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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' NOTICE OF MOTION AND MOTION TO PARTIALLY EXCLUDE THE OPINIONS OF JULIE DAVIS

Judge Eumi K. Lee
Magistrate Judge Susan van Keulen
Hearing Date: July 15, 2026, 10:00 am
Courtroom: 7

CERTIFICATION OF COMPLIANCE WITH CIVIL STANDING ORDER SEC. VIII.A

Pursuant to Sec. VIII.A of the Court's Civil Standing Order, the undersigned counsel certifies that Publishers' counsel met and conferred with Anthropic's counsel by videoconference on March 24, 2026 and by email to discuss the bases for this Motion in an effort to resolve or narrow disputed issues where possible to reduce motion practice.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 15, 2026, at 10:00 am (*see* ECF No. 587), or as soon thereafter as this matter may be heard, before the Honorable Eumi K. Lee, District Judge, U.S. District Court for the Northern District of California, in Courtroom 7 – 4th Floor, 280 South 1st Street, San Jose, CA 95113, Plaintiffs Concord Music Group, Inc., Capitol CMG, Inc., Universal Music Corp., Songs of Universal, Inc., Universal Music - MGB NA LLC, Polygram Publishing, Inc., Universal Music - Z Tunes LLC, and ABKCO Music, Inc. (collectively, "Publishers") will and hereby do respectfully move this Court for an order partially excluding the opinions of Defendant Anthropic PBC's ("Anthropic") expert witness, Ms. Julie Davis, as unreliable, not likely to aid the factfinder in assessing the relevant issues in this case, and otherwise improper.

STATEMENT OF RELIEF

Publishers respectfully request that the Court exclude Ms. Julie Davis's opinions and all related testimony regarding: (i) profit apportionment percentages; (ii) the fourth factor of the fair use defense; and (iii) any recoverable statutory damages or the factors to be considered therein.

INTRODUCTION

Anthropic's damages expert, Ms. Julie Davis, does nothing more in this case than apply an expert's gloss to basic arithmetic and legal arguments from counsel. Three of her opinions stand out as particularly improper. ***First***, she lacks the relevant expertise necessary to justify her proposed profit apportionment percentages, which amount to the simple division of two numbers given to her by other Anthropic experts. ***Second***, her "Factor Four Analysis" is a summary recitation of Publishers' revenue statements, followed by the ipse dixit conclusion that "there is no evidence that there has been harm to the lyrics market for the Asserted Works" under 17 U.S.C. §107 (4). ***Last***, her conclusory opinion that Publishers' claimed statutory damages are "disproportional" is improperly smuggled into her rebuttal report without being responsive to any of Publishers' experts, usurps the role of the jury, ignores legally relevant factors, and has no discernible methodology.

Excluding the foregoing opinions and related testimony will not prevent Anthropic from presenting any of the evidence or theories Ms. Davis advances, but failing to do so will grant an "unmerited credibility" for lay testimony that is "likely to carry special weight with the jury." *United States v. Gadson*, 763 F.3d 1189, 1212 (9th Cir. 2014). The Court should exclude Ms. Davis's report and opinions under both Federal Rules of Evidence 702 and 403.

BACKGROUND

Julie Davis, a certified public accountant and professional damages expert, opines on the appropriate measure of Publishers' damages as well as the effect of Anthropic's infringing use of the 499 Works in Suit (the "Works") on the potential market for or value of the Works—*i.e.,* the fourth factor of a fair use defense.

To apportion damages for use of the Works as training data, Ms. Davis calculates the percentage of the total tokens needed to train three Claude models (Claude 2, 3, and 3.5 Sonnet) that the tokens (the units into which Claude's text-based training corpus is broken down) corresponding to Publishers' lyrics represent. Decl. of Michelle Gomez-Reichman in Supp. of Pls.' Mot. to Exclude the Opinions of Julie Davis ("Gomez-Reichman Decl.") Ex. A at 43, Expert Report of Julie Davis (Dec. 19, 2025) ("Rpt."). Relying on another Anthropic expert's analysis of the 5 million prompt/output pairs sample Anthropic produced, Ms. Davis also lists the percentages of Claude prompts seeking any amount or form of lyric regurgitation for the Works and Claude outputs containing any amount or form of regurgitated lyrics from the Works and opines that such percentages "would provide important information as to an appropriate apportionment factor" for output infringement. Rpt. at 46. Ms. Davis also briefly discusses the costs Anthropic avoided by infringing the Works. She assumes that purchasing sheet music of the Publishers' Works and destructively scanning them to be ingested as training data is a legal fair use, and calculates the costs of purchasing that sheet music Anthropic avoided. *Id.* at 44–45. She also concludes that awarding more than minimum statutory damages would be "disproportional." Gomez-Reichman Decl. Ex. B at 27, Expert Rebuttal Report of Julie Davis (Jan. 23, 2026) ("Rebuttal").

