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19  
**20 UNITED STATES DISTRICT COURT**  
**21 NORTHERN DISTRICT OF CALIFORNIA**  
**22 SAN JOSE DIVISION**

23 *In re Google Generative AI Copyright Litigation*

24 Master File Case No. 5:23-cv-03440-EKL-SVK  
 25 Consolidated Case No. 5:24-cv-02531-EKL-SVK

26  
**27 PLAINTIFFS' REPLY IN SUPPORT OF**  
**28 MOTION FOR CLASS CERTIFICATION**

29  
 30 Judge: Hon. Eumi K. Lee  
 31 Date: February 4, 2026  
 32 Time 10:00 A.M.  
 33 Courtroom: 7, Fourth Floor

34  
**35 REDACTED**

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1       **I. INTRODUCTION**

2       Because the evidence of common conduct overwhelms administrative questions about established  
 3 copyrighted works, this case should be certified under Rule 23(b)(2) and (3). To develop its AI models,  
 4 Google engaged in a uniform and systematic course of mass infringement of the copyrights on millions of  
 5 books and images, copying them without authorization. Google's conduct, including where and how it  
 6 copied copyrighted works in developing the models at issue, is consistent across the works. Whether  
 7 Google's conduct constitutes fair use is the overarching issue in the case, turning on common issues of fact  
 8 and law involving expert testimony. All is capable of common proof. Were each Plaintiff to try this case  
 9 on their own, these same legal and factual issues would be repeated in each case. Class Members will  
 10 establish class membership and *prima facie* evidence of their claim by providing a copyright registration,  
 11 as Named Plaintiffs already have. Plaintiffs, including the Named Plaintiffs, [REDACTED]

12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]. This can be cross-checked with Google's own internal indexes  
 15 and records of the training data.

16       Google's primary attack is to the manageability of this class action. But the Ninth Circuit does not  
 17 credit administrative feasibility arguments, recognizing that practical issues can be addressed in a number  
 18 of ways, including by subclasses or through a properly designed claims administration process. Decades  
 19 of class action practice involving bundled property and ownership rights confirm that such issues are not a  
 20 basis to deny certification, as the Ninth Circuit's ruling in *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121  
 21 (9th Cir. 2019) confirms. Plaintiffs' rebuttal expert, Professor Lynn Baker, shows how courts properly and  
 22 practically manage such administrative questions.<sup>1</sup> Questions concerning shared or transferred copyright  
 23 ownership are routine administration matters, properly handled after trial or settlement. Allowing this  
 24 action to proceed on a class basis is plainly superior to individualized trials, or to the more likely alternative,  
 25 which is no redress at all for thousands of authors and creators whose works have been taken and used,

26  
 27       

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<sup>1</sup> Plaintiffs submit rebuttal expert reports, attached hereto as Exhibits to the Supplemental Declaration of  
 28 Gregory S. Mullens ("Suppl. Mullens Decl."), in support of their Reply for the limited purpose of  
 responding to arguments or issues raised by Google in its Opposition Brief and supporting papers.

1 without consent and without compensation.

2 **II. ARGUMENT**

3 **A. Plaintiffs Have Satisfied the Requirements of Rule 23(a)**

4 Plaintiffs satisfy all requirements of Rule 23(a). First, class members are so numerous that joinder  
 5 would be impracticable. Fed. R. Civ. P. 23(a)(1). Google admits that it copied a “vast universe” of books  
 6 and images for use as AI training data. Plaintiffs reasonably estimate class members to number in the  
 7 hundreds of thousands and have already identified [REDACTED]. *See In re JUUL Labs, Inc., Mktg. Sales Pracs. & Prods. Liab. Litig.*, 609 F.Supp.3d 942, 959 (N.D. Cal. 2022).  
 8 Second, Rule 23(a)(2)’s commonality requires only a single significant question of law or fact “capable of  
 9 classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011); *see In re Napster, Inc. Copyright Litig.*, 2005 WL 1287611, at \*7 (N.D. Cal. June 1, 2005) (“[C]laims of every member of the  
 10 class are uniformly premised upon the uploading or downloading of a copyrighted work[.]”). Third, Named  
 11 Plaintiffs’ claims are typical of the class as they arise out of the same facts. *See* Fed. R. Civ. P. 23(a)(3);  
 12 *Castillo v. Bank of Am. NA*, 980 F.3d 723, 729-30 (9th Cir. 2020). Fourth, Plaintiffs have shown that each  
 13 of the Named Plaintiffs is an engaged and adequate class representative. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

