OPPENHEIM + ZEBRAK, LLP
Matthew J. Oppenheim
Nicholas C. Hailey
Jeffrey M. Gould
Corey Miller
Keith Howell
(admitted *pro hac vice*)
4530 Wisconsin Ave., NW, 5th Floor
Washington, DC 20016
Telephone: (202) 480-2999
matt@oandzlaw.com
nick@oandzlaw.com
jeff@oandzlaw.com
corey@oandzlaw.com
khowell@oandzlaw.com

Alexander Kaplan
Jennifer Pariser
Andrew Guerra
Bret Matera
Timothy Chung
Michelle Gomez-Reichman
(admitted *pro hac vice*)
461 5th Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 951-1156
alex@oandzlaw.com
jpariser@oandzlaw.com
andrew@oandzlaw.com
bmatera@oandzlaw.com
tchung@oandzlaw.com
mgomez-reichman@oandzlaw.com

Attorneys for Plaintiffs

COBLENTZ PATCH DUFFY & BASS LLP
Jeffrey G. Knowles (SBN 129754)
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Telephone: (415) 391-4800
ef-jgk@cpdb.com

COWAN, LIEBOWITZ & LATMAN, P.C.
Richard S. Mandel
Jonathan Z. King
Richard Dannay
(admitted *pro hac vice*)
114 West 47th Street
New York, NY 10036-1525
Telephone: (212) 790-9200
rsm@cll.com
jzk@cll.com
rxd@cll.com

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 COLIN STOKES

REDACTED

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

When Colin Stokes first served his expert reports, their intended purpose was unclear. He offered two broad opinions with no apparent relevance to the issues in this case. First, he opined that lyrics "are a subset of a musical composition—not its equivalent," a proposition that is neither contested nor beyond the understanding of any lay person. *See* Anthropic's Opp. to Publishers' Mot. to Exclude Expert Testimony of Colin Stokes 1, ECF No. 740 ("Anthropic Opp." or "Opp."). Second, he asserted that the music industry has always resisted technological innovation, and that Publishers' concerns about AI represent the "[redacted]." Rpt. ¶ 55.[1]

In opposition to the instant motion, Anthropic reveals its intended purpose for Stokes's testimony. It argues that his first opinion—that lyrics are only a part of a musical composition—is relevant to the third fair-use factor, "the amount and substantiality of the portion used in relation to the copyrighted work as a whole." Opp. 1, 2; 17 U.S.C. § 107(3). But by Stokes's own description, [redacted] is so completely conclusory, generalized, and devoid of any explanation that it violates the most basic standards of Federal Rule of Evidence 702.

Anthropic insists that Stokes's second opinion, that the music industry always resists technology even though some artists are making creative uses of AI, speaks to the fourth fair-use factor, "the effect of the use upon the potential market for or value of the copyrighted work." Opp. 1, 6; 17 U.S.C. § 107(4). But castigating the music community as predisposed to rebuff technology says nothing about whether Anthropic's training on and regurgitation of Publishers' lyrics without authorization impacts the existing and potential markets for lyrics. It simply offers a prejudicial gloss on Publishers' presumed motives for bringing this case. Stokes's opinions, in other words, are pure advocacy and far afield from the proper use of expert testimony.

Stokes's improper opinions should be excluded in full.

[1] Defined terms in this brief have the same meaning assigned to them in Publishers' opening Motion to Exclude the Opinions of Colin Stokes, ECF No. 652 ("Motion" or "Mot.").

ARGUMENT

I. Stokes's Opinions on the "Value" of Lyrics are Irrelevant and Unreliable

Stokes's first opinion is that lyrics are only "[redacted]" *See* Rpt. ¶¶ 18–33. But Stokes readily concedes that people already understand that lyrics are only part of a composition. *See* Add'l Decl. of T. Chung in Supp. of Pls.' Reply, Ex. E, Stokes Dep. Tr. at 67:3–4 ("I believe an average listener listening to a song would be able to tell if there are lyrics or not"); *id.* at 67:13–15 ("an average listener can differentiate between a human voice and what's not a human voice"). Expert testimony is not admissible unless it explains something outside the understanding of an average person. *See, e.g., Sawyer v. City of Los Angeles*, 2013 WL 12642028, at *2 (C.D. Cal. Aug. 2, 2013) ("To be admissible, expert testimony must . . . address an issue beyond the common knowledge of the average layman . . . .") (citations omitted).

