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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

vs.

ANTHROPIC PBC,

Defendant.

Case No. 5:24-cv-03811-EKL

DEFENDANT ANTHROPIC PBC'S ADMINISTRATIVE MOTION FOR LEAVE TO FILE SURRESPONSE TO PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION

Hon. Eumi K. Lee

Pursuant to Civil Local Rule 7-11, Defendant Anthropic respectfully submits this Administrative Motion for Leave to File a Surresponse to Plaintiffs' Renewed Motion for a Preliminary Injunction. As Anthropic previously noted in its Objection to Reply Evidence (Dkt. 241) ("Objection"), Plaintiffs' Reply in support of their Renewed Motion for Preliminary Injunction included a substantial amount of new proffered evidence that Anthropic has not has an opportunity to rebut. In response to Anthropic's Objection, Plaintiffs invited Anthropic to submit "a short surresponse" by October 7, 2024, addressing the new evidence that Plaintiffs included in their Reply. *See* Dkt. 244 at 2; Decl. of Rachel S. Horn in Support of Administrative Motion for Leave to File Surresponse ("Horn Decl.") ¶ 8.

As detailed in Anthropic's Objection, Plaintiffs improperly attached to their Reply several new declarations and exhibits, including the results of a factual investigation and expert testimony that could have been addressed in their opening submission. Dkts. 226 through 226-5; 227; 228; 229 through 229-4; *see also* Dkt. 241 at 2-5. The inclusion of these new declarations and arguments violated the "well accepted" principle that "raising of new issues and submission of new facts in [a] reply brief is improper." *Pajas v. Cnty. of Monterey*, 2017 WL 1408016, at *7 (N.D. Cal. Apr. 20, 2017); *see also, e.g.*, *Sommers v. City of Santa Clara*, 2021 WL 326931, at *6 (N.D. Cal. Feb. 1, 2021) ("New evidence submitted as part of a reply is improper.").

If the evidence Plaintiffs attempted to introduce for the first time on Reply is made a part of the record, Anthropic should have an opportunity to respond. *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996); *see also True Health Chiropractic Inc. v. McKesson Corp.*, 2015 WL 5341592, at *1 n.1 (N.D. Cal. Sept. 12, 2015) (granting leave to file surreply where "Plaintiffs raised argument and evidence for the first time on reply"). Allowing Plaintiffs' belated evidence to go unrebutted could have tremendous implications here, where Plaintiffs seek extraordinary preliminary relief that threatens to hamper the development of a transformational technology. Although Plaintiffs have declined to stipulate to Anthropic's filing of the attached surresponse, they have agreed that "a short surresponse" would be appropriate under these circumstances. Dkt. 244 at 2; Horn Decl. ¶ 8. Anthropic accordingly requests the Court's leave to file the brief

surresponse and supporting declarations attached hereto, which are narrowly limited to addressing Plaintiffs' new reply evidence.[1]

Dated: October 7, 2024

Respectfully submitted,

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By */s/ Joseph R. Wetzel*

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[1] In addition, as Anthropic has explained in prior submissions and communications with the Court's courtroom deputy, to the extent the Court is not inclined to deny Plaintiffs' Renewed Motion on the papers, Anthropic believes an evidentiary hearing would provide the Court with a more robust, albeit still incomplete, record on the factual issues raised by Plaintiffs' motion.