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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 *In re Google Generative AI Copyright*
17 *Litigation*

18 Master File Case No. 5:23-cv-03440-EKL

19
20 **PLAINTIFFS' OPPOSITION TO DEFENDANTS'**
21 **MOTION TO DISMISS CONSOLIDATED AMENDED COMPLAINT**
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23
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25
26
27
28

TABLE OF CONTENTS

STATEMENT OF ISSUES TO BE DECIDED 1

INTRODUCTION..... 1

STATEMENT OF RELEVANT FACTS 2

ARGUMENT..... 3

**I. Plaintiffs’ CAC Provides Defendants Notice of Their Claims as
 Required by Rule 8.** 4

**A. Plaintiffs Precisely Identify Defendants’ Infringement (or Vicarious Infringement)
 of Their Copyrighted Works.** 4

**II. Plaintiffs Have Pled Sufficient Facts in Support of Direct Copyright
 Infringement Because They Detailed the Works Infringed by
 Defendants and Provided Copyright Registrations for Those Works.** 7

A. Plaintiffs Adequately Allege Registration of Their Copyrights. 8

B. Plaintiffs Sufficiently Identify Plaintiffs’ Infringed Works. 12

III. Plaintiffs State a Viable Claim for Vicarious Copyright Infringement. 15

A. Alphabet Failed to Exercise Its Control Over Google’s Infringement. 15

B. Alphabet Derived a Direct Financial Benefit from Google’s Infringement. 17

**IV. Plaintiffs Properly Plead Their Entitlement to Injunctive Relief as
 Authorized by the Copyright Act.** 18

**A. Preemptory Denial of Injunctive Relief is Unwarranted Where Copyright
 Infringement is Ongoing.**..... 20

B. The *eBay* Factors Weigh in Favor of an Injunction...... 22

CONCLUSION 24

TABLE OF AUTHORITIES

Cases	Page(s)
<i>A&M Records, Inc. v. Napster, Inc.</i> , 239 F.3d 1004 (9th Cir. 2001)	7, 16, 17
<i>AJ Mgmt. Consulting, LLC v. MBC FZ-LLC</i> , 2014 WL 2878891 (N.D. Cal. June 24, 2014).....	9
<i>Alaska Stock, LLC v. Houghton Mifflin Harcourt Publ’g Co.</i> , 747 F.3d 673 (9th Cir. 2014)	8, 9, 11
<i>Ambrosetti v. Oregon Catheter Press.</i> , 458 F. Supp. 3d 1013 (N.D. Ind. 2020)	9, 10
<i>Am. Vitagraph, Inc. v. Levy</i> , 659 F.2d 1023 (9th Cir. 1981)	11
<i>Andersen v. Stability AI Ltd.</i> , 700 F. Supp. 3d 853 (N.D. Cal. 2023).....	2
<i>Andersen v. Stability AI Ltd.</i> , 2024 WL 3823234 (N.D. Cal. Aug. 12, 2024)	2
<i>Apple, Inc. v. Psystar Corp.</i> , 673 F. Supp. 2d 943 (N.D. Cal. 2009).....	24
<i>Archer & White Sales, Inc. v. Henry Schein, Inc.</i> , 2016 WL 7157421 (E.D. Tex. Dec. 7, 2016)	19, 24
<i>Arista Records, LLC v. Doe 3</i> , 604 F.3d 110 (2d Cir. 2010)	13
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	4
<i>B.K. v. Snyder</i> , 922 F.3d 957 (9th Cir. 2019)	20

1 *Beastie Boys v. Monster Energy Co.*,
 2 87 F. Supp 3d 672 (S.D.N.Y. 2015)21
 3 *Becton, Dickinson & Co. v. Cytex Bioscis. Inc.*,
 4 2020 WL 1877707 (N.D. Cal. Apr. 15, 2020).....5
 5 *Bell Atl. Corp. v. Twombly*,
 6 550 U.S. 544 (2007)4
 7 *Bender v. LG Elecs., U.S.A., Inc.*,
 8 2010 WL 889541 (N.D. Cal. Mar. 11, 2010)6
 9 *Blain v. Liberty Mut. Fire Ins. Co.*,
 10 2023 WL 2436003 (S.D. Cal. Mar. 9, 2023).....22
 11 *Body Jewelz, Inc. v. Valley Forge Ins. Co.*,
 12 241 F. Supp. 3d 1084 (C.D. Cal. 2017) 11
 13 *Brunson v. Cook*,
 14 2023 WL 2668498 (M.D. Tenn. Mar. 28, 2023) 10
 15 *Cadence Design Sys. v. Pounce Consulting, Inc.*,
 16 2019 WL 1768619 (N.D. Cal. Apr. 1, 2019).....23
 17 *City of Los Angeles v. Wells Fargo & Co.*,
 18 22 F. Supp. 3d 1047 (C.D. Cal. 2014)3, 4
 19 *Clifton v. Houghton Mifflin Harcourt Publ’g Co.*,
 20 152 F. Supp. 3d 1221 (N.D. Cal. 2015)..... 13
 21 *Cole v. John Wiley & Sons*,
 22 2012 WL 3133520 (S.D.N.Y. Aug. 1, 2012)..... 14
 23 *Cook v. Meta Platforms Inc.*,
 24 2023 WL 6370891 (N.D. Cal. Jan. 4, 2023)..... 17
 25 *Corbello v. Valli*,
 26 974 F.3d 965 (9th Cir. 2020) 8
 27
 28

1 *DBW Partners, LLC v. Bloomberg, L.P.*,
 2 2019 WL 5892489 (D.D.C. Nov. 12, 2019).....13
 3 *Doe v. Meta Platforms, Inc.*,
 4 690 F. Supp. 3d 1064 (N.D. Cal. 2023).....3
 5 *Dolman v. Agee*,
 6 157 F.3d 708 (9th Cir. 1998) 11
 7 *E. & J. Gallo Winery v. EnCana Energy Servs.*,
 8 2004 WL 7342782 (E.D. Cal. Oct. 13, 2004).....6
 9 *eBay v. MercExchange*,
 10 547 U.S. 388 (2006) 19, 22
 11 *Ellison v. Robertson*,
 12 357 F.3d 1072 (9th Cir. 2004) 17
 13 *Enter. Mgmt. Ltd., Inc. v. Construx Software Builders, Inc.*,
 14 73 F.4th 1048 (9th Cir. 2023)9
 15 *Feingold v. RageOn, Inc.*,
 16 472 F. Supp. 3d 94 (S.D.N.Y. 2020) 11
 17 *Fermata Int’l. Melodies, Inc. v. Champions Golf Club, Inc.*,
 18 712 F. Supp. 1257 (S.D. Tex. 1989)..... 19
 19 *Flava Works, Inc. v. Clavio*,
 20 2012 WL 2459146 (N.D. Ill. June 27, 2012)..... 13
 21 *Fonovisa, Inc. v. Cherry Auction, Inc.*,
 22 76 F.3d 259 (9th Cir. 1996) 15
 23 *Fox Broad. Co. Inc. v. Dish Network, L.C.C.*,
 24 905 F. Supp. 2d 1088 (C.D. Cal. 2012) 8
 25 *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*,
 26 772 F.2d 505 (9th Cir. 1985) 17
 27
 28

1 *Frerck v. Pearson Educ., Inc.*,
 2 2012 WL 1280771 (N.D. Ill. Apr. 16, 2012).....6
 3 *Friche v. Hyundai Motor, Am.*,
 4 2022 WL 1599868 (C.D. Cal. Jan. 28, 2022).....16
 5 *Garrick v. Garrick*,
 6 2024 WL 3522205 (N.D. Cal. July 24, 2024)6
 7 *Hill v. MacMillan McGraw-Hill School Pub. Co.*,
 8 1994 WL 594027 (N.D. Cal. Oct. 5, 1994)4
 9 *Hodgers-Durgin v. de la Vina*,
 10 199 F.3d 1037 (9th Cir. 1999)19
 11 *Howard Johnson Co., Inc. v. Khimani*,
 12 892 F.2d 1512 (11th Cir. 1990)16
 13 *Howard v. City of Vallejo*,
 14 2013 WL 6070494 (E.D. Cal. Nov. 13, 2013).....19
 15 *Hubbard v. Google LLC*,
 16 2024 WL 3302066 (N.D. Cal. July 1, 2024)22
 17 *In re Google RTB Consumer Priv. Litig.*,
 18 606 F. Supp. 3d 935 (N.D. Cal. 2022).....3, 20
 19 *In re “Santa Barbara Like It Is Today” Copyright Infringement Litig.*,
 20 94 F.R.D. 105 (D. Nev. 1982)5
 21 *Int’l Med. Devices, Inc. v. Cornell*,
 22 2024 WL 1363690 (C.D. Cal. Mar. 28, 2024).....18
 23 *ITC Textile Ltd. v. Wal-Mart Stores Inc.*,
 24 2015 WL 12712311 (C.D. Cal. Dec. 16, 2015).....7, 8
 25 *Jerez v. Holder*,
 26 2011 WL 7637808 (D. Minn. Sept. 1, 2011).....19
 27
 28