14 **B. Common Issues Predominate as Required by Rule 23(b)(3)**

15 Google disputes that Plaintiffs have satisfied predominance and superiority under Rule 23(b)(3),  
 16 but this is a clear case of common evidence. Plaintiffs assert a single claim for direct infringement under  
 17 the Copyright Act, 17 U.S.C. § 501, *et seq.* The claim requires proof of two elements: (1) that plaintiffs  
 18 own a valid copyright, and (2) that the defendant infringed it. *Woodland v. Hill*, 136 F.4th 1199, 1206 (9th  
 19 Cir. 2025). Ownership is shown by proof of a registered copyright. Copyright registration records  
 20 maintained by the U.S. Copyright Office (“USCO”) establish “a *rebuttable presumption of validity and ownership.*” *Baystate Techs., Inc. v. Bentley Sys., Inc.*, 946 F. Supp. 1079, 1086 (D. Mass. 1996) (emphasis  
 21 added). Infringement is shown by common proof of Google’s infringing conduct. Google systematically  
 22 made numerous unauthorized copies of Class Members’ works to train its AI models. Finally, Google’s  
 23 affirmative defense that its mass unauthorized copying constitutes fair use presents overarching  
 24 predominating common questions of law and fact. *See Authors Guild v. Google, Inc.*, 282 F.R.D. 384, 395  
 25

1 (S.D.N.Y. 2012), *vacated in part*, 721 F.3d 132 (2d Cir. 2013) (finding common issues predominated where  
 2 “[e]very potential class member’s claim arises out of Google’s uniform, widespread practice of copying  
 3 entire books without permission of the copyright holder” and because “the question of ‘fair use’ may be  
 4 evaluated on a sub-class-wide basis”). Rule 23(b)(3)’s predominance requirement is satisfied. *See Bartz v.*  
 5 *Anthropic PBC*, 791 F.Supp.3d 1038, 1054-62 (N.D. Cal. 2025); *Napster*, 2005 WL 1287611, at \*7.

6 **C. Google’s Argument that Plaintiffs Cannot Identify the Class Works Is  
 7 Contrary to *Briseno* and Will Turn on Common Evidence**

8 Ignoring the common questions around Google’s conduct, Google contends that (1) Plaintiffs must  
 9 identify the works in its own possession; and (2) ownership and validity of copyright registrations cannot  
 10 be established by common proof or methods. It claims that proof of ownership is an individual question,  
 11 rendering a class action administratively unfeasible and overcoming predominance. Opp. at 13. Given that  
 12 the Named Plaintiffs have established standing, both are administrative questions and fail under the law of  
 13 Ninth Circuit, which expressly rejects any administrative feasibility requirement under Rule 23. *Briseno*,  
 14 844 F.3d at 1126. Joining the Sixth, Seventh, and Eighth Circuits, the Ninth Circuit in *Briseno* agreed that  
 15 district courts possess ample tools to address manageability concerns. *Id.* at 1123. “For example, Rule 23(c)  
 16 enables district courts to divide classes into subclasses or certify a class as to only particular issues[.]” *Id.*  
 17 at 1128. The Ninth Circuit also recognized that “[a]t the claims administration stage, parties have long  
 18 relied on ‘claim administrators, various auditing processes, sampling for fraud detection, follow-up notices  
 19 to explain the claims process, and other techniques tailored by the parties and the court’ to validate claims.”  
 20 *Id.* at 1131 (citation omitted); *see Williams v. Apple, Inc.*, 338 F.R.D. 629, 645-46 (N.D. Cal. 2021) (“[T]he  
 21 asserted difficulty of identifying ‘who paid for a subscription to iCloud’ is no bar to predominance” because  
 22 it is a claims administration issue.).

