

DOUGLAS A. WINTHROP (Bar No. 183532)
Douglas.Winthrop@arnoldporter.com
JOSEPH FARRIS (Bar No. 263405)
Joseph.Farris@arnoldporter.com
JESSICA L. GILLOTTE (Bar No. 333517)
Jessica.Gillotte@arnoldporter.com
ESTAYVAINE BRAGG (Bar No. 341400)
Estayvaine.Bragg@arnoldporter.com
**ARNOLD & PORTER KAYE SCHOLER
LLP**
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400

MARK LEMLEY
mlemley@lex-lumina.com
LEX LUMINA LLP
700 S. Flower Street, Suite 1000
Los Angeles, CA 90017
Telephone: (213) 600-6063

Attorneys for Defendant ANTHROPIC PBC

ANGEL T. NAKAMURA (Bar No. 205396)
Angel.Nakamura@arnoldporter.com
OSCAR RAMALLO (Bar No. 241487)
Oscar.Ramallo@arnoldporter.com
ALLYSON MYERS (Bar No. 342038)
Ally.Myers@arnoldporter.com
**ARNOLD & PORTER KAYE SCHOLER
LLP**
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199

JOSEPH R. WETZEL (Bar No. 238008)
joe.wetzel@lw.com
ANDREW M. GASS (Bar No. 259694)
andrew.gass@lw.com
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: (415) 391-0600
Facsimile: (415) 395-8095

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANDREA BARTZ, ANDREA BARTZ, INC.,
CHARLES GRAEBER, KIRK WALLACE
JOHNSON, and MJ + KJ, INC., individually and on
behalf of others similarly situated,

Plaintiffs,

v.

ANTHROPIC PBC,

Defendant.

Case No. 3:24-CV-05417-WHA

Action Filed: August 19, 2024

**DEFENDANT ANTHROPIC PBC'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF OPPOSITION TO MOTION FOR
CLASS CERTIFICATION**

Judge: Honorable William H. Alsup

1 Defendant Anthropic PBC (“Anthropic”) submits this Supplemental Brief at the request of
2 the Court at oral argument on May 15, 2025. The Court inquired as to case law on the effect on
3 Anthropic if one legal or beneficial owner of a copyright in a work is included in one of the proposed
4 classes and another legal or beneficial owner outside of the class later sues Anthropic for the same
5 activity.

6 Although there is little case law in this area given the dearth of copyright class actions in
7 which classes actually have been certified, there is authority for the proposition that the legal and
8 beneficial owners in a copyright each can recover, in separate actions, for the same infringement.
9 *See Kamakazi Music Corp. v. Robbins Music Corp.*, 534 F. Supp. 69 (S.D.N.Y. 1982). In *Kamakazi*
10 *Music Corp. v. Robbins Music Corp.*, Barry Manilow had transferred the copyrights in his musical
11 compositions to a wholly owned loan-out company, Kamakazi Music Corp. (“Kamakazi”), in
12 exchange for royalties. *Id.* at 73, 75. Kamakazi, the “duly registered owner of the copyrights,” then
13 licensed the right to publish the compositions to Warner Bros. Publications, Inc. (“Warner”). *Id.* at
14 73. Kamakazi had previously licensed those rights to Robbins Music Corp. (“Robbins”). *Id.* When
15 that license expired and Robbins continued to publish the music beyond the term of the license,
16 Kamakazi, Manilow, and Warner brought an action against Robbins pursuant to the terms of the
17 license from Kamakazi to Robbins. *Id.* Robbins successfully moved Kamakazi’s claim to
18 arbitration. *Id.* The arbitrator awarded Kamakazi statutory damages under the Copyright Act.
19 *Id.* Robbins subsequently moved to dismiss Manilow’s and Warner’s copyright claims for damages
20 based on the statutory damages *already* awarded by the arbitrator to Kamakazi. *Id.* at 73-78.
21 Viewing Kamakazi’s legal rights in the musical compositions as distinct from Manilow’s and
22 Warner’s beneficial rights, the court denied the motion, holding that “[t]here is nothing that can be
23 discerned in the statutory scheme to require that recovery by one owner of a particular exclusive
24 right precludes the recovery for infringement by the owner of another exclusive right, as long as the
25 infringer’s liability on these statutory damages does not exceed the maximum amount provided in
26 Section 504(c)” *Id.* at 75.

27 While *Kamakazi Music Corp.* addresses only statutory damages, it is also equally possible
28 that Anthropic could pay statutory damages in this case and remain exposed to liability for actual

1 damages in a separate case brought by another rightsholder. In *Reservoir Media Mgmt., Inc. v.*
2 *Craze Prods.*, the court noted that “[i]t is an open question whether a copyright holder's election
3 to recover the equivalent of actual damages and profits, rather than statutory damages under the
4 Copyright Act, also precludes a separate copyright holder from later pursuing statutory damages for
5 infringement of the same ‘work.’” 2015 WL 5692105 , at *7 (S.D.N.Y. Sept. 28, 2015). Thus,
6 Anthropic could very well face the risk of copyright damage claims by non-class members that
7 assert infringement of a copyright that ostensibly was included in, and infringement of which was
8 resolved by, a class action judgment.

9
10 Dated: May 16, 2025

Respectfully submitted,

11 **ARNOLD & PORTER KAYE SCHOLER LLP**

12 By: /s/ Douglas A. Winthrop
13 DOUGLAS A. WINTHROP

14 *Attorneys for Defendant*
15 ANTHROPIC PBC
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CERTIFICATE OF SERVICE

I, Douglas A. Winthrop, am the ECF user whose identification and password are being used to file the foregoing **DEFENDANT ANTHROPIC PBC'S SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO MOTION FOR CLASS CERTIFICATION.**

Dated: May 16, 2025

/s/ Douglas A. Winthrop