1 *Joint Stock Co. Channel One Russ. Worldwide v. Infomir LLC,*
 2 2017 WL 696126 (S.D.N.Y. Feb. 15, 2017) 12
 3 *Keck v. Alibaba.com Hong Kong Ltd.,*
 4 369 F. Supp. 3d 932 (N.D. Cal. 2019)..... 15
 5 *Kremer v. Alphabet Inc.,*
 6 2024 WL 923900 (M.D. Tenn. Mar. 4, 2024) 18
 7 *LaDuke v. Nelson,*
 8 762 F.2d 1318 (9th Cir. 1985) 19
 9 *Lambertini v. Fain,*
 10 2014 WL 4659266 (E.D.N.Y. Sept. 17, 2014) 13
 11 *Lancaster v. Alphabet, Inc.,*
 12 2016 WL 3648608 (N.D. Cal. July 8, 2016) 18
 13 *Livingston v. Morgan,*
 14 2006 WL 8459602 (N.D. Cal. July 31, 2006) 13
 15 *Los Angeles v. Lyons,*
 16 461 U.S. 95 (1983) 19
 17 *Manigault-Johnson v. Google, LLC,*
 18 2019 WL 3006646 (D.S.C. Mar. 31, 2019)..... 18
 19 *Marya v. Warner/Chappell Music, Inc.,*
 20 131 F. Supp. 3d 975 (C.D. Cal. 2015) 10
 21 *McShannock v. J.P. Morgan Chase Bank NA,*
 22 976 F.3d 881 (9th Cir. 2020) 3
 23 *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.,*
 24 545 U.S. 913 (2005) 17
 25 *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.,*
 26 518 F. Supp. 2d 1197 (C.D. Cal. 2007) 20
 27
 28

1 *Navarro v. Block*,
 2 250 F.3d 729 (9th Cir. 2001)4
 3 *Newborn v. Yahoo!, Inc.*,
 4 391 F. Supp. 2d 181 (D.D.C. 2005).....13
 5 *O’Shea v. Littleton*,
 6 414 U.S. 488 (1974)21, 23
 7 *Oxygenator Water Techs., Inc. v. Tennant Co.*,
 8 2020 WL 4572062 (D. Minn. Aug. 7, 2020).....19
 9 *Perfect 10 v. Amazon.com.*,
 10 498 F. App’x 341 (4th Cir. 2012)21
 11 *Perfect 10, Inc. v. Amazon, Inc.*,
 12 508 F.3d 1146 (9th Cir. 2007)21
 13 *Perfect 10, Inc. v. Cybernet Ventures, Inc.*,
 14 167 F. Supp. 2d 1114 (C.D. Cal. 2001)7, 8, 12
 15 *Perfect 10, Inc. v. Giganews, Inc*
 16 847 F.3d 657 (9th Cir. 2017).....6, 17
 17 *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*,
 18 494 F.3d 788 (9th Cir. 2007)16, 17
 19 *Peter T. Erdelyi & Assocs. v. Optimum Seismic*,
 20 2021 WL 4775635 (C.D. Cal. July 1, 2021).....9, 10
 21 *Philips v. Ford Motor Co.*,
 22 726 F. App’x 608 (9th Cir. 2018).....22
 23 *Plakhova v. Hood*,
 24 2017 WL 10592315 (C.D. Cal. June 20, 2017).....7, 13
 25 *Risby v. Hawley*,
 26 2024 WL 217827 (N.D. Cal. Jan. 19, 2024).....24
 27
 28

1 *Ritani, LLC v. Aghjayan,*
 2 880 F. Supp. 2d 425 (S.D.N.Y. 2012) 14
 3 *Sadowski v. Package Depo, LLC,*
 4 2024 WL 1829701 (C.D. Cal. Jan. 22, 2024)..... 18
 5 *Schneider v. Pearson Educ., Inc.,*
 6 2013 WL 1386968 (S.D.N.Y. April 5, 2013)..... 14
 7 *Shade v. Gorman,*
 8 2009 WL 196400 (N.D. Cal. Jan. 28, 2009)..... 20
 9 *Signify N. Am. Corp. v. Robe Lighting, Inc.,*
 10 2021 WL 3419187 (S.D. Fla. Mar. 16, 2021) 19
 11 *Silicon Valley Textiles, Inc. v. Sofari Collections Ltd.,*
 12 2023 WL 8242105 (N.D. Cal. Nov. 28, 2023) 23
 13 *Silverstein v. Penguin Putnam, Inc.,*
 14 368 F.3d 77 (2d Cir. 2004) 21
 15 *Software Research, Inc. v. Dynatrace LLC,*
 16 316 F. Supp. 3d 1112 (N.D. Cal. 2018)..... 19
 17 *Sonner v. Premier Nutrition Corp.,*
 18 971 F.3d 834 (9th Cir. 2020) 22
 19 *Sony Music Ent., Inc. v. Clark-Rainbolt,*
 20 2024 WL 1319735 (N.D. Tex. Mar. 27, 2024)..... 18, 21
 21 *Soo Park v. Thompson,*
 22 851 F.3d 910 (9th Cir. 2017) 6
 23 *Sosenko v. LG Elecs. U.S.A., Inc.,*
 24 2019 WL 6118355 (C.D. Cal. Aug. 29, 2019) 7
 25 *Tattoo Art, Inc. v. TAT Int’l, LLC,*
 26 794 F. Supp. 2d 634 (E.D. Va. 2011) 21
 27
 28

1 *Taylor Corp. v. Four Seasons Greetings, LLC,*
 2 315 F.3d 1039 (8th Cir. 2003)24
 3 *Taylor Corp. v. Four Seasons Greetings, LLC,*
 4 403 F.3d 958 (8th Cir. 2005)21
 5 *TD Bank N.A. v. Hill,*
 6 928 F.3d 259 (3d Cir. 2019)20
 7 *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.,*
 8 595 U.S. 178, 181-82 (2022) 11
 9 *Unicolors, Inc. v. Urban Outfitters, Inc.,*
 10 853 F.3d 980 (9th Cir. 2017)9
 11 *United States v. Baxter, Int’l, Inc.,*
 12 345 F.3d 866 (11th Cir. 2003)7
 13 *Wakefield v. Olenicoff,*
 14 2015 WL 1460152 (C.D. Cal. Mar. 30, 2015).....21
 15 *William R. Warner & Co. v. Eli Lilly & Co.,*
 16 265 U.S. 526 (1924)20
 17 *Y.Y.G.M. SA v. Redbubble, Inc.,*
 18 75 F.4th 995 (9th Cir. 2023)20, 22
 19
 20 **Statutes**
 21 17 U.S.C. § 10110, 11
 22 17 U.S.C. § 1067
 23 17 U.S.C. § 50218
 24
 25 **Rules**
 26 Fed. R. Civ. P. 8 Passim
 27 Fed. R. Civ. P. 9(b)7
 28

1 **STATEMENT OF ISSUES TO BE DECIDED**

2 (1) Whether Plaintiffs, including Plaintiff Sarah Andersen, have sufficiently pled their direct
3 and vicarious copyright infringement claims by identifying the specific works Google LLC (“Google”)
4 and Alphabet Inc. (“Alphabet”) (together, “Defendants”) infringed and how Defendants infringed
5 these works.

6 (2) Whether Plaintiffs’ request for injunctive relief is proper because Plaintiffs have
7 sufficiently alleged irreparable harm and inadequate remedies at law, and the Copyright Act
8 specifically authorizes that relief.

9 (3) Whether Plaintiffs have sufficiently pled Alphabet’s vicarious liability based on Alphabet’s
10 direct and active participation in the supervision and control of Google’s copyright infringement
11 activities and substantial, direct financial benefit.

12 (4) Whether Plaintiffs’ Consolidated Amended Complaint, which names the specific works
13 infringed and identifies Defendants’ methods of infringement, satisfies the notice pleading standard
14 of Federal Rule of Civil Procedure 8.

15 **INTRODUCTION**

16 Plaintiffs’ Consolidated Amended Complaint (ECF No. 91) (“CAC”) alleges with requisite
17 specificity how Google and its corporate parent, Alphabet, either directly or vicariously, copied
18 Plaintiffs’ and class members’ copyrighted text and images, without authorization, to train
19 Defendants’ Generative AI Models (or the “Models”) for their own commercial profit. In their rush
20 to create their commercial AI Products, Defendants used datasets, including LAION-400M, LAION
21 5B, C4, and Infiniset, that contain vast quantities of copyrighted works registered before the filing of
22 this suit, including those of the Plaintiffs, and all taken without consent and without any credit or
23 compensation to the copyright holders. By using the copyrighted material in these datasets to train
24 their Models, Defendants committed copyright infringement on a massive scale while disregarding
25 the rights of the people who created the works. The harm is exacerbated by the fact that these trained
26 Generative AI Models now serve as fuel for Defendants’ commercial AI Products.

27 Defendants concede that Plaintiffs’ claim for direct infringement satisfies the pleading
28

1 requirements. Indeed, other defendants facing similar claims elected not to seek Rule 12(b)(6)
2 dismissal at all. *See, e.g., Tremblay v. OpenAI*, No. 3:23-cv-03223, ECF No. 176, (N.D. Cal. Aug.
3 27, 2024); *Kadrey v. Meta Platforms*, No. 3:23-cv-03417, ECF No. 154 (N.D. Cal. Sept. 16, 2024);
4 *Bartz v. Anthropic*, No. 3:24-cv-05417, ECF No. 57 (N.D. Cal. Oct. 21, 2024); *In Re Mosaic LLM*
5 *Litig.*, 3:24-cv-01451, ECF No. 39 (N.D. Cal. May 2, 2024); *Nazemian v. NVIDIA Corp.*, 4:24-cv-
6 01454, ECF No. 38 (N.D. Cal. May 24, 2024). Nonetheless, Defendants’ Motion to Dismiss the CAC
7 (ECF No. 95) (the “MTD”) attacks marginal issues that will be resolved in discovery and raises
8 arguments that courts have declined to accept. For instance, other courts in this district have already
9 considered and rejected quibbles with Plaintiffs’ registrations. *See, e.g., Andersen v. Stability AI Ltd.*,
10 700 F. Supp. 3d 853, 863-64 (N.D. Cal. 2023); *Andersen v. Stability AI Ltd.*, --- F. Supp. 3d ---, 2024
11 WL 3823234, at *13 (N.D. Cal. Aug. 12, 2024). None of Defendants’ arguments challenging
12 Plaintiffs’ registrations or Plaintiffs’ infringement allegations against Defendants’ Models are new.