Anthropic nevertheless protests that, even if most people already know that lyrics are only one part of a song, Stokes's opinion will help them understand the "interplay between lyrics and other elements of a musical composition." Opp. 3. In Anthropic's telling, that "interplay"—expressed in vague assessments of undefined "emotional value"—will somehow inform jurors' assessment of the third fair-use factor and how much of Publishers' copyrights Anthropic has taken. *Id.* at 3–4. The problem is the decidedly unreliable and prejudicial way Stokes describes that "interplay" and uses it to denigrate Publishers' lyrics.

The entire tenor of Stokes's first opinion is to diminish the significance of lyrics generally. *See, e.g.*, Rpt. ¶¶ 33–34 ([redacted]); ¶ 47 [redacted]"). Indeed, his report is replete with references to the allegedly lesser [redacted]. *See, e.g., id.* ¶¶ 17.a, 19, 54, 95. And he purports to illustrate this vague conclusion by cherry-picking a small handful of works—only some of which are even at issue in this case—and announcing with essentially no explanation [redacted]. *See, e.g., id.* ¶

22 ([redacted]); ¶ 23 ([redacted]); ¶ 25 ([redacted]).

Anthropic effectively concedes that Stokes does not explain how he arrived at these opinions but insists that, because Stokes is "not a scientist," the "reliability" of his testimony rests on his "knowledge and experience" rather than "the methodology or theory behind it." Opp. 4–5. Anthropic is wrong that, because Stokes is not a scientific expert, he is under no obligation to explain why he thinks [redacted] and how he arrived at those conclusions. The nonscientific nature of Stokes's opinions does not automatically free him from explaining the basis for his views. While Stokes may not be obligated to apply a peer-reviewed scientific methodology, Rule 702 still requires an expert's opinion to be "the product of reliable principles and methods." Fed. R. Evid. 702(c). "If the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts." Fed. R. Evid. 702 Adv. Comm. Notes (2000 Amendment); *see also* Fed. R. Civ. P. 26(a)(2)(B)(i) (expert report "must contain . . . a complete statement of all opinions the witness will express and the basis and reasons for them"). Even if a nonscientific expert need not satisfy all the relevant criteria for scientific evidence, the Supreme Court and courts in this Circuit hold that a trial court may consider one or more of the *Daubert* factors in assessing nonscientific expert testimony, including whether a method has been tested, peer-reviewed, or is generally accepted. *See, e.g., Kaupelis v. Harbor Freight Tools USA, Inc.*, 2020 WL 5901116, at *3 (C.D. Cal. Sept. 23, 2020) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) ("'A trial court *may* consider one or more' of the *Daubert* factors in determining the reliability of nonscientific expert testimony") (emphasis in original); *Physicians Healthsource, Inc. v. Masimo Corp.*, 2019 WL 8138043, at *4 (C.D. Cal. Nov. 21, 2019) (same).

Here, Stokes never explains *how* his knowledge and experience as a music technologist qualify him to state naked conclusions about the "expressive" meaning or value of lyrics, or why certain musical elements contribute [redacted] so he fails the test of reliability at the threshold. "The trial court's gatekeeping function requires more than simply

taking the expert's word for it." Fed. R. Evid. 702 Adv. Comm. Notes (2000 Amendment) (quotation omitted). "The more subjective and controversial the expert's inquiry, the more likely the testimony should be excluded as unreliable." *Id.* Devoid of any basis other than his vague emotional instincts, Stokes's opinion is thus improperly conclusory. *See Reno v. United States,* 283 Fed. App'x 502, 503 (9th Cir. 2008) (holding that plaintiff-appellant's "expert reports were inadequate because they were conclusory and failed to explain in any meaningful way the basis for the opinions"). And Stokes further compounds that error by generalizing from a tiny snapshot of the Works in Suit, implying that all [redacted] just because he feels that to be the case for a handful of songs.

II. Stokes's Opinion on [redacted] is Irrelevant and Prejudicial

As set forth in Publishers' opening brief, Mot. 9–10, Stokes's second opinion is an irrelevant historical retrospective designed to show that Publishers' concerns about AI are akin to [redacted]. *See* Rpt. ¶ 55. According to Anthropic, "the music industry's historical adaptation to new technologies is plainly relevant" to the "fourth fair use factor" concerning "harm to the actual or potential markets for the copyrighted work." Opp. at 6. The argument is a *non sequitur*.

