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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CONCORD MUSIC GROUP, INC., ET AL.,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case Number: 5:24-cv-03811-EKL-SVK

PLAINTIFFS' REPLY IN SUPPORT OF MOTION TO EXCLUDE THE OPINIONS OF DR. RUSS ALTMAN

REDACTED

Judge Eumi K. Lee
Magistrate Judge Susan van Keulen
Hearing Date: October 21, 2026
Time: 10:00 AM
Courtroom 7

Anthropic's Opposition to Publishers' Motion to Exclude Expert Testimony of Dr. Russ Altman, ECF No. 746 ("Opposition" or "Opp."), fails to defend Anthropic's improper attempt to offer Dr. Altman's opinions on irrelevant topics about which Dr. Altman lacks expertise and which do no more than parrot Anthropic's and its customers' marketing materials. Publishers' Motion to Exclude the Opinions of Dr. Russ Altman, ECF No. 640 ("Motion" or "Mot."), should be granted.[1]

I. AI's generalized benefits are irrelevant to Anthropic's use of Publishers' lyrics.

Anthropic is wrong that purported public benefits unrelated to its use of Publishers' lyrics are relevant to whether its use of those lyrics is fair use. Anthropic cherry-picks language from *Sega,* but the broader passage makes clear that courts "are free to consider the public benefit resulting from a ***particular use*** . . . . Public benefit need not be direct or tangible, but may arise because ***the challenged use*** serves a public interest." *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1523 (9th Cir. 1992) (emphasis added). Nothing in *Sega* severed the necessary connection between the use of the work at issue and relevant benefits. Nor does *Perfect 10 v. Amazon.com* hold that all benefits are relevant to fair use without any connection to the use of the copyrighted work. Opp. 34 (citing 508 F.3d 1146, 1166 (9th Cir. 2007)). *Perfect 10* held that a search engine's use of copyrighted thumbnail images was transformative because "a search engine provides social benefit by incorporating an original work into a new work, namely, an electronic reference tool." *Perfect 10* connected the social benefit of electronic image search to the use of copying thumbnails, observing that courts should "be mindful of the extent to which a ***use*** promotes the purposes of copyright and serves the interests of the public." *Perfect 10*, 508 F.3d at 1165–66 (emphasis added).

Anthropic is also wrong that any evidence connects its use of Publishers' lyrics to any of the purported benefits of Claude it identifies. Anthropic does not argue that Publishers' lyrics are a but-for or proximate cause of, or are important or necessary to, any of those benefits. Nor could it, since Anthropic has argued the opposite: that lyrics are essentially worthless as training data. Mot. 4; *see also* ECF No. 686-2, Def. Ad.F #33 ([redacted]). Instead, Anthropic argues that ***any*** piece of training data Anthropic uses is relevant to ***every*** benefit of its models because it is impossible to prove that any piece of training

[1] "Rpt.," "Rebuttal," "Reply," and "Miller Decl." are defined in Publishers' Motion, ECF No. 640.

data had exactly zero effect on any of the parameters of the model. Opp. 3–4. Anthropic's argument invokes an unprecedentedly broad theory of causation that courts would reject out-of-hand in any other context. That no one can rule out that every piece of training data ***might*** have some infinitesimal effect on some of the model's many parameters cannot on its own connect Anthropic's use of Publishers' lyrics to any, let alone all, of Claude's benefits. Anthropic cannot show that its use of Publishers' lyrics has any discernible effect on the model's parameters that produce the benefits Anthropic touts: not only has Anthropic not done so, it has repeatedly argued the opposite. Contrary to Anthropic's strawman, Opp. 4, Anthropic need not necessarily quantify the effects of including Publishers' lyrics. But Anthropic must do more than simply wave its hands and claim that all training data has a meaningful causal relationship with every model output.

Anthropic does not dispute that courts must assess the fair use factors "in light of the purposes of copyright." *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 578 (1994). But Anthropic interprets that purpose so broadly as to render it meaningless. If the purpose of copyright is detached from its roots in creativity and stretched to include "[redacted]" and "[redacted]" Rpt. ¶¶ 61, 81, then it has no real meaning at all.