13 Defendants separately dispute Plaintiffs’ vicarious infringement claim on the basis of corporate
14 formality, but their argument lacks both factual and legal support. Unlike the cases upon which
15 Defendants rely, Plaintiffs’ CAC is replete with allegations reflecting Alphabet’s control over and
16 financial benefit from Google’s copyright infringement. This satisfies Plaintiffs’ pleading burden.

17 Defendants also challenge whether pleading injunctive relief is appropriate. Yet the Copyright
18 Act expressly authorizes such relief when necessary to prevent ongoing irreparable harm, which the
19 CAC details.

20 Finally, Defendants’ Rule 8-based arguments attempt to impose burdens on Plaintiffs that are
21 unsupported by law and require information wholly within Defendants’ possession and control. Not
22 one of Defendants’ arguments present viable grounds for dismissal.

23 **STATEMENT OF RELEVANT FACTS**

24 In its struggle to win the generative AI race, Defendants have infringed millions of copyrights
25 and perpetrated one of the largest thefts of intellectual property in history. Defendants took and
26 repeatedly copied the works of Plaintiffs’ and the Class, without notice or authorization, in connection
27 with the training of their Generative AI Products. These violations of the Copyright Act took place on

1 an unprecedented scale. CAC ¶¶ 4-6. Although Defendants could have licensed or paid Plaintiffs when
 2 training their Generative AI Models, they instead collected Plaintiffs' works from shadow libraries of
 3 pirated works. *Id.* ¶¶ 1, 3-7, 17-102, 121-161.

4 The FTC has warned companies like Defendants that “[m]achine learning is no excuse to break
 5 the law” and that “[t]he data you use to improve your algorithms must be lawfully collected.” *Id.* ¶ 5.
 6 Nonetheless, Google has and continues to make unauthorized copies of Plaintiffs' copyrighted works,
 7 generating billions in ill-gotten profits. *Id.* ¶¶ 8-10. Defendants' illegal conduct is ongoing and
 8 unabated, *id.* ¶¶ 3, 131, 157, 188, 195, and likely will not stop as Google's AI Products rely on the
 9 infringement of Plaintiffs' works, *id.* ¶ 3; *cf.* MTD at 1 (falsely claiming that Defendants' models can
 10 “create original stories”).

11 Plaintiffs advance two basic theories for Defendants' direct and vicarious copyright
 12 infringement and seek relief individually and on behalf of other authors and visual artists from whom
 13 Defendants misappropriated, and continue to misappropriate, copyrighted works in violation of federal
 14 law.

15 ARGUMENT

16 Under Rule 8(a)(2), a complaint is sufficiently pled if it contains “a short and plain statement
 17 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Rule 8(a) is a “liberal
 18 pleading standard” that only requires plaintiffs to put defendants on fair notice of their potential
 19 liability. *City of Los Angeles v. Wells Fargo & Co.*, 22 F. Supp. 3d 1047, 1062 (C.D. Cal. 2014).
 20 Dismissal under Rule 12(b)(6) is improper where a complaint pleads “enough facts to state a claim . .
 21 . that is plausible on its face.” *In re Google RTB Consumer Priv. Litig.*, 606 F. Supp. 3d 935, 942 (N.D.
 22 Cal. 2022) (internal quotation omitted). When evaluating a motion to dismiss under Rule 12, “[a]ll
 23 allegations of material fact are taken as true and construed in the light most favorable to the nonmoving
 24 party.” *McShannock v. J.P. Morgan Chase Bank NA*, 976 F.3d 881, 886-87 (9th Cir. 2020); *Doe v.*
 25 *Meta Platforms, Inc.*, 690 F. Supp. 3d 1064, 1075 (N.D. Cal. 2023) (explaining that the court “accepts
 26 the plaintiffs' allegations as true” and draws all reasonable inferences in [plaintiffs'] favor”). The
 27 Court must determine whether Plaintiffs have set forth “sufficient factual matter, accepted as true, to
 28

1 state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
 2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Dismissal is proper only where there is no
 3 cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory.”
 4 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

5 **I. Plaintiffs’ CAC Provides Defendants Notice of Their Claims as Required by Rule 8.**

6 **A. Plaintiffs Precisely Identify Defendants’ Infringement (or Vicarious**
 7 **Infringement) of Their Copyrighted Works.**

8 Defendants assert that Plaintiffs’ CAC fails to comply with Rule 8. Their argument is
 9 misplaced.

10 Rule 8 requires only a “short and plain statement” of facts supporting a claim set forth in
 11 “simple, concise, and direct” statements. Fed. R. Civ. P. 8(a) & (d); *see also Twombly*, 550 U.S. at
 12 569 n.14, 570. “No technical form is required.” Fed. R. Civ. P. 8(d). The purpose of Rule 8 is to “give
 13 the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”
 14 *Twombly*, 550 U.S. at 554-55 (quoting Fed. R. Civ. P. 8(a)(2)). There is no heightened pleading
 15 standard for copyright cases. *See* 3 Nimmer on Copyright § 12.07 (“Though it is clearly desirable to
 16 allege the infringing acts with some specificity, the modern view disclaims any heightened pleading
 17 standard in the copyright ambit.”); *Los Angeles v. Wells Fargo*, 22 F. Supp. 3d at 1062 (holding that
 18 plaintiffs only need to put defendant on fair notice of potential liability, which is “all that is required
 19 under the liberal pleading standard of Rule 8(a).”). Plaintiffs have met this standard.

20 The CAC clearly establishes “what claims Plaintiff alleges [i.e., direct and vicarious copyright
 21 infringement], against whom the claims are made [i.e., Google and Alphabet], and the grounds upon
 22 which the claims are based [i.e., Google and Alphabet violated Plaintiffs’ exclusive rights under the
 23 Copyright Act by using their copyrighted works without authorization to train its generative AI
 24 models].” *Hill v. MacMillan McGraw-Hill School Pub. Co.*, 1994 WL 594027, at *2 (N.D. Cal. Oct.
 25 5, 1994); *see also id.* (“This is not a case . . . where there are so many different claims alleged against
 26 multiple defendants that the substance and direction of the separate claims is undecipherable [in
 27 violation of Rule 8].”). Specifically, Plaintiffs explain how Defendants infringed on their respective,
 28 identified works in connection with training Imagen and Gemini. CAC ¶¶ 17-28 (Plaintiff Almond),

1 30-33 (Plaintiff Andersen), 35-46 (Plaintiff Barer), 48-52 (Plaintiff Fink), 54-65 (Plaintiff Hubbard),
2 67-73 (Plaintiff Larson), 75-79 (Plaintiff Lemos), 81-87 (Plaintiff Leovy), 89-96 (Plaintiff
3 McLennan), 98-102 (Plaintiff Zhang). Plaintiffs also identify the specific locations, including
4 hyperlinks, from which Plaintiffs’ works were scraped as well as which datasets they comprise. *Id.*
5 For example, for those works that appeared on pirated sites such as “Z Library” or “Pdfdrive,”
6 Plaintiffs allege that those sites served as sources for Infiniset and C-4, datasets used by Defendants
7 to train Gemini. *Id.* Similarly, if the copyrighted images appeared in the LAION-400M dataset or
8 “haveibeentrained,” Plaintiffs explain that they are comprised within LAION-5B, the training dataset
9 for Imagen. *Id.* These allegations make out the act of infringement, i.e., Google’s illegal use and
10 reproduction of Plaintiffs’ specifically identified and registered copyrighted works, and are
11 sufficiently defined for Rule 8 purposes.

12 Defendants complain that Plaintiffs do not allege *how many times* Google may have illegally
13 infringed their works in the training and build process outlined in the CAC, or the exact products
14 beyond Imagen or Gemini that depend on their copyrighted works. Neither allegation, however, is
15 required at this stage. As the court held in *Thunder Studios, Inc. v. Kazal*, a copyright infringement
16 action, “that the list [of instances of infringement] might not be exhaustive does not render
17 [plaintiff’s] allegations insufficient.” 2018 WL 5099726, *3 (C.D. Cal. Mar. 22, 2018) (denying
18 defendant’s motion to dismiss copyright infringement claims).

19 Defendants’ cases do not compel a different result. None stand for the proposition that
20 Plaintiffs must specify anything more than the act of copyright infringement and the work infringed.
21 In neither *Becton* nor *Santa Barbara* was the act of infringement or precise infringed work specified.
22 *See Becton, Dickinson & Co. v. Cytek Bioscis. Inc.*, 2020 WL 1877707, at *6 (N.D. Cal. Apr. 15,
23 2020) (holding that plaintiff failed to specify “what parts of any [of plaintiff’s] manual(s) were copied,
24 what portions of its software”); *In re “Santa Barbara Like It Is Today” Copyright Infringement Litig.*,
25 94 F.R.D. 105, 108 (D. Nev. 1982) (plaintiff’s amended complaint against “well over 200 defendants”
26 had “no specific allegations or any factual basis given as to any specific instances of infringement”
27 making it difficult for the court to even decipher “which defendants [were] being sued under the

1 various claims”); *see also Frerck v. Pearson Educ., Inc.*, 2012 WL 1280771, at *3 (N.D. Ill. Apr. 16,
2 2012) (rejecting defendant’s argument that, “in order to state a claim for copyright infringement,
3 [plaintiff] must plead specific details as to each infringing act,” as “[t]his requirement would impose
4 a higher burden on copyright claims than is required under the federal rules”).