Ms. Davis also purports to analyze revenue trends in Publishers' produced financial data to determine any market harm in accordance with the fourth fair-use factor. After summarizing the

available revenue data, Ms. Davis concludes that there is no evidence of harm to the lyrics licensing market for the Works since the launch of Claude. Rpt. at 48–52. Finally, Ms. Davis briefly discusses the potential benefits general AI may offer to the lyrics licensing market. *Id.* at 53.

LEGAL STANDARD

Expert testimony is admissible under Fed. R. Evid. 702 where "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue," and the testimony is sufficiently reliable. Fed. R. Evid. 702. The court acts as a gatekeeper for such testimony, "ensur[ing] that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). Generally, expert opinion "is relevant if the knowledge underlying it has a valid connection to the pertinent inquiry," *Engilis v. Monsanto Co.,* 151 F.4th 1040, 1047 (9th Cir. 2025) (quotations and citations omitted), and carries "sufficient indicia of reliability." *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 840 (9th Cir. 2001). There is no presumption in favor of admission. *Engilis*, 151 F.4th at 1049.

ARGUMENT

I. Ms. Davis Lacks the Expertise Needed to Justify Her Profit Apportionment Analysis, which Amounts to Basic Arithmetic and Disguised Legal Argument.

Ms. Davis did not use any "specialized knowledge" in calculating the apportionment percentages she applies to Anthropic's profits, and she lacks the expertise necessary to explain *why* those percentages are fair reflections of the value Anthropic derived from copying Publishers' lyrics. Instead, she uses "grade-school arithmetic" and the unverified inputs of other experts to determine the profits she claims are attributable to the infringements in this case—an exercise a jury is perfectly capable of doing unassisted. *Waymo LLC v. Uber Tech., Inc.*, 2017 WL 5148390, at *5 (N.D Cal. Nov. 6, 2017); *accord Kim v. Benihana, Inc.*, 2022 WL 1601393, at *8 (C.D. Cal. Mar. 25, 2022) (relying on *Waymo* to exclude expert), *exclusion aff'd*, 2023 WL 3674673, at *1 (9th Cir. May 26, 2023).

Ms. Davis's calculations are no different than those excluded in *Waymo*, where the expert "simply multiplied" an input taken from another expert by a value taken from an internal Uber

slide deck. *See Waymo*, 2017 WL 5148390 at *2–*6. Such an opinion required exclusion because it "amounted to nothing more than uncritical acceptance of other evidence in the case, which can speak for itself, plus some basic arithmetic," and was therefore "not 'specialized knowledge' that [would] help the jury understand the evidence or determine a fact issue." *Id.* at *6. As such, the expert's "only contribution would be to pile on a misleading façade of expertise." *Id.* at *5.

Ms. Davis's [redacted]. Like the *Waymo* expert, Ms. Davis "brings no specialized knowledge to the table." *Id.* at *5. She is an accountant and professional damages expert with [redacted]. Gomez-Reichman Decl. Ex. D 65:14–66:6, Davis Dep. Tr. ("Dep. Tr."). Nor does Ms. Davis "[redacted]." Dep. Tr. 137:12–16. [redacted]" Dep. Tr. 139:8–15. She cannot offer any insight based on "specialized knowledge" to explain why [redacted]

Take her "[redacted]. *See* Rpt. at 42–45; Rebuttal at 3–15. Ms. Davis simply [redacted]. *See* Dep. Tr. 145:21–146:1 ("[redacted]").

To calculate her "[redacted]

by the total number of prompts that Dr. Bray deemed relevant from a sample of 5 million prompt/output pairs that Anthropic produced in this case. *See* Rpt. at 45–47; Rebuttal at 3–15. This is just simple arithmetic that does not require any specialized knowledge. Nor does Ms. Davis offer any expert analysis for why this arithmetic is appropriate.

The last step in Ms. Davis's apportionment analysis is likewise just simple arithmetic that does not require any specialized knowledge: she sums her two apportionment percentages from above (without explanation) then multiplies the result by Anthropic's "gross profits," *see* Rebuttal at 14–15, which she derives from a revenue statement that Anthropic prepared for this case. She does not explain why the measure of Anthropic's "gross profits" is the correct one.