This issue is ripe. "[B]efore admitting expert testimony, the district court must perform a gatekeeping role to ensure that the proffered testimony is both relevant and reliable." *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1047 (9th Cir. 2025) (citation modified). Accordingly, the time is right to resolve the relevance of Dr. Altman's opinions. While Publishers have developed the record on Claude's risks, Anthropic's clear intent to try to focus the case on AI's public benefits compelled Publishers to do so. Doing so did not waive Publishers' relevance objection; Anthropic does not argue otherwise. If the Court holds that AI's public benefits (and corresponding risks) are not relevant, Publishers need not affirmatively introduce evidence on that issue at trial.

II. Dr. Altman has no general AI expertise.

The record refutes Anthropic's claim that Dr. Altman has general expertise regarding "practical applications of AI and LLMs" beyond medicine, biology, and higher education. Opp. 6. Dr. Altman claims his "[redacted]

[redacted]" Rpt. ¶ 9 (emphasis added); Rpt. ¶ 29 ("[redacted]"). His publications and courses taught have all been in those areas. ECF No. 654-4 at 16:8–17, 17:6–11. The other bases of expertise Anthropic highlights are also limited to biology, medicine, or higher education. As Associate Director of the Stanford Institute for Human-Centered AI, Dr. Altman "[redacted]" Rpt. ¶ 51 (emphasis added). As Chair of Stanford's AI task force, Dr. Altman advises Stanford's provost on "the need for policies at Stanford on the use of AI in administration, education, and research," Add'l Decl. of Corey Miller in Supp. of Pls' Reply, Ex. E 288:2–290:2 ("Altman Tr.")—all within higher education. Nor is Dr. Altman much of an "AI Consultant." Opp. 6. In reality, by December 2025, he had only consulted for less than two months for only one AI-related company that helps prepare documents for FDA submission. Altman Tr. 26:16–27:18. And hosting a podcast that sometimes covers AI topics does not make Dr. Altman an expert on everything AI-related.

Anthropic's cited cases do not salvage Dr. Altman. *In re Roundup Products* held that a biostatistician was qualified to opine on an epidemiology issue because the expert "ha[d] reviewed epidemiology studies throughout his career and has published in the field." *In re Roundup Prods. Liab. Litig.*, 390 F. Supp. 3d 1102, 1131 (N.D. Cal. 2018), *aff'd sub nom. Hardeman v. Monsanto Co.*, 997 F.3d 941 (9th Cir. 2021). That differs from Dr. Altman, who has never worked nor published in many of the diverse fields about which he seeks to opine. Anthropic's other cases hold that an expert's general expertise qualified that expert to opine on specific issues *within* that expertise, even if the expert lacked specific expertise on the point at issue. *Capitol Recs., Inc. v. MP3tunes, LLC*, 2014 WL 503959, at *9 (S.D.N.Y. Jan. 29, 2014) (music-industry consultant could opine on specific music-industry business practice even though consultant lacked personal experience with that practice); *United States v. Garcia*, 7 F.3d 885, 890 (9th Cir. 1993) (children's mental health specialist with experience counseling abused children did not need particularized expertise to opine regarding trauma child would face from testifying in court); *Stagl v. Delta Air Lines, Inc.*, 117 F.3d 76, 82 (2d Cir. 1997) (mechanical engineer with expertise on "interaction

between people and machinery" could opine on safety of baggage delivery system). Those cases do not apply to Dr. Altman, who seeks not to apply a generalized expertise to particular issues within that broad scope, but to apply a particularized expertise to issues well outside that scope.

Dr. Altman's opinions on K-12 education highlight this problem. Dr. Altman is not a general education expert; his expertise is limited to higher education, Mot. 6, of which K-12 education is not a more particular subset. Asking him to opine on K-12 education is like calling an electrician to unclog a drain when you actually need a plumber.