5 *Bender* is also inapposite. In *Bender*, the court reviewed sufficiency of *patent* infringement
6 claims, not copyright claims, where the *product* was the alleged infringement, and not the copying or
7 other form of reproduction of one’s work. Further, the *Bender* plaintiff did not identify *any* specific
8 act of infringement. Therefore, the court observed that “*at a minimum*, a [complaint must contain a]
9 brief description of what the patent at issue does, and an allegation that certain named and specifically
10 identified products or product components also do what the patent does[.]” *Bender v. LG Elecs.,*
11 *U.S.A., Inc.*, 2010 WL 889541, at *6 (N.D. Cal. Mar. 11, 2010) (emphasis added). By contrast,
12 Plaintiffs here *do* identify which copyrights were infringed, how they were infringed, and which
13 products were infringing.

14 Defendants’ reliance on *Perfect 10, Inc. v. Giganews, Inc.* is also misplaced because *Perfect*
15 *10* arose on summary judgment. Further, Defendants’ cited quote, that an infringement suit “is a
16 specific lawsuit by a specific plaintiff against a specific defendant about specific copyright images”
17 was addressing *causation*, because plaintiff did not demonstrate *on summary judgment* “a causal link
18 between the infringing activities and a financial benefit to [the defendant].” 847 F.3d 657, 673 (9th
19 Cir. 2017); MTD at 23. Defendants in this case do not challenge causation, and Plaintiffs properly
20 allege the financial benefit to Defendants that resulted from their infringement of the specifically
21 identified works. CAC ¶¶ 9-10, 185-87.

22 Finally, Defendants overlook a bedrock legal proposition, applied not only in the Ninth Circuit
23 but elsewhere, allowing plaintiffs even greater leniency in their pleadings where the “facts are
24 peculiarly within the possession and control of the defendant.” *Soo Park v. Thompson*, 851 F.3d 910,
25 928 (9th Cir. 2017); *Garrick v. Garrick*, 2024 WL 3522205, at *3 (N.D. Cal. July 24, 2024) (same);
26 *see also E. & J. Gallo Winery v. EnCana Energy Servs.*, 2004 WL 7342782, at *5 (E.D. Cal. Oct. 13,
27 2004) (“[W]here a lack of specificity in the pleading relates to facts controlled by the opponent and
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1 not available to the pleader, greater leniency is granted.”). Further, and contrary to Defendants’
 2 assertions, Plaintiffs’ allegations referencing fraudulent concealment are supported by allegations
 3 pled with particularity to the extent possible. CAC ¶¶ 158-62 (Defendants were aware of the data and
 4 datasets used to train the Generative AI Models, and how Plaintiffs works were used, copied, and/or
 5 reproduced in the training process and intentionally concealed these material facts). It would be
 6 unreasonable to place a heightened burden on Plaintiffs and expect them to know which other AI
 7 Products Defendants have built using the datasets at issue or other datasets which included Plaintiffs’
 8 works, or even what internal measures they took to cloak their copyright violations. *United States v.*
 9 *Baxter, Int’l, Inc.*, 345 F.3d 866, 881 (11th Cir. 2003) (Under Rule 8, “[c]ourts typically allow the
 10 pleader an extra modicum of leeway where the information supporting the complainant’s case is
 11 under the exclusive control of the defendant”) (superseded by statute on other grounds).

12 Furthermore, Defendants’ suggestion that Plaintiffs have not pled the requisite scienter is
 13 mistaken. Copyright infringement claims are *strict liability* torts and no intent need be pleaded. *ITC*
 14 *Textile Ltd. v. Wal-Mart Stores Inc.*, 2015 WL 12712311, at *5 (C.D. Cal. Dec. 16, 2015) (“Copyright
 15 infringement is a strict liability tort. Lack of knowledge does not limit liability, but only applies to
 16 damages.”). In any event, intent, even under Rule 9, need not be pled with specificity. Fed. R. Civ. P.
 17 9(b) (“Malice, intent, knowledge, and other conditions of a person’s mind may be alleged *generally*.”)
 18 (emphasis added); *accord Sosenko v. LG Elecs. U.S.A., Inc.*, 2019 WL 6118355, at *6 (C.D. Cal.
 19 Aug. 29, 2019) (“[F]raudulent intent need not be pleaded with particularity[.]”); *Plakhova v. Hood*,
 20 2017 WL 10592315, at *3 (C.D. Cal. June 20, 2017) (“If fraudulent intent is alleged, it may be alleged
 21 generally. . . .”). Plaintiffs have nonetheless done so. *See, e.g.*, CAC ¶¶ 130, 158-59.

22 **II. Plaintiffs Have Pled Sufficient Facts in Support of Direct Copyright Infringement**
 23 **Because They Detailed the Works Infringed by Defendants and Provided Copyright**
 24 **Registrations for Those Works.**

25 To plead a claim for direct copyright infringement, Plaintiff must allege: (1) “ownership of the
 26 allegedly infringed material” and (2) “that the alleged infringers violated at least one exclusive right
 27 granted to copyright holders under 17 U.S.C. § 106.” *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d
 1004, 1013 (9th Cir. 2001). “[C]opyright claims need not be pled with particularity.” *Perfect 10, Inc.*

1 *v. Cybernet Ventures, Inc.*, 167 F. Supp. 2d 1114, 1120 (C.D. Cal. 2001). Among other things, “[d]irect
2 infringement does not require intent or any particular state of mind.” *Fox Broad. Co. Inc. v. Dish*
3 *Network, L.C.C.*, 905 F. Supp. 2d 1088, 1098 (C.D. Cal. 2012); *see also ITC Textile Ltd.*, 2015 WL
4 12712311, at *5 (“Copyright infringement is a strict liability tort.”).

5 Defendants concede the sufficiency of the allegations regarding the violation of an exclusive
6 right, but dispute Plaintiffs’ ownership of the infringed material. They ignore Plaintiffs’ well-pled
7 allegations and, instead, attack Plaintiffs’ registrations and attempt to circumscribe Plaintiffs’ claims
8 to the works identified in Exhibit A of the CAC. As explained more fully below, both arguments are
9 unpersuasive.

10 **A. Plaintiffs Adequately Allege Registration of Their Copyrights.**

11 A plaintiff who alleges copyright infringement must show ownership of a valid copyright.
12 *Corbello v. Valli*, 974 F.3d 965, 973 (9th Cir. 2020). The pleading burden is low. *Cybernet Ventures*,
13 167 F. Supp. 2d at 1120 (“[C]omplaints simply alleging present ownership by plaintiff, registration
14 in compliance with the applicable statute and infringement by defendant have been held sufficient
15 under the rules.”). Here, as required, each Plaintiff has alleged that their registered works were copied
16 and used by Defendants, without authorization, as training data for their Models. CAC ¶¶ 17-103;
17 Exs. A & B. At this stage, no more is required.

18 Nonetheless, Defendants argue that the copyright registrations of Plaintiffs Andersen, Fink,
19 and Almond are invalid. With respect to Plaintiff Andersen, Defendants challenge the validity of her
20 registrations because they were for compilations containing previously published material and,
21 therefore, they do not protect the individual images within them. This argument fails for several
22 reasons.

23 First, Defendants’ argument is wholly misplaced at the pleading stage because it is well-
24 settled that a copyright registration certificate alone serves as prima facie evidence of validity. *Alaska*
25 *Stock, LLC v. Houghton Mifflin Harcourt Publ’g Co.*, 747 F.3d 673, 683 (9th Cir. 2014). The burden,
26 therefore, shifts to Defendants. In other words, Defendants’ argument is not a pleading issue but a
27 disputed issue of fact. Courts find that “deciding the validity of Plaintiff’s copyright registration
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1 would require the Court to make factual determinations . . . that are not appropriate on a Rule 12(b)(6)
2 motion to dismiss.” *AJ Mgmt. Consulting, LLC v. MBC FZ-LLC*, 2014 WL 2878891, at *4 (N.D. Cal.
3 June 24, 2014); *see also Peter T. Erdelyi & Assocs. v. Optimum Seismic*, 2021 WL 4775635, at *3
4 (C.D. Cal. July 1, 2021) (collecting cases holding that asserting copyright registration certificates for
5 infringed products are sufficient to satisfy pleading requirements).

6 Defendants also claim that Plaintiffs’ registration of their derivative works, such as in the case
7 of Plaintiff Andersen, does not protect preexisting works or components of the derivative works.
8 Defendants’ argument conflicts with settled law. The Ninth Circuit recently reaffirmed that if a
9 copyright holder owns both the collective work and the underlying elements, the registration of the
10 former permits an infringement action on the underlying parts. *Enter. Mgmt. Ltd., Inc. v. Construx*
11 *Software Builders, Inc.*, 73 F.4th 1048, 1057 (9th Cir. 2023) (quoting 2 Nimmer on Copyright
12 § 7.16[B][5][c]) (“[I]f the same party owns a copyright in both a derivative work . . . and the
13 underlying work that is incorporated in the derivative work, registration of a copyright in the
14 derivative work is sufficient to permit an infringement action on either preexisting . . . material or on
15 any newly contributed material.”); *see also Alaska Stock*, 747 F.3d at 684 (quoting 2 Nimmer on
16 Copyright § 7.16[B][5][c]); *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 989 (9th Cir.
17 2017) (“An applicant does not need to list the names of the component works in a collection to register
18 them as long as it holds the rights to the component works.”). Defendants do not—and cannot—refute
19 this binding precedent. They also do not dispute that Plaintiff Andersen, who has registered the
20 derivative work, is the sole author of all underlying elements of the compilations or the validity of
21 the copyright registration for each compilation. Moreover, Defendants’ argument is directly contrary
22 to the well-pled allegations in the CAC specifically asserting Plaintiff Andersen has valid registered
23 copyrights in five compilations of works. CAC ¶ 31; *see also Alaska Stock*, 747 F.3d at 685;
24 *Unicolors*, 853 F.3d at 989; 2 Nimmer on Copyright § 7.16[B][5][c].