23 First, Google insists that Plaintiffs must search through the small sample of datasets that Google  
 24 provided to identify class members’ works. Plaintiffs dispute that this is the most efficient form of proof,  
 25 but have still shown that there is a reliable methodology to do so. By matching reliable authoritative lists  
 26 of copyrighted works to the [REDACTED] Google provided, Plaintiffs’ expert McCarron has  
 27 identified more than [REDACTED]  
 28 [REDACTED]. Ex. 203 (“McCarron Reb. Rpt.”) ¶41 & n.6.

1 McCarron's scientific methodology is a repeatable matching exercise, relying on a simple search for text  
 2 and images in training datasets for reliable identifiers of U.S. copyright registrations, including USCO  
 3 records and ISBNs. For books, McCarron searched for ISBNs and text strings from copyrighted works. For  
 4 images, McCarron matched [REDACTED] to presumptively valid USCO  
 5 registrations. McCarron Rpt. ¶¶111-30. In copyright cases, the finder of fact may determine validity and  
 6 ownership based on common evidence from the USCO database of copyright registrations. *See Unicolors,*  
 7 *Inc. v. Urb. Outfitters, Inc.*, 853 F.3d 980, 988 (9th Cir. 2017). Thus, there is a reliable methodology for  
 8 objectively identifying class members. *See Bartz*, 791 F.Supp.3d at 1054-58.

9 Google offers the opinion of Mr. Patry to advance the extraordinary argument that USCO records  
 10 or ISBNs are unreliable. Patry Rpt. ¶¶8-10. This is wrong and ignores the many steps the USCO takes to  
 11 validate claims. Ex. 207 ("Seeley Reb. Rpt.") ¶¶2, 11-29; *see Baystate Techs.*, 946 F.Supp. at 1086. Patry's  
 12 opinion would undermine all copyright claims relying on USCO records. Google also quarrels with  
 13 McCarron's use of data from Bowker, the official source of ISBNs in the United States and the same  
 14 information plaintiffs in *Bartz* used to verify membership *after* the class was certified. *See Mot. to Approve*  
 15 *Class Notice* at 7-8, *Bartz v. Anthropic PBC*, No. 24-cv-05417 (N.D. Cal. Aug. 15, 2015), ECF No. 317.

16 Google also possesses a host of information—which it refused to produce—to be used to cross-  
 17 check and validate this matching methodology. Google (1) [REDACTED]  
 18 [REDACTED] (e.g., Ex. 17 at 58:15-22, 116:4-20, 149:20-150:3), and (2) [REDACTED]  
 19 [REDACTED] (e.g., Ex. 22 at 313:10-317:19). As  
 20 Plaintiffs' expert Doermann testified, Google maintains this information because these [REDACTED]  
 21 [REDACTED]. Doermann Rpt. ¶¶31-37 & §IV.A & C; Ex. 204  
 22 ("Doermann Reb. Rpt.") ¶¶25-28; *see Wilson v. LSB Indus., Inc.*, 2018 WL 3913115, at \*7 (S.D.N.Y. Aug.  
 23 13, 2018) (certifying class where members "can be identified from the books and records maintained by  
 24 [defendant] and its agents"). Google has copied and acquired voluminous material from a variety of  
 25 sources. [REDACTED]

26 [REDACTED]. Doermann Rpt. ¶¶32-37; Doermann  
 27 Reb. Rpt. ¶¶22-27. The record evidence shows Google did just that. E.g., Exs. 125, 200 ([REDACTED]  
 28 [REDACTED]). It is clear that Google already employs tools to identify copyrighted materials.

