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 PARTIALLY EXCLUDE THE OPINIONS OF MS. JULIE DAVIS

FILED UNDER SEAL

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

Anthropic does not dispute that Julie Davis calculated her apportionment percentages by simply dividing two inputs she uncritically accepted from other experts. Nor does Anthropic dispute that Ms. Davis does not know how to assess "the relative value of any piece of data included in an LLM training." ECF No. 646 ("Mot.") at 4. Ms. Davis's decades as a professional expert and CPA cannot transform basic arithmetic into "scientific, technical, or other specialized knowledge," especially when she cannot explain ***why*** her simple arithmetic fairly reflects the value that Anthropic derived from copying Publishers' lyrics.

Anthropic also does not dispute that Ms. Davis is not an economist and therefore lacks relevant expertise to claim that "there is no evidence that there has been harm to the lyrics market for the Asserted Works." *Id.* 5–6. Anthropic's defense of her four-page, cursory analysis on this point amounts to lawyer recharacterization of plainly *ipse dixit* conclusions.

Similarly, Anthropic fails to identify any discernible methodology in Ms. Davis's untimely opinion that maximum statutory damages are "disproportionate."

Last, no court has ever held that "destructive scanning" constitutes fair use for purposes of AI training and output. The Court would need to hold a mini-trial on that question, which has not been the subject of fact or expert discovery, before Ms. Davis can rely on Anthropic's destructive-scanning practices as a basis to calculate damages.

The Court should grant Publishers' motion.

ARGUMENT

I. Anthropic does not dispute that Ms. Davis lacks the expertise to justify her "apportionment percentages," which amount to simple division.

Ms. Davis seeks to apply her "apportionment percentages" in front of the jury and claim that the results yield a fair reflection of the value Anthropic derived from copying Publishers' lyrics. But Ms. Davis's background as a CPA does not give her any expertise to opine about how much value Anthropic derived from copying, training on, and outputting Publishers' lyrics.

Ms. Davis admits she: (a) has never worked for an LLM developer; (b) does not know how to assess "the relative value of any piece of data included in an LLM training"; (c) has no idea "what kind of data is necessary" to train an LLM; (d) has no prior knowledge about "how tokens

are used related to lyrics and training"; and (e) is a self-proclaimed "layperson" when it comes to LLM training and ingestion. Mot. 4. Anthropic does not dispute any of this. Opp. 4–6.

Consequently, Ms. Davis lacks the ***relevant*** "scientific, technical, or specialized knowledge" needed to explain ***why*** her apportionment percentages reflect the value Anthropic derived from copying Publishers' lyrics. Fed. R. Evid. 702(a). Without relevant expertise, Ms. Davis's opinions do not constitute admissible expert testimony under Rule 702. Moreover, because her apportionment percentages do not require an expert to calculate—Ms. Davis simply divides two inputs given to her by other experts—there's no reason why counsel cannot easily "do [this] on an easel" instead. *Waymo LLC v. Uber Tech., Inc.*, 2017 WL 5148390, at *5 (N.D. Cal. Nov. 6, 2017). Indeed, by having counsel perform this "grade-school arithmetic," the Court eliminates the risk of granting "unmerited credibility" to lay testimony that will "likely carry [] special weight with the jury." *United States v. Gadson*, 763 F.3d 1189, 1212 (9th Cir. 2014) (citation omitted).

Anthropic misreads *Pacific Health Corp.* to claim that the amount of time an expert spends drafting their reports can make up for a lack of relevant expertise. Opp. 6 (citing 2018 WL 1026361, at *5 (C.D. Cal. Feb. 20, 2018)). The court there determined that the challenged opinions "do not boil down to simple math" ***because*** the expert first applied his "knowledge about Medicare billing practices as well as billing codes and the breakdown of medical billing" to then perform his calculations. *Id*. Here, by contrast, Ms. Davis disavowed any prior knowledge about LLM training and output, such that her simple calculations do not apply ***any*** expertise. Anthropic conflates the time Ms. Davis spent drafting her report and reading the more than 1,900 documents she cites in her report appendices ("between 125 and 150 hours") with the time it takes to input her one-step equation into a calculator (negligible). In any event, Rule 702 offers no "sweat of the brow" escape hatch, by which an expert can make an otherwise unreliable opinion admissible simply by working many hours.