25 To the extent Defendants rely on *Ambrosetti v. Oregon Catheter Press*, that reliance is
26 misplaced. MTD at 7 (citing 458 F. Supp. 3d 1013 (N.D. Ind. 2020)). *Ambrosetti* specifically
27 distinguished cases where copyright registration of a collective work extends to individual
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1 components authored by a single creator, finding dismissal appropriate because the work at issue in
2 *Ambrosetti* involved *multiple* authors. *Ambrosetti*, 458 F. Supp. 3d at 1017. Here, Defendants cannot
3 dispute that the challenged works were created by a single author—Plaintiff Andersen.

4 Defendants’ reliance on judicial filings from the Register of Copyrights in two cases are also
5 unpersuasive. Like *Ambrosetti*, those cases did not involve plaintiffs who authored the underlying
6 components of the compilations at issue. These filings are therefore inapplicable to Plaintiffs here.
7 *See PalatiumCare, Inc. v. Notify LLC & Lucas Narbatovics*, No. 2:22-cv-217-JPS (E.D. Wis.), ECF
8 No. 101 (addressing whether failure to name authors of plaintiff company’s source code would have
9 caused Register to refuse registration); *Neman Bros. & Assoc., Inc. v. Interfocus, Inc.*, No. 2:20-
10 11181-CAS-JPR (C.D. Cal.), ECF No. 85 (addressing whether Register would have refused
11 registration if it had known that plaintiff company “was not the sole author of all of the works included
12 in the group application”).

13 Defendants cite an out-of-circuit decision from an order on summary judgment in support of
14 their argument that works posted on X purportedly grant others the right to copy the works, and thus,
15 qualify as a publication. MTD at 15 (citing *Brunson v. Cook*, 2023 WL 2668498, at *13-14 (M.D.
16 Tenn. Mar. 28, 2023)). This argument is also unpersuasive and premature. Even if the Court could
17 take judicial notice of X’s terms of service, the interpretation and effect of those terms – particularly
18 whether they could render the work as “published” – remain disputed, and are inappropriate for
19 resolution at the pleading stage. See *supra* at 8. Moreover, Defendants’ interpretation would lead to
20 the absurd result that virtually every image posted to social media automatically constitutes
21 publication—a result that would eviscerate the Copyright Act’s careful distinction between
22 publication and display. See 17 U.S.C. § 101 (public performance of the works is insufficient). Terms
23 of service cannot usurp this fundamental statutory text.

24 Defendants also claim that Plaintiff Andersen’s alleged internet posts constituted prior
25 “publication” under the Copyright Act. See *Marya v. Warner/Chappell Music, Inc.*, 131 F. Supp. 3d
26 975, 990 (C.D. Cal. 2015) (party claiming “publication” has burden of proof). First, Defendants’
27 argument relies on unauthenticated, disputed extrinsic documents which are improper at the pleading
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1 stage. *See Body Jewelz, Inc. v. Valley Forge Ins. Co.*, 241 F. Supp. 3d 1084, 1090 (C.D. Cal. 2017)
2 (declining to consider disputed documents outside of the pleadings). Second, the assertion that
3 internet posts are “publication” is not well taken. “Publication” constitutes the “distribution of copies
4 or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or
5 lending. . . . A public performance or display of a work does not of itself constitute publication.” 17
6 U.S.C. § 101; *see also Am. Vitagraph, Inc. v. Levy*, 659 F.2d 1023, 1029 (9th Cir. 1981) (holding a
7 motion picture is not published when viewed publicly by an audience until it is commercially
8 distributed to theater operators—i.e., for further public display); *Dolman v. Agee*, 157 F.3d 708, 713
9 (9th Cir. 1998) (“[M]ere performance or exhibition of a work does not constitute a publication of that
10 work[.]”). Like a photograph posted on a website, the works posted on X do not qualify as
11 publications because “publication entails more than mere display” and requires “commercial
12 exploitation.” *Feingold v. RageOn, Inc.*, 472 F. Supp. 3d 94, 99-100 (S.D.N.Y. 2020). Furthermore,
13 the Compendium of U.S. Copyright Office Practices (“*Compendium*”) maintains that “the mere fact
14 that a work is disclosed on the Internet does not ‘publish’ the work” and “it is not always factually
15 clear whether the placement of works online is intended to be an authorized distribution of those
16 works” so as to constitute publication. *Compendium* § 1008.3(C) (3d ed. 2021),
17 <https://www.copyright.gov/comp3/docs/compendium.pdf>.

18 As a final gambit, Defendants assert technical challenges to Plaintiff Fink and Almond’s
19 registrations, misapprehending the legal distinction between serial publication and compilation
20 registration. Serial publication of installments of webcomics does not constitute publication of the
21 final integrated work as a matter of law. *See Alaska Stock*, 747 F.3d at 685 (recognizing distinct
22 protection for collective works). For compilations like Almond’s short story collection, the Copyright
23 Act explicitly protects “the collection and assembling of preexisting materials” as an original work
24 of authorship. 17 U.S.C. §§ 101 & 103(b). The Supreme Court has expressly rejected attempts to
25 invalidate registrations through technical arguments where the registrant owns the underlying rights.
26 *See Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178, 181-82 (2022) (explaining a
27 certificate of copyright registration may be valid even if it is inaccurate). The Copyright Office’s
28

1 guidance is in accord, confirming that authors who own rights to both compilations and components
 2 may register collections as new works, with protection extending to the underlying contents.
 3 *Compendium* § 509.1. Defendants cannot transmute registration formalities into grounds for dismissal
 4 where plaintiffs have properly alleged ownership and registration of the works at issue.

5 **B. Plaintiffs Sufficiently Identify Plaintiffs' Infringed Works.**

6 In pleading their copyright infringement claims, Plaintiffs detail the following: (a) the exact
 7 Plaintiffs' works used by Defendants to train their Models, CAC ¶¶ 17-18, 30, 35-36, 48-49, 54-55,
 8 67-68, 75-76, 81-82, 89-90, 98-99; (b) the specific datasets where these works were included, *id.* ¶¶
 9 19-26, 31, 37-44, 50, 56-63, 69-71, 77, 83-85, 91-94, 100; and (c) information about Defendants'
 10 Generative AI Models and AI-Powered Products and their concealment of the fact that these datasets
 11 contained unauthorized copies that were used to train their Models, *id.* ¶¶ 130-131. Conceding the
 12 sufficiency of these allegations, Defendants make the remarkable claim that Plaintiffs' CAC should
 13 have itemized each of the infringed works. That is not the law.¹ Given the broad, repeated, and
 14 concealed nature of the infringement alleged, there is no such requirement at the pleading stage. At
 15 most, this would be a matter of proof.

16 Plainly, "Plaintiffs [] need not identify every [work] allegedly infringed . . ." *Joint Stock Co.*
 17 *Channel One Russ. Worldwide v. Infomir LLC*, 2017 WL 696126, at *14 (S.D.N.Y. Feb. 15, 2017).
 18 "Where a copyright claim is based on the alleged wholesale infringement of a large number of
 19 copyrighted works, courts have relaxed [the rule requiring identification of each specific work] . . . ,
 20 but the plaintiff must still identify, at a minimum, representative examples of the works allegedly
 21 infringed[.]" *Id.*; *see also Cybernet Ventures*, 167 F. Supp. 2d at 1120 ("Requiring a statement of
 22 each and every example [of infringement] would defeat the regime established by Rule 8.") This is
 23 especially true where the identity of the works Defendants infringed is within the exclusive possession
 24 and control of Defendants. Indeed, as Plaintiffs allege, only a small subset of the shadow libraries
 25

26 ¹ Considering the precise and detailed nature of Plaintiffs' allegations, it is unclear whether
 27 Defendants are also suggesting that Plaintiffs must identify an exhaustive list of works infringed by
 28 Defendants. This would require Plaintiffs to access information within Defendants' *sole and exclusive*
control. In any event, Defendants' demand far exceeds what is required at this stage.

1 Defendants downloaded or otherwise acquired is disclosed, and Defendants, in fact, conceal this
2 information. *See Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) (holding in a
3 copyright infringement case that the plausibility pleading standard allows factual allegations made
4 “upon information and belief” where (1) “the facts are peculiarly within the possession and control
5 of the defendant,” or (2) “where the belief is based on factual information that makes the inference
6 of culpability plausible”).