Anthropic's attempts to address Dr. Altman's lack of expertise in other areas fail. Having used other LLMs (not Claude) in medical and biological research does not qualify Dr. Altman to opine about how government and civic organizations—organizations with which Dr. Altman has no experience, Mot. 6—deploy Claude for non-biomedical purposes. On Claude's effect on new business generation, Dr. Altman has no relevant experience at all. Mot. 6–7. Speaking with executives and his minimal consulting experience, *see supra*, do not make him an expert. Similarly, Dr. Altman's experience with creative sectors is laughably thin: attending one symposium and using Claude to write a single song does not make him an expert on how Claude will affect fiction writers, filmmakers, illustrators, graphic designers, and musicians. *See* Rpt. ¶¶ 105–116.

Unable to defend Dr. Altman's general AI safety credentials, Anthropic exaggerates them. Anthropic claims Dr. Altman co-authored an "influential paper on foundational AI models that broadly discusses AI risks and potential mitigations." Opp. 8. Actually, the paper had *114* co-authors and Dr. Altman only contributed to the section on "healthcare and biomedicine." RISHI BOMMASANI ET AL., *On the Opportunities and Risks of Foundation Models* 1, ARXIV: 2108.07258 (rev. July 12, 2022), https://doi.org/10.48550/arXiv.2108.07258. Nor does Dr. Altman "teach a boot camp for members of Congress on the latest developments, benefits, and risks of AI." Opp. 9. Instead, he sat on an hour-long panel on AI's use in science at a three-day event aimed at Congressional *staff*, not members. Reply ¶ 31; STANFORD INST. FOR HUM.-CENTERED AI, *Congressional Boot Camp on Artificial Intelligence* (Aug. 10–12, 2026), https://hai.stanford.edu/assets/files/ai_congressionalbootcamp_2026_booklet_digital.pdf.

Anthropic does not defend most of Dr. Altman's foray into amateur history, Mot. 7–8,

arguing only that Dr. Altman can opine on the history of x-ray technology. Opp. 8. Even there, while Anthropic claims experts "may base their opinion on knowledge that is common in their field," *id.*, Anthropic never shows, as it must, that the history of x-ray technology is common knowledge in the medical profession. Nor does Dr. Altman confine his opinion to the medical development of radiology but includes "[redacted]" as well. Rebuttal ¶ 26.

III. Dr. Altman's reliance on unvetted marketing materials requires exclusion.

The distinction Anthropic tries to draw between Dr. Altman's opinions and the evidence on which he relies, Opp. 9, is false. Dr. Altman opines that Claude has certain beneficial uses; the substance of that opinion is simply citing Anthropic's and its customers' marketing materials as evidence of those uses, without further investigation or analysis. Mot. 8–10. Because Dr. Altman performs no independent analysis, the opinion ***is*** the evidence, and they stand or fall as one.

For this reason, Anthropic misses the significance of Dr. Altman's failure to independently verify his sources. Where an expert performs additional analysis on inputs, the opinion stands on the analysis' reliability. And where "experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject," Fed. R. Evid. 703, the expert can do so as well. Thus, Publishers have not moved Dr. Altman's opinions that rely on peer-reviewed literature. But where the expert performs no analysis and only regurgitates sources that lack the traditional indicia of reliability that experts in the field would reasonably require, the opinion must be excluded. For obvious reasons, Anthropic does not even try to argue that other biomedical AI researchers would reasonably rely on hearsay marketing materials as reliable evidence of anything. When the opinion is the evidence and the evidence is not reliable, the opinion is unreliable.

Anthropic also errs that Dr. Altman's "knowledge and experience" can compensate for his unreliable methods because his opinions are not technical. Opp. 10. Dr. Altman's opinions regarding the unreliable hearsay marketing materials he parrots are not rooted in his knowledge or experience because he lacks knowledge or experience regarding the substance of the sources he cites, even for the few that fall within his areas of technical expertise. Mot. 8–10.

CONCLUSION

For these reasons, Publishers respectfully request that the Court grant Publishers' Motion.

Dated: August 18, 2026

Respectfully submitted,

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