The Parties' summary judgment briefs address whether Anthropic's training on and outputting Publishers' lyrics harms existing and potential markets for, *inter alia*, the creation of lyrics, licensing of existing lyrics to online sources, and licensing lyrics as training data. *See, e.g.*, Pls.' Mot. for Partial Summ. J., 28–35, ECF No. 594. How the music industry responded to [redacted]—much of which, in any event, relates to the recording industry rather than the songwriting industry at issue here—bears not one iota of relevance to AI's impacts on those markets. By the same token, the opinion is highly prejudicial, because it casts musicians and the industries that support them as stubbornly unable to see the promise of new technology such as AI. Federal Rule of Evidence 403 requires preclusion of evidence whose prejudice outweighs its probative value, which in this case is zero.

The same holds true for Stokes's examples of musicians using other types of AI—[redacted]—in their creative processes. The question is not whether AI or even Claude may be useful to some musicians. Rather, the question is whether Anthropic's copying of Publishers' lyrics without authorization to train Claude to generate verbatim copies of those lyrics, synthetic derivatives, and AI-produced lyric facsimiles harms their commercial markets. That market harm is not mitigated by, for example, [redacted] *See* Rpt. ¶ 77. Such examples have nothing to do with either Claude or lyrics, let alone the effects of Anthropic's copying on the markets for lyrics.

In any event, that an infringing product may otherwise provide some public or creative benefit does not render it non-infringing. For example, even if an unauthorized film adaptation of a novel leads to an increase in sales of the original novel, it still infringes the derivative works right. *Abend v. MCA, Inc.*, 863 F.2d 1465, 1482 (9th Cir. 1988) (rejecting fair use and holding that it is "irrelevant that the [film adaptation] may have promoted sales of the underlying story in the book medium"); *see also A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1018 (9th Cir. 2001) (holding that "increased sales of copyrighted material attributable to unauthorized use should not deprive the copyright holder of the right to license the material"). Those benefits have no bearing whatsoever on whether the particular use in question—copying lyrics to output lyrics—impacts economic markets for the copied works.

CONCLUSION

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

Dated: August 18, 2026

Respectfully submitted,

/s/ Jonathan Z. King

OPPENHEIM + ZEBRAK, LLP
Matthew J. Oppenheim
Nicholas C. Hailey
Jeffrey M. Gould
Corey Miller
Keith Howell
(admitted *pro hac vice*)
4530 Wisconsin Ave., NW, 5th Floor
Washington, DC 20016
Telephone: (202) 480-2999
matt@oandzlaw.com
nick@oandzlaw.com
jeff@oandzlaw.com
corey@oandzlaw.com
khowell@oandzlaw.com

Alexander Kaplan
Jennifer Pariser
Andrew Guerra
Bret Matera
Timothy Chung
Michelle Gomez-Reichman
(admitted *pro hac vice*)
461 5th Avenue, 19th Floor
New York, NY 10017
Telephone: (212) 951-1156
alex@oandzlaw.com
jpariser@oandzlaw.com
andrew@oandzlaw.com
bmatera@oandzlaw.com
tchung@oandzlaw.com
mgomez-reichman@oandzlaw.com

COBLENTZ PATCH DUFFY & BASS LLP
Jeffrey G. Knowles (SBN 129754)
One Montgomery Street, Suite 3000
San Francisco, CA 94104
Telephone: (415) 391-4800
ef-jgk@cpdb.com

COWAN, LIEBOWITZ & LATMAN, P.C.
Richard S. Mandel
Jonathan Z. King
Richard Dannay
(admitted *pro hac vice*)
114 West 47th Street
New York, NY 10036-1525
Telephone: (212) 790-9200
rsm@cll.com
jzk@cll.com
rxd@cll.com

Attorneys for Plaintiffs

SIGNATURE ATTESTATION PURSUANT TO CIVIL L.R. 5-1(h)

Pursuant to Civil L.R. 5-1(h), I hereby attest that concurrence in the filing of this document was obtained from the signatory of this document. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 18, 2026

/s/ Timothy Chung
Timothy Chung