7 In copyright claims, “[d]etermining whether a complaint states a plausible claim for relief . . .
8 [is] a context-specific task that requires the reviewing court to draw on its judicial experience and
9 common sense.” *Clifton v. Houghton Mifflin Harcourt Publ’g Co.*, 152 F. Supp. 3d 1221, 1225 (N.D.
10 Cal. 2015) (applying *Iqbal* in a copyright infringement case and rejecting the notion that plaintiff
11 must identify every work subject to infringement and each instance of infringement). Defendants,
12 however, rely on cases where the plaintiffs failed to allege any specific works and, thus, failed to
13 provide the defendants the requisite notice and made it difficult or impossible for the defendants to
14 defend the litigation, or where plaintiffs in individual lawsuits did not allege copyrighted works or
15 instances of infringement. All are distinguishable. *See DBW Partners, LLC v. Bloomberg, L.P.*, 2019
16 WL 5892489, at *3 (D.D.C. Nov. 12, 2019) (dismissing claims where plaintiffs did not identify *any*
17 specific infringed works, or even defendant’s infringing works, making it “virtually impossible to
18 determine what materials have allegedly been infringed”) (quoting *Newborn v. Yahoo!, Inc.*, 391 F.
19 Supp. 2d 181, 187 (D.D.C. 2005)); *Livingston v. Morgan*, 2006 WL 8459602, at *3 (N.D. Cal. July
20 31, 2006) (plaintiff failed to “identify any of the specific photographs . . . purportedly used by
21 [defendant] without [plaintiff’s] authorization”); *Lambertini v. Fain*, 2014 WL 4659266, at *3
22 (E.D.N.Y. Sept. 17, 2014) (similar); *Plakhova*, 2017 WL 10592315, at *2 (plaintiff failed to identify
23 *any* specific infringed works); *Flava Works, Inc. v. Clavio*, 2012 WL 2459146, at *2 (N.D. Ill. June
24 27, 2012) (“[B]road and conclusory allegations” that “videos were posted and distributed on other
25 websites” do not point to a specific infringed work, and “are not enough to put [defendant] on
26 notice”). For example, in *Premier Tracks, LLC v. Fox Broadcasting Co.*, the plaintiffs defined
27 “Infringed Works” as the copyright applications reflected in their attached exhibit, “along with other
28

1 of [p]laintiffs’ works . . . yet to be identified[,]” and of the 18 copyright applications attached, only
2 five were filed on behalf of one plaintiff the day before the filing of the lawsuit, *with none filed on*
3 *behalf of the other plaintiff*. 2012 WL 13012714, at *2, 26-27 (C.D. Cal. Dec. 18, 2012). Here, each
4 Plaintiff identified at least one or more works that they confirmed were infringed by Defendants and
5 used to train Defendants’ Imagen and/or Gemini AI models. *See, e.g., Ritani, LLC v. Aghjayan*, 880
6 F. Supp. 2d 425, 441 (S.D.N.Y. 2012) (plaintiff adequately “identified, claimed ownership over and
7 offered proof of registration of representative specific works that are the subject of the copyright
8 claim”).

9 Defendants’ reliance on *Cole v. John Wiley & Sons*, 2012 WL 3133520, *11-14 (S.D.N.Y.
10 Aug. 1, 2012) is also misplaced. In *Cole*, the plaintiff brought a copyright infringement lawsuit, but
11 failed to identify *how* the defendant infringed his works and, as to two of the three defendants, failed
12 to specify which of 66 works were subject to infringement. *Id.* at *11-14. Most of the *Cole* plaintiff’s
13 allegations rested on the notion that the court should “make an inferential leap” that infringement
14 occurred because defendants purportedly had access to the photographs and thus were “likely to have
15 infringed his rights in at least one” of them. *Id.* at *12. The court rejected this argument and dismissed
16 plaintiff’s ambiguous and unsubstantiated allegations that defendants infringed on other
17 “unidentified” works. *Id.*

18 No “inferential leap” is required here—Plaintiffs specifically allege the works Defendants
19 infringed, the method in which they were infringed, and detailed information regarding some of the
20 known datasets in which these works were included. Therefore, “it would be unjust and inappropriate
21 to throw out [plaintiff’s] well-pleaded allegations” supporting their copyright claims simply because
22 “several discrete paragraphs” in the complaint referenced other unspecified works, the identity of
23 which are within Defendants’ sole knowledge and control. *Schneider v. Pearson Educ., Inc.*, 2013
24 WL 1386968, *3 (S.D.N.Y. April 5, 2013). As in *Schneider*, Plaintiffs have “alleged that specific
25 works to which [they] owned the copyright were infringed upon, and by doing so, [they have]
26 adequately pleaded this element under Rule 12(b)(6).” *Id.*

III. Plaintiffs State a Viable Claim for Vicarious Copyright Infringement.

1 A plaintiff may state a claim for vicarious copyright infringement where the defendant (1)
 2 failed to exercise its supervisory power over the infringing conduct and (2) obtained a direct financial
 3 benefit from such infringement. *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 262 (9th Cir.
 4 1996). The CAC alleges with specificity the requisite facts for this claim. In particular, Plaintiffs
 5 allege Alphabet’s documented capacity to control Google’s operations, CAC ¶¶ 106-10, its conscious
 6 decision not to exercise that control over Google’s infringing conduct, *id.*, and its receipt of
 7 substantial financial benefits flowing directly from the infringement, *id.* ¶¶ 9-10, 108, 185-87. *See*
 8 *also Keck v. Alibaba.com Hong Kong Ltd.*, 369 F. Supp. 3d 932, 936 (N.D. Cal. 2019) (applying the
 9 *Fonovisa* standard).

10 Defendants insinuate Plaintiffs’ allegations suffer from a failure to allege facts sufficient to
 11 permit some form of veil piercing. The factual allegations in the CAC, however, extend well beyond
 12 a mere parent-subsidary relationship and detail Alphabet’s substantive role in the development of
 13 Google’s AI activities and, relatedly, its failure to control Google’s infringing conduct. Specifically,
 14 the CAC documents Alphabet’s control through its stated initiative to “expand[] [its] investment in
 15 AI across the entire company . . . [and] integrate AI capabilities into our products and services,”
 16 combined with the substantial financial benefits that followed. CAC ¶ 107. Alphabet possessed the
 17 ability to control Google’s conduct while deriving significant benefit from the infringement and,
 18 therefore, it must bear corresponding legal responsibility.

A. Alphabet Failed to Exercise Its Control Over Google’s Infringement.

19 The first prong of vicarious liability requires both the legal right and practical ability to control
 20 the infringing conduct. *Fonovisa* illustrates this principle: a swap meet operator’s contractual right to
 21 terminate vendors established sufficient control because this authority enabled oversight of vendor
 22 activities on the premises. 76 F.3d at 262. The operator’s subsequent failure to exercise this control
 23 created vicarious liability for its vendor’s infringement.
 24

25 As set forth in the CAC, Alphabet maintains comprehensive operational control over Google
 26 that exceeds mere third-party oversight authority. While plaintiffs at the pleading stage “cannot be
 27 expected to know the precise relationship between members of the [Alphabet] corporate family,”
 28

1 *Friche v. Hyundai Motor, Am.*, 2022 WL 1599868, at *5, n.4 (C.D. Cal. Jan. 28, 2022), the CAC
2 plausibly asserts Alphabet’s control through multiple operational channels: (1) unified and
3 interlocking executive leadership, including a shared CEO, CFO, and CIO, CAC ¶¶ 110, 184; (2)
4 strategic restructuring of Google’s AI operations, CAC ¶¶ 106-07; (3) direct oversight of AI
5 initiatives across Alphabet subsidiaries, CAC ¶ 107; and (4) centralized control over AI resource
6 allocation, *id.* ¶ 108. This operational integration demonstrates Alphabet’s “practical ability” to
7 control Google’s activities through executive decision-making authority. *See Howard Johnson Co.,*
8 *Inc. v. Khimani*, 892 F.2d 1512, 1518 (11th Cir. 1990) (finding requisite control where officers served
9 both parent and subsidiary). The authority to allocate and direct resources also indicate Alphabet’s
10 control over Google, in particular the power to restrict funding for infringing activities.

11 Alphabet’s possession of control authority triggers an affirmative duty to exercise that
12 authority to prevent infringement. The Ninth Circuit has established that “to escape imposition of
13 vicarious liability, the reserved right to police must be exercised to its fullest extent. Turning a blind
14 eye to detectable acts of infringement for the sake of profit gives rise to liability.” *Napster, Inc.*, 239
15 F.3d at 1023. The CAC details Alphabet’s systematic failure to exercise this required oversight,
16 specifically noting its failure to implement copyright compliance procedures or restrict resources for
17 infringing activities. CAC ¶ 188. Moreover, Alphabet affirmatively ratified the infringing conduct by
18 expanding the integration of Google’s AI Products across its subsidiaries while increasing investment
19 in the underlying infringing activities. *Id.* ¶ 108.

20 Defendants misapprehend the distinct requirements for vicarious versus contributory
21 copyright infringement by arguing that Plaintiffs must show Alphabet’s direct “involvement in
22 Google’s decisions regarding what data to use to train its AI models.” MTD at 16. But Plaintiffs
23 allege *vicarious*, not contributory, liability. The Supreme Court has established separate frameworks
24 for each theory: contributory infringement requires that a defendant “induce[], cause[], or materially
25 contribute[] to the infringing conduct,” *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*, 494 F.3d 788, 795
26 (9th Cir. 2007), while vicarious infringement stems from a defendant’s decision to “profit[] from
27 direct infringement while declining to exercise a right to stop or limit it,” *Metro-Goldwyn-Mayer*

1 *Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005). Because vicarious liability arises from
2 *inaction* despite control authority, Plaintiffs need not demonstrate Alphabet’s affirmative
3 participation in Google’s infringement. Defendants rely on outdated or out-of-circuit cases to assert
4 there is an additional element of “substantial and continuing connection . . . with respect to the
5 infringing acts.” *See, e.g.*, MTD at 16 (quoting *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*,
6 772 F.2d 505, 519-20 (9th Cir. 1985)). This requirement is effectively subsumed by the later “control”
7 or “stop and limit” elements articulated by *Perfect 10* and *Grokster*. *See Perfect 10*, 494 F.3d at 806.
8 In any event, Plaintiffs allegations of Alphabet’s ongoing control over Google’s infringing activity
9 and continued benefit from integrating Google’s AI products sufficiently establishes a “substantial
10 and continuing connection . . . to the infringing acts.” *Frank Music Corp.*, 772 F.2d at 520.

