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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.

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

**ANTHROPIC PBC'S REQUEST FOR
LEAVE TO FILE REPLY IN SUPPORT
OF RESPONSE TO ORDER TO SHOW
CAUSE RE AFFIRMATIVE DEFENSES**

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1 Defendant Anthropic PBC respectfully seeks leave to file a reply in support of its response
2 to the Court’s Order to Show Cause Re Defenses Based on Advice of Counsel, ECF 273. Anthropic
3 respectfully requests that such reply be due on August 13, 2025.

4 On July 24, Plaintiffs sent a letter to the Court taking the position that, by “asserting privilege
5 over materials relevant to [Anthropic’s] affirmative defenses” of innocent infringement and
6 volitional conduct, Anthropic had “selectively used privilege as both a sword and a shield,” ECF
7 271 at 1. The letter did not identify any specific testimony or evidence in support of Plaintiffs’
8 theory that those defenses put privileged material in issue. This Court then ordered Anthropic to
9 “Show Cause why its third and eleventh affirmative defenses should not be stricken unless it
10 produces all evidence of advice of counsel.” ECF 273. Anthropic filed its show cause response on
11 July 31, and Plaintiffs responded on August 7. The Court’s order did not provide for a reply.

12 Good cause exists for the Court to grant Anthropic leave to file a reply in support of its
13 response to the Court’s Order to Show Cause.

14 **First**, Plaintiffs’ response identifies for the first time the evidence on which they are
15 purportedly relying to support their claim that Anthropic has impliedly waived privilege. They
16 attach excerpts from transcripts of six depositions, as well as specific entries from Anthropic’s
17 privilege log. Plaintiffs’ July 24 letter, by contrast, referred more generally to the privilege log and
18 made no mention of any depositions. ECF 271 at 2. Anthropic deserves an opportunity to explain
19 why the specific evidence Plaintiffs now cite does not support their implied waiver theory.

20 **Second**, Plaintiffs also argue that, if Anthropic does not produce privileged materials, it
21 should be barred from denying willfulness *at all*, and not only barred from raising affirmative
22 defenses. This Court’s Order to Show Cause asked only about Anthropic’s two affirmative
23 defenses, and Anthropic accordingly focused on the affirmative defenses. *See* ECF 273 (“[B]y
24 NOON ON JULY 31, defendant shall SHOW CAUSE why its third and eleventh affirmative
25 defenses should not be stricken unless it produces all evidence of advice of counsel.” (formatting
26 omitted)). Anthropic deserves an opportunity to address Plaintiffs’ argument that it should be
27 precluded from denying willfulness more generally—a possibility not addressed by the Court’s
28 Order.

1 ***Third***, Anthropic deserves the opportunity to respond to Plaintiffs’ legal theories, which
2 were not developed in any meaningful way in the July 24 letter.

3 For these reasons, Anthropic respectfully requests that the Court permit it to file a reply in
4 support of its response to the Court’s Order to Show Cause, to be due on August 13, 2025.

5
6 dated: August 8, 2025

Respectfully submitted,

7 **ARNOLD & PORTER KAYE SCHOLER LLP**

8 By: /s/ Douglas A. Winthrop
9 DOUGLAS A. WINTHROP

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11 ANTHROPIC PBC
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CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, 10th Floor, San Francisco, California 94111. On August 8, 2025, the foregoing **ANTHROPIC PBC'S REQUEST FOR LEAVE TO FILE REPLY IN SUPPORT OF RESPONSE TO ORDER TO SHOW CAUSE RE AFFIRMATIVE DEFENSES** was electronically served on the following:

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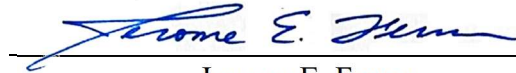
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17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed August 8, 2025 at San Francisco.
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Jerome E. Ferrer