Unable to explain *why* her training and output percentages should be used for profit apportionment in this case, Ms. Davis is reduced to performing calculations that "grade-school arithmetic counsel can do on an easel." *Waymo LLC*, 2017 WL 5148390, at *5. Such analysis amounts to "lawyer argument dressed up as expert opinion," *id.*, and creates a serious risk that Ms. Davis will be given "unmerited credibility" for lay testimony that is "likely to carry special weight with the jury." *Gadson*, 763 F.3d at 1212. Insofar as the testimony and other evidence in this case are appropriate barometers for determining the proportion of Anthropic's profits attributable to its infringement of Publishers' lyrics, that evidence "can speak for itself," which means Ms. Davis's "only contribution would be to pile on a misleading façade of expertise." *Waymo LLC*, 2017 WL 5148390, at *5.

II. Ms. Davis Is Unqualified to Offer Her *Ipse Dixit* Market Harm Analysis, and Merely Regurgitates Record Evidence.

Ms. Davis should be precluded from opining regarding the effect of Anthropic's use on the potential market for and value of Publishers' lyrics because she lacks any relevant expertise and fails to do any analysis beyond regurgitating record evidence.

Ms. Davis lacks relevant expertise to opine on the market for a copyrighted work. Ms. Davis is not an economist, and despite her many decades of experience testifying as a hired expert, she has never opined on the effect of an infringer's use on the "potential market for and value of the copyrighted work." *See* Dep. Tr. 68:9–14. Ms. Davis also did not analyze any market harm.

Her only support for her conclusory view that "there is no evidence that there has been harm to the lyrics market for the Asserted Works" are the summarized accounts of Publishers' revenue data for the 499 Works between Q1 2019 and Q4 2025, which she claims, without any elaboration or analysis, reflect no evidence of harm since Anthropic released Claude to the general public in July 2023. *See* Rpt. at 49–53; Rebuttal at 30–33.

"[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). The court's gatekeeping function requires more than "taking the expert's word for it." Fed. R. Evid. 702 Adv. Comm. Notes (2000 Amendment); *see also Siqueiros v. Gen. Motors, LLC*, 2022 WL 74182, at *9–10 (N.D. Cal. Jan. 7, 2022) (expert may not restate or summarize record evidence and then state a conclusion without applying a reliable methodology and which evinces expertise); *Cisco Sys. Inc. v. Arista Networks, Inc.*, 2016 WL 11752975, at *5 (N.D. Cal. Nov. 16, 2016) (excluding opinions where opinions amount to nothing more than a summary of documents).

But "*ipse dixit*" is all that Ms. Davis offers here. She makes no attempt to examine Publishers' revenue data in the context of any control variables, potential confounders, or benchmarks, and she fails to consider any "obvious alternative explanations" for Publishers' revenue trends, such as lyric-licensing agreements expiring or new ones being signed. *See* Fed. R. Evid. 702 Advisory Committee Notes (2000 Amendment) (factors relevant in determining whether expert testimony is reliable include whether expert has adequately accounted for obvious alternative explanations). For example, with respect to Plaintiff UMPG, Ms. Davis observes that UMPG's "online lyric revenues increase and decrease . . . without any apparent pattern." Rpt. at 50. From this, she summarily concludes that "there is no indication that the launch of Claude on any of the various dates identified above caused a downward trend in lyric revenues." *Id.* But she does so without analyzing the revenue trends themselves to determine what factors—including the introduction of Claude—might be contributing to the fluctuations.

Ms. Davis further exposes her lack of expertise and reliable methodology where she shoehorns in a paragraph about the "potential ways that generative AI may be beneficial to the market

for licensing lyrics." Rpt. at 53. Ms. Davis offers no analysis to support these supposed benefits, again merely regurgitating record evidence. Indeed, during her deposition she admitted that she has no expertise with respect to the functionality of generative AI like Claude. Dep. Tr. 146:5–13.

Hollow regurgitation of Publishers' revenues and conclusory inferences are "inappropriate under Rule 702 because the jury is in as good a position as [Ms. Davis] to draw conclusions from the evidence, and is capable of drawing its own inferences." *Siqueiros*, 2022 WL 74182, at *9 (internal quotation marks and citation omitted). Ms. Davis's "factor four" analysis "offers nothing more than what [Anthropic's] counsel could argue to the jury in closing arguments." *Edwards Lifesciences Corp. v. Meril Life Scis. Pvt. Ltd.*, 2022 WL 254348, at *10 (N.D. Cal. Jan. 27, 2022).