11 **B. Alphabet Derived a Direct Financial Benefit from Google’s Infringement.**

12 The CAC sets forth sufficient facts regarding Alphabet’s direct financial benefit from
13 Google’s infringing conduct under controlling Ninth Circuit precedent. A “financial benefit” arises
14 when “the availability of infringing material acts as a draw for customers.” *Cook v. Meta Platforms*
15 *Inc.*, 2023 WL 6370891, at *6 (N.D. Cal. Jan. 4, 2023) (quoting *Ellison v. Robertson*, 357 F.3d 1072,
16 1078 (9th Cir. 2004)). This element requires neither substantial benefit nor substantial draw for
17 customers. *Perfect 10, Inc.*, 847 F.3d at 673. Similarly, here, Alphabet’s integration of Google’s
18 Generative AI Models—made possible only through the infringement of Plaintiffs’ works—into its
19 product suite demonstrates the requisite financial benefit. The CAC alleges this integration enhanced
20 product attractiveness and “drov[e] increased usage and revenue[.]” CAC ¶ 185 (alleging \$10.9
21 billion growth in revenue from AI-Powered Products). Alphabet’s direct benefit also subsumes more
22 than mere subsidiary revenue, as confirmed by its CEO’s attribution of increased profitability to AI
23 integration across Alphabet products. *Id.* ¶ 108.

24 Defendants’ contention that Plaintiffs must draw a straight line from “their particular works”
25 to Alphabet’s financial benefit is incorrect. In *Napster*, the Ninth Circuit held that a platform’s broad
26 offering of copyrighted content creates the requisite “draw” for financial benefit analysis. *Napster,*
27 *Inc.*, 239 F.3d at 1023. Here, the CAC similarly alleges that Plaintiffs’ works were incorporated into

1 the AI models, CAC ¶¶ 1, 4, and that these models—enhanced by the inclusion of Plaintiffs’ protected
2 content—created the commercial draw driving Alphabet’s revenue growth, *id.* ¶ 185.

3 Defendants’ reliance on cases dismissing claims against Alphabet fails upon examination of
4 the distinguishing factual and procedural contexts. In *Lancaster v. Alphabet, Inc.*, dismissal rested on
5 the complete absence of “specific allegations against Alphabet, Inc.” 2016 WL 3648608, at *7 (N.D.
6 Cal. July 8, 2016). Plaintiffs’ CAC, by contrast, details Alphabet’s operational control and direct
7 financial benefit from the infringing conduct. CAC ¶¶ 106-10.

8 The other cases on which Defendants rely are similarly distinguishable. *See Kremer v.*
9 *Alphabet Inc.*, 2024 WL 923900, at *1 (M.D. Tenn. Mar. 4, 2024) (dismissing on basis that plaintiff
10 alleged only that Alphabet’s “brands include gmail, google.com, youtube, google ads, nest and
11 others”); *Manigault-Johnson v. Google, LLC*, 2019 WL 3006646, at *2 (D.S.C. Mar. 31, 2019)
12 (dismissing where complaint contained “only one factual allegation regarding [Alphabet], namely,
13 that it is Google’s parent company”). Unlike these cases, the CAC here clearly establishes Alphabet’s
14 active operational control and deliberate extraction of financial benefit from infringing conduct, and
15 thus, warrants a denial of Defendants’ MTD.

16 **IV. Plaintiffs Properly Plead Their Entitlement to Injunctive Relief as Authorized by the**
17 **Copyright Act.**

18 The Copyright Act expressly authorizes injunctive relief: “[A]ny court having jurisdiction of
19 a civil action arising under this title may . . . grant temporary and final injunctions on such terms as
20 it may deem reasonable to prevent or restrain infringement.” 17 U.S.C. § 502. Courts regularly award
21 injunctive relief for copyright infringement. *See, e.g., Int’l Med. Devices, Inc. v. Cornell*, 2024 WL
22 1363690, at *8 (C.D. Cal. Mar. 28, 2024) (permanent injunction granted to plaintiffs who were
23 successful on copyright and trademark claims); *Sadowski v. Package Depo, LLC*, 2024 WL 1829701,
24 at *4 (C.D. Cal. Jan. 22, 2024) (awarding permanent injunction where defendant continued infringing
25 use of plaintiff’s work, and monetary damages are inadequate to eliminate the problem); *Sony Music*
26 *Ent., Inc. v. Clark-Rainbolt*, 2024 WL 1319735, at *5 (N.D. Tex. Mar. 27, 2024) (granting permanent
27 injunction to prevent defendant from copying/performing or otherwise exploiting the works without
28 paying certain revenues to plaintiffs); *Fermata Int’l. Melodies, Inc. v. Champions Golf Club, Inc.*,

1 712 F. Supp. 1257, 1262 (S.D. Tex. 1989) (“[C]ourts have traditionally granted permanent
2 injunctions, if liability is established and a continuing threat to the copyright exists.”) (collecting
3 cases).

4 Defendants attempt to litigate the scope of a permissible injunction on the merits, without the
5 benefit of discovery and findings by the trier of fact. MTD at 13-15. This position is contrary to the
6 law: “claim[s] for injunctive relief must be resolved on an evidentiary record and not at the pleading
7 stage.” *Howard v. City of Vallejo*, 2013 WL 6070494, at *6-7 (E.D. Cal. Nov. 13, 2013) (citing *Los*
8 *Angeles v. Lyons*, 461 U.S. 95 (1983); *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999);
9 and *LaDuke v. Nelson*, 762 F.2d 1318 (9th Cir. 1985)); see also *Sears Roebuck & Co. v. Williams*
10 *Express, Inc.*, No. 3:10-cv-00221, ECF No. 38, at 16 (D. Alaska June 8, 2011) (“Plaintiff does not
11 need to demonstrate that it is entitled to a permanent injunction in its pleading.”).

12 Defendants rely on *eBay v. MercExchange*, 547 U.S. 388, 390 (2006) but their reliance is off-
13 base. *eBay* is not a pleadings case and simply “does not, as Defendant argues, address pleading
14 requirements at the motion to dismiss stage.” *Signify N. Am. Corp. v. Robe Lighting, Inc.*, 2021 WL
15 3419187, at *3 (S.D. Fla. Mar. 16, 2021) (emphasis added) (declining to dismiss claim for injunctive
16 relief for patent infringement). Instead, *eBay* merely describes the facts which must be shown in order
17 to establish whether or not a permanent injunction should issue. Plaintiffs will meet *eBay*’s test but
18 at the proper juncture after discovery has closed and Defendants’ liability is determined. *Software*
19 *Research, Inc. v. Dynatrace LLC*, 316 F. Supp. 3d 1112, 1138 (N.D. Cal. 2018) (explaining that courts
20 “cannot find as a matter of law on a motion to dismiss that [plaintiff] cannot satisfy the *eBay* criteria”).
21 Other courts are in accord. See, e.g., *Archer & White Sales, Inc. v. Henry Schein, Inc.*, 2016 WL
22 7157421, at *6 (E.D. Tex. Dec. 7, 2016) (“[T]he [*eBay* factors] are not pleading requirements—rather
23 they are factors that are to be considered . . . before an injunction should issue.”) (overruled on
24 irrelevant grounds); *Oxygenator Water Techs., Inc. v. Tennant Co.*, 2020 WL 4572062, at *6 (D.
25 Minn. Aug. 7, 2020) (holding “[a] claim for permanent injunction should not be stricken at the
26 pleading stage when the underlying claim is not dismissed”) (quoting *Jerez v. Holder*, 2011 WL
27 7637808, at *12 (D. Minn. Sept. 1, 2011)).

1 Defendants cite only two additional cases that dismissed injunctive relief at summary
 2 judgment or applied the *eBay* factors to a motion for permanent injunction, not a Rule 12 motion. *See*
 3 *TD Bank N.A. v. Hill*, 928 F.3d 259, 267 (3d Cir. 2019) (analyzing irreparable harm factor only after
 4 discovery and a ruling on summary judgment from the district court); *Metro-Goldwyn-Mayer Studios,*
 5 *Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1209-1214 (C.D. Cal. 2007) (applying the *eBay* factors
 6 at plaintiffs’ motion for a permanent injunction).

7 **A. Preemptory Denial of Injunctive Relief is Unwarranted Where Copyright**
 8 **Infringement is Ongoing.**

9 Plaintiffs are not required to “specify the precise injunctive relief they will ultimately seek at
 10 the class certification stage.” *B.K. v. Snyder*, 922 F.3d 957, 972 (9th Cir. 2019). This concept is
 11 especially important in the copyright context, where preemptive dismissal of injunctive relief would
 12 eviscerate a plaintiff’s ability to prevent future infringement. Thus, preemptive dismissals of
 13 injunctive relief are disfavored because a prevailing plaintiff “is entitled to effective relief; and any
 14 doubt in respect of the extent thereof must be resolved in its favor as the innocent producer and against
 15 the [infringer], which has shown by its conduct that it is not to be trusted.” *See, e.g., Y.Y.G.M. SA v.*
 16 *Redbubble, Inc.*, 75 F.4th 995, 1006 (9th Cir. 2023) (quoting *William R. Warner & Co. v. Eli Lilly &*
 17 *Co.*, 265 U.S. 526, 532 (1924)); *Shade v. Gorman*, 2009 WL 196400, at *2 (N.D. Cal. Jan. 28, 2009)
 18 (denying attempt to dismiss plaintiff’s claims for injunctive relief as premature where defendant
 19 argued that plaintiff failed to support allegations of irreparable injury and lack of adequate legal
 20 remedy with sufficient facts).