Anthropic next argues that reliance on other expert inputs does not render Ms. Davis's opinions "lay testimony." Opp. 6. But reliance on another expert's work is not the issue here—the issue is whether Ms. Davis applied any additional expertise to another expert's inputs. She did not, because an expert is simply not needed to divide one input by another, especially when that expert

lacks the expertise necessary to justify ***why*** she is dividing those inputs. Accordingly, *U.S. ex rel. Jordan v. Northrop Grumman Corp.*, which Anthropic cites, is distinguishable: the court denied exclusion there because the expert used her own expertise to select "the appropriate data to use" in "complex calculations." 2003 WL 27366224, at *6–7 (C.D. Cal. Jan. 6, 2003). Here, Ms. Davis does nothing more than divide two numbers given to her by other experts.

II. Anthropic does not dispute that Ms. Davis lacks the expertise needed to support her market harm opinions.

Publishers did not, as Anthropic contends, move to exclude a "market ***definition*** opinion" from Ms. Davis's report. Opp. 6–7 (emphasis added). Publishers moved to exclude Ms. Davis's opinions about market ***harm***, and specifically her bold and unsubstantiated conclusion that "there is no evidence that there has been harm to the lyrics market for the Asserted Works." Mot. 5–6.

Ms. Davis admitted during her deposition that she is not an economist and that she has never offered a fair-use market harm opinion before. *Id*. 5. Anthropic does not dispute either point, Opp. 6–7, and therefore cannot credibly claim that Ms. Davis has the "scientific, technical, or specialized knowledge" necessary to opine on factor-four market harm in the "lyrics market for the Asserted Works." This alone is sufficient to exclude Ms. Davis's market harm opinions.

Anthropic also does not dispute that Ms. Davis failed to analyze Publishers' revenue trends in the context of any control variables, potential confounders, or benchmarks. *See* Opp. 6–7. This four-page section of Ms. Davis's report amounts to conclusory observations about how Publishers' various lyric revenues "increase" during one period then "decrease" during another "without any apparent pattern." ECF No. 657-2 at 49–52. Ms. Davis provides no further analysis yet somehow concludes that there is "no evidence" of market harm. *Id*. That is not a reliable economic opinion—it is an *ad hoc* conclusion from an accountant, working well outside her area of expertise.

Anthropic suggests that Publishers' motion is designed to exclude "***all*** expert financial testimony." Opp. 1 (emphasis in original). Not so. Publishers have only moved to exclude Ms. Davis's *ipse dixit* opinions and testimony that do not reflect any application of her own "scientific, technical, or other specialized knowledge." Fed. R. Evid. 702(a). Publishers are not seeking to

preclude Ms. Davis from interpreting or identifying line items in the more than 2,600 pages of regurgitated financial summaries she attached as appendices to her reports.

III. Anthropic does not dispute that Ms. Davis's "proportionality" opinions were untimely served and fails to point to any discernible methodology.

Ms. Davis offers no discernible methodology to support her untimely opinion that Publishers' claimed statutory damages are "disproportional." She offers, at most, a summary of evidence that Anthropic's counsel will use in closing arguments. *See* Mot. 7. Anthropic argues that Ms. Davis's methodology is demonstrated by her comparison of an apportioned gross profits figure [redacted] and Anthropic's maximum statutory exposure in this case (~$120 million). Opp. 7–8. But a bald comparison between these two numbers cannot serve as a reliable basis from which Ms. Davis could conclude that Publishers' claimed damages are "disproportional." Publishers explained in detail why Ms. Davis's failure to consider all relevant statutory factors both shows her lack of methodological rigor and risks misleading the jury about how to assess statutory damages. Mot. 7–8. While Anthropic claims that Ms. Davis will not tell the jury "how" to weigh the statutory factors, Opp. 8–9, there is no way to conclude that a statutory damages award is "disproportional" without weighing all of the factors.

