



Joseph Farris
+1 415.471.3454 Direct
Joseph.Farris@arnoldporter.com

August 20, 2025

Harold J. McElhinny
The Law Offices of Harold J. McElhinny
1664 9th Avenue
San Francisco, CA 94122

**Re: *Bartz, et al. v. Anthropic PBC*, No. 3:24-cv-05417-WHA
Anthropic's Objections and Responses to Special Master's Tentative
Ruling Regarding Privileged Documents**

Dear Mr. McElhinny:

Anthropic provides the following responses and objections to the Special Master's August 17, 2025 Tentative Ruling regarding Plaintiffs' motion to compel production of privileged documents. Anthropic addresses below only those portions of challenged documents where it has an objection to the Tentative Ruling.

Anthropic attaches certain exhibits that provide context supporting its objections:

- In three instances, Plaintiffs challenged emails that were auto-generated by Google Documents to notify users of new comments added to an underlying privileged document (ANTPRIV_0000139, ANTPRIV_0000642, ANTPRIV_0001017). Anthropic submits the underlying Google Documents, which were not challenged by Plaintiffs, but which provide context for why the comments are privileged.
- In two instances (ANTPRIV_0000507, ANTPRIV_0000691), Anthropic discovered that the documents did not print with redlines or embedded comments when prepared in hard copy for the Special Master, omitting relevant context. Those have been reprinted for *in camera* review.

Category 2

ANTPRIV_0000041 is an email chain about user privacy. The unredacted portions of the discussion are about design or other aspects of messaging about user privacy. The three redacted emails in the chain, however, reflect Anthropic in-house counsel Janel Thamkul's privileged assessment of different options for Anthropic's messaging on user privacy, which reflect legal strategy. Ms. Thamkul provides that assessment on the email on August 7, 2023 at 7:54pm, and the next two emails respond directly to it. This narrow portion of the email provides legal advice, not business strategy.

Arnold & Porter

August 20, 2025

Page 2

ANTPRIV_0000575 is a January 2024 memorandum entitled Strategic Data Partnerships. With respect to the redaction number 11 on page ANT_BARTZ_000028528, the Special Master found that this discussion “appears to be a description of previous experience, not a request for legal advice.” The redacted content reflects an ongoing privileged discussion with Janel Thamkul regarding settling litigation. Notably, the redacted language uses the same terminology and framework from earlier in the document at ANT_BARTZ_000028518 (third redacted bullet), which is content that the Special Master found “sets out legal strategies.”

Category 3

ANTPRIV_0000088 is a November 2023 memorandum entitled Strategic Data Partnerships. Given the number of privilege redactions in this document, Anthropic submits a markup of this document for *in camera* review that overlays red boxes to visually identify the narrow portions of the challenged document where Anthropic objects to the Tentative Ruling. (Ex. 1 (ANTPRIV_0000088, *in camera* annotated).)

- With respect to the redactions at ANT_BARTZ_000004943 and ANT_BARTZ_000004944, the redacted content is an application of the legal principles that appear on the bottom half of the preceding page, content that the Special Master found was appropriately withheld as privileged. (*See* Ex. 1.) The legal analysis—attributed to Janel Thamkul—is privileged because it includes general legal strategy, assesses legal risk, discusses settlement, and analyzes the legal landscape. (*Id.*)
- The redaction on the bottom half of ANT_BARTZ_000004949 (and the top two lines carrying over on the top of ANT_BARTZ_000004950) are also attributed to Janel Thamkul. (*Id.*) This content is privileged because it assesses legal risk, applies the legal principles mentioned above, and discusses risk mitigation. (*Id.*)
- The third redaction at ANT_BARTZ_000004951 comprises 6 bullets also attributed to Janel Thamkul, of which bullets 1-3 and 6 discuss risk mitigation, lawsuits and settlement, and assess the legal landscape. (*Id.*) Bullets 1-3 and 6 do not comprise business strategy.

ANTPRIV_0000139 is a notification email from Google Documents that summarizes new comments added to an underlying Google Document. The underlying document is a privileged “Data Proposals” memorandum drafted by Janel Thamkul, which was not challenged by Plaintiffs. (Ex. 2 (ANTPRIV_0000096, *in camera* review).) In the context of the notification email, the Special Master found only Janel Thamkul’s comment



August 20, 2025

Page 3

was privileged. All of the comments in the notification email, however, are part of a broader privileged discussion responding to the content of the privileged Data Proposals document.

ANTPRIV_0000507 is a draft NDA prepared by Anthropic counsel, Biran Shah. The Special Master did “not really understand the basis for a privilege claim” because on its face, the document appeared to be an “unsigned NDA.” In investigating the Special Master’s Tentative Ruling, Anthropic has discovered that the way in which **ANTPRIV_0000507** was exported for printing did not have Mr. Shah’s redlines visible. A replacement copy of the document is attached. (Ex. 3 (**ANTPRIV_0000507** *in camera*).) Thus, the document is not an unsigned NDA, but a draft NDA with counsel’s redlines.

ANTPRIV_0000642 is another notification email from Google Documents that includes a summary of selected comments. The underlying document is a privileged “IP and Copyright Policy” memorandum drafted by Janel Thamkul. (Ex. 4 (**ANTPRIV_0000643**, *in camera*).) This document was not challenged by Plaintiffs. Based on the notification email, the Special Master found that “the legal group appears to have been excluded from this discussion,” but the comments were made in the context of Janel Thamkul’s memorandum. (Ex. 4.) Thus, the comments did not exclude the legal group but were part of a privileged conversation reacting to Janel Thamkul’s privileged memorandum.

ANTPRIV_0000691 is a memorandum that relates to Anthropic’s policies for law enforcement reporting. The Special Master found that this document was “a statement of company practice” that did not include “a communication of legal advice.” The document, however, includes embedded conversations between employees and multiple Anthropic in-house counsel including Ethan Forrest, Elena Leichty, and Aparna Sridhar. It is privileged because they analyze and respond to questions about the contours of Anthropic’s obligations under the law. Anthropic believes that the way in which this document was printed in hard copy for review by the Special Master may not have depicted the embedded comments. Anthropic submits a replacement version of the document for *in camera* review. (Ex. 5, **ANTPRIV_0000691** *in camera*).)

ANTPRIV_0001017 is another notification email from Google Documents. The underlying document is “[ACP] Scarborough research sync notes.docx,” a privileged summary of research conducted at the direction of Anthropic counsel, Janel Thamkul, to assess Claude guardrails. (Ex. 6 (**ANTPRIV_0001018**, *in camera*).) The underlying document was not challenged by Plaintiffs. The Special Master found that “no attorney appears to be involved” in the notification email, but Ex. 6 confirms that the comments were made in response to Anthropic counsel’s privileged analysis. Further, the cover email



August 20, 2025

Page 4

also includes a comment from Marat Freytsis requesting legal advice, and the comment from Cam McKinnon confirms that the request be directed to Janel Thamkul.

Sincerely,

/s/ Joseph Farris

Joseph Farris

APPENDIX OF ATTACHMENTS¹

Exhibit 1	ANTPRIV_0000088, <i>in camera</i> annotated
Exhibit 2	ANTPRIV_0000096, <i>in camera</i>
Exhibit 3	ANTPRIV_0000507, <i>in camera</i>
Exhibit 4	ANTPRIV_0000643, <i>in camera</i>
Exhibit 5	ANTPRIV_0000691 <i>in camera</i>
Exhibit 6	ANTPRIV_0001018, <i>in camera</i>

¹ These documents will be submitted for *in camera* review by the Special Master. See Procedural Order (Dkt. No. 295), ¶ 7.