21 Plaintiffs have pled “enough facts” to plausibly state a claim for which they may obtain
 22 injunctive relief. *Google RTB Consumer Priv. Litig.*, 606 F. Supp. 3d at 942. Specifically, Plaintiffs
 23 have pled that “the unique characteristics of AI model training and deployment create distinct
 24 categories of harm,” Google’s infringement is continuing, and that there is a threat of future
 25 infringement that monetary damages would not prevent. CAC ¶ 181; *see also id.* ¶ 195 (“Unless
 26 enjoined by this Court, Alphabet will continue to benefit from and facilitate Google’s ongoing
 27 infringement through continued operation and monetization of its AI models, causing irreparable
 28 injury for which Plaintiffs have no adequate remedy at law.”). Accepting these factual allegations as

1 true—as the Court must—without an injunction, Plaintiffs face ongoing future harm as the
2 infringement continues even were they to recover damages for past harm. Monetary compensation
3 alone is an insufficient remedy for future infringement and therefore an injunction is warranted,
4 especially because “[i]n the copyright realm . . . an injunction should be granted if denial would
5 amount to a forced license to use the creative work of another.” *See Wakefield v. Olenicoff*, 2015 WL
6 1460152, at *9 (C.D. Cal. Mar. 30, 2015) (quoting *Silverstein v. Penguin Putnam, Inc.*, 368 F.3d 77,
7 84 (2d Cir. 2004)); *see also Taylor Corp. v. Four Seasons Greetings, LLC*, 403 F.3d 958, 968 (8th
8 Cir. 2005) (“[Plaintiff] certainly has the right to control the use of its copyrighted materials, and
9 irreparable harm inescapably flows from the denial of that right.”). For example, barring use
10 contingent on compensation is an accepted equitable remedy. *See Sony Music Ent., Inc.*, 2024 WL
11 1319735, at *5 (granting permanent injunction under an “alternative request for damages in the event
12 of future infringement,” where defendant would compensate plaintiff with a percentage of all
13 revenues connected to the infringing work). Injunctions fashioned to prevent infringement of yet-
14 unregistered works are also common. *See Perfect 10, Inc. v. Amazon, Inc.*, 508 F.3d 1146, 1154 n.1
15 (9th Cir. 2007) (rejecting the argument against including unregistered works in an injunction and
16 affirming the district court’s authority to issue such an order); *see also Tattoo Art, Inc. v. TAT Int’l,*
17 *LLC*, 794 F. Supp. 2d 634, 661-63 (E.D. Va. 2011) (enjoining infringement of both registered and
18 unregistered works in reliance on *Perfect 10 v. Amazon.com* and the fact that “the majority of the
19 United States Courts of Appeals that have considered this issue”), *aff’d*, 498 F. App’x 341 (4th Cir.
20 2012)); *Beastie Boys v. Monster Energy Co.*, 87 F. Supp 3d 672, 681 (S.D.N.Y. 2015) (injunction
21 which extended beyond specific acts of infringement was inappropriate because infringement was
22 “unlikely to recur”).

23 All of the cases on which Defendants rely are *non-copyright* cases dismissing claims for
24 injunctive relief because either the plaintiffs’ allegations contradicted their right to an injunctive
25 relief, or they waived such right based on inapplicable procedural nuances. Neither scenario applies
26 here. *See* MTD at 13-14; *O’Shea v. Littleton*, 414 U.S. 488, 495-96, 502 (1974) (dismissing injunctive
27 relief in illegal bond-setting claim where future or ongoing harm was implausible because it relied
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1 on likelihood of plaintiffs being arrested for and charged with crimes in the future); *Sonner v. Premier*
 2 *Nutrition Corp.*, 971 F.3d 834, 842, 844 (9th Cir. 2020) (in false advertising case, dismissing
 3 *restitution* for past harm where plaintiff had adequate remedy at law, price premium, but chose not
 4 to pursue such remedy); *Philips v. Ford Motor Co.*, 726 F. App'x 608, 609 (9th Cir. 2018) (appellants
 5 “d[id] not challenge” and therefore “waived any argument that they alleged sufficient facts to
 6 plausibly establish the inadequacy of their legal remedies” in consumer protection action); *Hubbard*
 7 *v. Google LLC*, 2024 WL 3302066, at *4 (N.D. Cal. July 1, 2024) (dismissing request for equitable
 8 relief because plaintiffs’ “allegations of harm focus on economic injuries already suffered” such that
 9 they failed to allege inadequate remedy at law); *Blain v. Liberty Mut. Fire Ins. Co.*, 2023 WL
 10 2436003, *7 (S.D. Cal. Mar. 9, 2023) (breach of contract action, where plaintiff’s injury was tied to
 11 COVID-19 stay-at-home orders that were no longer effective). Unlike in Defendants’ cited cases, the
 12 Copyright Act expressly authorizes Plaintiffs’ right to seek injunctive relief and there is no waiver.

13 **B. The *eBay* Factors Weigh in Favor of an Injunction.**

14 Even if the Court were to accept Defendants’ invitation to apply the *eBay* test as a requirement
 15 at the pleading stage (and Plaintiffs are aware of no courts which have done so, *see supra* at 18-19),
 16 Plaintiffs sufficiently plead facts as to each of the *eBay* elements: (1) Plaintiffs suffered an irreparable
 17 injury, CAC ¶¶ 4, 181, 194-195; (2) Plaintiffs have inadequate remedies at law, CAC ¶¶ 181, 195;
 18 (3) remedy in equity is warranted, given the balance of hardships, CAC ¶¶ 155-156; and (4) public
 19 interest would not be disserved, CAC ¶¶ 1-7, 151-156. *See eBay*, 547 U.S. at 391.

20 ***Plaintiffs Would Suffer Irreparable Harm.*** Plaintiffs allege that future harm will befall them
 21 absent a permanent injunction—an allegation which, when proved, will satisfy their entitlement to
 22 injunctive relief. *Y.Y.G.M.*, 75 F.4th at 1007 (“The district court abused its discretion by discounting
 23 the relevance of future harm.”). Plaintiffs have alleged that Defendants will continue to surreptitiously
 24 feed its Generative AI Models copyrighted works without licensure. *See, e.g.*, CAC ¶ 4 (“By
 25 embedding the Plaintiff Works into its Generative AI Models, Google has irreversibly entangled the
 26 Plaintiff Works with its commercial products . . . [which] Google compounds daily through its
 27 expanding deployment of AI-Powered Products built on infringed Plaintiff Works.”). Defendants’
 28

1 intention is clear: it will continue to train its AI products on copyrighted works, despite being on
2 notice that copyright holders like Plaintiffs do not consent.

3 ***Plaintiffs Have No Adequate Remedy at Law.*** Plaintiffs also sufficiently allege no adequate
4 remedy at law: Defendants are on notice of their infringement and yet continue to infringe. CAC ¶¶
5 181, 195. “[G]iven [Defendant’s] knowledge of its violations and continued use of Plaintiff’s
6 [protected works], there is no adequate remedy at law to address the ongoing damage and irreparable
7 harm.” *Cadence Design Sys. v. Pounce Consulting, Inc.*, 2019 WL 1768619, at *10 (N.D. Cal. Apr.
8 1, 2019). *O’Shea v. Littleton* is inapposite because the court there dismissed claims for injunctive
9 relief based on its reasoning that the injury alleged was “necessarily conjectural” and, therefore, the
10 complaint “failed to satisfy the threshold requirement imposed by Art. III.” 414 U.S. at 493, 502.
11 Article III standing is not in dispute here.

12 ***The Balance of Hardships & Public Interests Weigh in Plaintiffs’ Favor.*** Nothing in
13 Defendants’ argument compels a conclusive determination of these factors against Plaintiffs as a
14 matter of law on the pleadings. This is a case of great public import and interest, and courts do not
15 force non-consenting licensing on those whose works were infringed without their authorization. *See*
16 CAC ¶¶ 1-6 (Google has willfully infringed on millions of registered copyrighted works for profit on
17 an unprecedented scale, ignoring the FTC’s warnings to cease such practices); *id.* ¶ 7 (Google has
18 chosen to “copy data from websites under active prosecution for copyright infringement”); *id.* ¶ 151
19 (the infringement was willful and enacted “without securing licenses or authorization,” in conscious
20 disregard of U.S. copyright laws); *id.* ¶¶ 152-56 (Google knew that customers were concerned about
21 its Generative AI Models and being aware of the legal risks, Google chose to infringe on millions of
22 copyrighted works anyway); *id.* ¶¶ 29, 34, 47, 53, 66, 74, 80, 88, 97, 103 (Plaintiffs have been
23 deprived of licensing revenues they would have received had Google properly licensed their works
24 for AI training purposes). Any balance of hardships can also be overcome by the well-established
25 interest in ensuring proper enforcement of already-enacted federal intellectual property laws
26 promulgated under Congress’s constitutional authority. *See, e.g., Silicon Valley Textiles, Inc. v. Sofari*
27 *Collections Ltd.*, 2023 WL 8242105, at *5 (N.D. Cal. Nov. 28, 2023) (“Defendants cannot ‘claim any
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1 legitimate hardships as a result of being enjoined from committing unlawful activities’ whereas
2 Plaintiff would suffer significant hardships if Defendants were permitted to continue unlawfully
3 infringing on their Copyrighted Design.”) (quoting *Apple, Inc. v. Psystar Corp.*, 673 F. Supp. 2d 943,
4 950 (N.D. Cal. 2009)); *Taylor Corp. v. Four Seasons Greetings, LLC*, 315 F.3d 1039, 1042 (8th Cir.
5 2003) (“The public interest is served in protecting the holders of valid copyrights from infringing
6 activity”). Regardless, and to reiterate, the Court does not need to make any of these
7 determinations at this stage, as the *eBay* factors “are not pleading requirements.” *Archer & White*
8 *Sales, Inc.*, 2016 WL 7157421, at *6.

9 **CONCLUSION**

10 For the aforementioned reasons, Plaintiffs request that the Court deny Defendants’ Motion to
11 Dismiss in its entirety. If the Court is inclined to grant any portion, Plaintiffs request leave to amend.
12 *Risby v. Hawley*, 2024 WL 217827, at *1 (N.D. Cal. Jan. 19, 2024) (“[A] court should grant leave to
13 amend unless amendment would be futile.”).

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