III. Ms. Davis' Opinion that Publishers' Claimed Statutory Damages Are "Disproportional" Should be Excluded.

Ms. Davis's opinion that Publishers' claimed statutory damages are "disproportional in light of my opinions in my opening report" should be excluded as unreliable and as improperly usurping the jury's role to assess statutory damages. Further, this opinion was not timely disclosed.

First, Ms. Davis's proportionality opinion is unreliable because it lacks any discernible methodology. *See Colby v. Newman*, 2012 WL 12885118, at *6 (C.D. Cal. Nov. 20, 2012) (quoting *Daubert II*, 43 F.3d at 1319) ("[T]he proponent of expert testimony must 'explain the methodology the experts followed to reach their conclusions [and] point to any external source to validate that methodology'"). In opining that Publishers' claimed statutory damages are "disproportional," Ms. Davis never specifies *what* those damages would be disproportional to or which opinions in her opening report would render statutory damages disproportional, let alone the basis on which she weighed proportionality. *See* Rebuttal at 28. In lieu of analysis, Ms. Davis offers only a six-bullet list of disputed evidence that she claims justifies her conclusion, *id.*, but which amount to nothing more than "lawyer argument dressed up as expert opinion." *Waymo LLC*, 2017 WL 5148390, at *5. The Court should not permit Anthropic's counsel to play the ventriloquist to provide specious closing argument through Ms. Davis.

Ms. Davis's proportionality opinion should also be excluded because she did not consider all of the relevant statutory damages factors. In this circuit, assessing statutory damages includes

consideration of "1. the revenue lost by the copyright holder as a result of the infringement; 2. the profits earned by the defendant as a result of the infringement; 3. the need to deter future infringement; 4. the need to penalize the infringer; 5. the circumstances of the infringement; and 6. whether the infringement was intentional." Ninth Circuit Model Jury Instructions, § 17.37 Copyright—Damages—Statutory Damages. Ms. Davis admitted she did not consider deterrence, the need for punishment, the circumstances of the infringement, or willfulness, rendering her supposed proportionality analysis inherently deficient and methodologically unsound. *See* Dep. Tr. 250:12–251:7.

Ms. Davis's failure to consider all of the relevant factors also risks misleading the jury about how to assess statutory damages. A jury weighing the factors Ms. Davis ignored can properly award statutory damages that are not directly linked to the defendant's profits from infringement. The Supreme Court has held that, "[e]ven for uninjurious and unprofitable invasions of copyright the court may, if it deems it just, impose a liability within statutory limits to sanction and vindicate the statutory policy." *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 234 (1952). Similarly, this circuit has held that, "[b]ecause awards of statutory damages serve both compensatory and punitive purposes, a plaintiff may recover statutory damages whether or not there is adequate evidence of the actual damages suffered by plaintiff or of the profits reaped by defendant to sanction and vindicate the statutory policy of discouraging infringement." *Los Angeles News Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998). Such an award is not "disproportional" but a proper application of the statutory damages framework. Ms. Davis's opinion suggesting otherwise would confuse the jury about what it can properly consider when awarding damages and it should therefore be excluded.

Second, Ms. Davis's opinion exceeds her role as an expert because she goes beyond helping the jury evaluate each of the underlying statutory damages factors to telling the jury *how to weigh* those factors. Opining on how to weigh statutory damages impermissibly exceeds the expert's role because it does nothing but tell the trier of fact what result to reach. *See Nationwide Trans. Fin. V. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1060 (9th Cir. 2008) (evidence that merely tells the jury what result to reach is not sufficiently helpful to be admissible). Accordingly, courts exclude attempts by experts to opine on an appropriate amount of statutory damages. For example,

in *Sony Music Ent. v. Cox Commc'ns, Inc.*, a statutory damages copyright case, the court precluded the defendant's damages expert from "offer[ing] any opinions as to whether certain damages should be characterized as a 'windfall' or if they would tend to overcompensate Plaintiffs." 2019 WL 9088257, at *2 (E.D. Va. Nov. 19, 2019); *see also Macro Niche Software, Inc. v. 4 Imaging Sols., L.L.C.*, 2013 WL 12140417, at *4 (S.D. Tex. Dec. 18, 2013) (excluding expert testimony that recommended a statutory damages award to the jury).