Anthropic does not dispute that Ms. Davis's proportionality opinion fails to rebut any specific opinions from Publishers' experts. This reason alone is enough to merit exclusion. *See Panchenko v. Comenity Cap. Bank*, 2025 WL 2372597, at *1–2 (N.D. Cal. Aug. 13, 2025) (Lee, J.). There was absolutely nothing preventing Anthropic from serving a statutory damages opinion by the deadline for affirmative expert disclosures. Anthropic cannot blame the timing of Publishers' interrogatory responses for its late disclosure. Opp. 9. Anthropic has been aware of Publishers' claim for maximum statutory damages since at least October 18, 2023. ECF No. 1 at 58 (seeking "statutory damages . . . in an amount up to $150,000 per work infringed"). Publishers have reiterated that claim in every subsequent damages disclosure.

Last, Anthropic does not respond to Publishers' argument that Ms. Davis's "alternate calculations of statutory damages" reflect only grade school arithmetic without any applied expertise or analysis. Mot. 9; *see also* Opp. 7 n.3 (wrongly claiming Publishers did not address

these calculations in their Motion). That testimony must be excluded.

IV. No court has ever held that "destructive scanning" constitutes fair use for purposes of AI training and output.

Anthropic wants Ms. Davis to testify in front of the jury that it could have legally used Publishers' lyrics to train Claude and generate output if only it had scanned them from physical books Anthropic subsequently destroyed, instead of copying them in the manner Publishers have alleged. No court has ever addressed this "destructive scanning" question in this context before, it is not at issue here, and answering it would require a complex "trial-within-a-trial" on matters beyond the parties' discovery, which will likely confuse the jury and derail the merits trial. Trial in this case will be complex enough already without forcing the jury to weigh irrelevant and distracting issues. Federal Rules of Evidence 403 and 702 demand this opinion's exclusion.

Neither of the cases Anthropic cites supports Ms. Davis's assumption that Anthropic may use Publishers' lyrics in training and output because it destroyed a book after scanning them. *Authors Guild v. Google, Inc.* was decided before LLM models even existed and obviously does not address LLM training and outputs. 804 F.3d 202 (2d Cir. 2015). And *Bartz v. Anthropic PBC* held only that it was fair use to build a non-commercial research library via destructive scanning, 787 F. Supp. 3d 1007 (N.D. Cal. 2025), which is not Anthropic's use of Publishers' lyrics that Publishers have challenged in this case.

CONCLUSION

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

Dated: August 18, 2026

Respectfully submitted,

/s/ Bret Matera

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

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2026, I caused the foregoing document to be served on the following counsel via email:

WILMER CUTLER PICKERING HALE AND DORR LLP
Sonal Mehta (SBN 222086)
sonal.mehta@wilmerhale.com
Allison Bingxue Que (SBN 324044)
allison.que@wilmerhale.com
2600 El Camino Real, Suite 400
Palo Alto, CA 94306
(650) 858-6000
Fax: (650) 858-6100

Robin C. Burrell (admitted *pro hac vice*)
robin.burrell@wilmerhale.com
Ari Holtzblatt (admitted *pro hac vice*)
ari.holtzblatt@wilmerhale.com
2100 Pennsylvania Avenue NW
Washington, DC 20037
(202) 663-6964

Jared V. Grubow (admitted *pro hac vice*)
jared.grubow@wilmerhale.com
7 World Trade Center
250 Greenwich Street
Suite Floor 42
New York, NY 10006
(212) 295-6459

Joseph Taylor Gooch (SBN 294282)
taylor.gooch@wilmerhale.com
50 California Street
Suite 3600
San Francisco, CA 94111
(628) 235-1002

Louis W. Tompros (admitted *pro hac vice*)
louis.tompros@wilmerhale.com
Disha Patel (admitted *pro hac vice*)
Disha.Patel@wilmerhale.com
60 State Street
Boston, MA 02109
(617) 526-6886

Attorneys for Defendant

/s Timothy Chung
Timothy Chung