Further, Ms. Davis claims she was also "asked to prepare alternate calculations of statutory damages," but simply multiplies the Works by the minimum statutory damages rates for innocent and willful infringement. Rebuttal at 29. She offers no opinion of any kind alongside this "grade-school arithmetic," which should be excluded because the factfinder is perfectly capable of doing such calculations on their own. *Waymo LLC*, 2017 WL 5148390, at *5.

Third, Ms. Davis's statutory damages opinion was disclosed only as a rebuttal opinion and therefore must be excluded as untimely disclosed. None of Publishers' experts offer any opinion on how to weigh the statutory damages factors or what an appropriate award of statutory damages should be. Ms. Davis does not and cannot identify any specific opinions from Publishers' experts that her proportionality opinion purports to rebut. Her report itself does not identify any such opinion from Publishers. "Rebuttal reports are 'intended solely to contradict or rebut evidence on the same subject matter identified by another party' in that party's expert disclosures." *Panchenko v. Comenity Capital Bank*, 2025 WL 2372597, at *1 (N.D. Cal. Aug. 13, 2025) (Lee, J.) (quoting Fed. R. Civ. P. 26(a)(2)(D)(ii)). Rebuttal evidence should be excluded if it "attempts to put forward new theories outside the scope of the report it claims to rebut." *Id.* (quotation omitted).

Anthropic's failure to timely disclose her proportionality opinion in her opening report is neither substantially justified nor harmless under Fed. R. Civ. P. 37(c)(1). Publishers claimed maximum statutory damages in both their Complaint and Amended Complaint, *see* ECF Nos. 1, 337, as well as in their Rule 26 damages disclosures, and "there was ample opportunity to develop and timely disclose expert testimony on this subject." *Panchenko*, 2025 WL 2372597, at *3. That Ms. Davis ignored factors, such as Anthropic's willfulness and the need for deterrence, that are central to Publishers' claim for maximum statutory damages, *see* Gomez-Reichman Decl. Ex. E 3–4,

Plaintiffs' Updated Second Am. Rule 26(a)(1) Initial Disclosures (Oct. 28, 2025), shows the unreliability of her opinion.

IV. Ms. Davis Should Be Precluded from Using Destructive Scanning as a Basis to Calculate Damages.

Ms. Davis should be precluded from offering any testimony relying on the assumption that "destructively ingesting song lyrics obtained by purchasing sheet music from an authorized retailer . . . would not have violated the Plaintiffs' copyrights." Rpt. at 44–45. "Destructive ingestion" or "destructive scanning" involves purchasing physical books and then converting them into digital copies, during which the physical copy is destroyed. *See Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1016 (N.D. Cal. 2025) (describing Anthropic's destructive scanning process). Ms. Davis relies on the legality of destructive scanning to opine that, by taking Publishers' Works from the Internet, Anthropic avoided at most $5000 in destructive scanning costs. Rpt. at 44–45.

Publishers have not asserted claims in this case based on Anthropic's destructive scanning. *See generally* Am. Compl., ECF No. 337; Pls.' Mot. for Partial SJ, ECF No. 594. The legality of destructive scanning for purposes of LLM training is a contested question that, to date, no appellate court has addressed. Appellate courts have rejected the legality of destructive scanning in other contexts. *Hachette Book Grp., Inc. v. Internet Archive*, 115 F.4th 163, 181 (2d Cir. 2024) (holding that destructive scanning to create a digital lending library was not fair use and stating, "[c]hanging the medium of a work is a derivative use rather than a transformative one").

For Ms. Davis to offer such testimony, Anthropic would first need to prove that Ms. Davis's assumption is correct—that destructive scanning is legal as fair use. That would require holding a mini-trial on the legality of a practice that is not otherwise at issue in the case, which would needlessly derail and extend the trial and confuse the jury. *See, e.g.*, *Food & Water Watch, Inc. v. United States Env't Prot. Agency*, 2024 WL 4035924, at *11 (N.D. Cal. Jan. 18, 2024) (excluding expert testimony that would "require assessing the hypothetical" scenario as "present[ing] the classic trial-within-a-trial on a collateral issue against which Fed. R. Evid. 403 is design to safeguard").

CONCLUSION

For the foregoing reasons, Publishers respectfully request that the foregoing opinions be excluded from any testimony Ms. Davis offers in this case.

Dated: March 31, 2026

Respectfully submitted,

/s/ Michelle Gomez-Reichman

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