1 Auster Ex. 179 ( [REDACTED]  
 2 [REDACTED]); Psounis Rpt. ¶24 (citing Auster Ex. 179); Doermann  
 3 Reb. Rpt. ¶¶15-22.<sup>2</sup> Google just refuses to make them available to Plaintiffs.

4 Second, Google asserts that at the class certification stage, Plaintiffs must show proof of a valid  
 5 copyright for each work *and* conclusively establish who owns those rights. Google says this can only be  
 6 done by deposing every single class member, rendering this case unmanageable or administratively  
 7 unfeasible as a class action. But Google has no say in allocation. Its speculation about the economic  
 8 interests of certain class members is not a basis to refuse to certify a meritorious class action and to permit  
 9 Google to benefit from its conduct or retain its ill-gotten gains. Allocation of judgment proceeds for each  
 10 registered work “does not implicate . . . due process interest at all [because] the addition or subtraction of  
 11 individual class members affects neither defendant’s liability nor the total amount of damages it owes the  
 12 class.” *Briseno*, 844 F.3d at 1132 (citation omitted). Unlike cases like *Briseno* where no reliable purchase  
 13 records or other *prima facie* evidence exists, reliable and authoritative external records exist here: the  
 14 USCO copyright registration database and the Bowker database. *See, e.g., Nevarez v. Forty Niners Football*  
 15 *Co., LLC*, 326 F.R.D. 562, 577 (N.D. Cal. 2018) (identification with stadium ticket records and self-  
 16 identifications); *Chess v. Volkswagen Grp. of Am., Inc.*, 2021 WL 5507177, at \*9 (N.D. Cal. Nov. 24, 2021)  
 17 (reference to external databases to identify class); *Williams*, 338 F.R.D. at 645-46. Each class member can  
 18 submit proof of copyright within the required time period and submit affidavits attesting to issues that  
 19 Google’s experts identify. *See, e.g., Bartz*, 791 F.Supp.3d at 1053 (“If the author controls the loan-out, she  
 20 can bring the suit in its name, or effect a transfer from one hand to the other hand by at anytime simply  
 21 memorializing that intent in writing.” (citation omitted)). Disputes about entitlement to class action  
 22 proceeds are routine and can be adjudicated or resolved within the claims process, or failing that, by  
 23 submission to the Court. *Briseno*, 844 F.3d at 1131; *Doe v. Mindgeek USA Inc.*, 702 F.Supp.3d 937, 950  
 24 (C.D. Cal. 2023) (“[C]lass members may self-identify, and defendants may challenge the claims of absent  
 25 class members during the claims administration process.”). Similarly, it has long been settled that  
 26

27 <sup>2</sup> Plaintiffs sought evidence related to Google’s records of the copyrighted materials Google used to train  
 28 the at-issue models, including lists it maintains by author, title, and publisher. The Court denied it as “not  
 - - proportional to the needs of the case.” ECF No. 311. It is unfair to permit Google to resist this discovery  
 while relying on its absence to defeat class certification.

1 individual issues regarding damages are not an impediment to class certification when the requirements of  
 2 Rule 23(a) are established and common questions predominate as to liability and causation. *Tyson Foods,*  
 3 *Inc. v. Bouaphakeo*, 577 U.S. 442, 453-54 (2016); *see, e.g., In re Lidoderm Antitrust Litig.*, 2017 WL  
 4 679367, at \*11 (N.D. Cal. Feb. 21, 2017) (“differences in damages will rarely suffice to defeat class  
 5 certification”); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990)  
 6 (“Where the only question is how to distribute the damages, the interests affected are not the defendant’s  
 7 but rather those of the silent class members.”); *Hilao v. Estate of Marcos*, 103 F.3d 767, 786 (9th Cir. 1996)  
 8 (noting that defendant’s interest is “only in the total amount of damages for which it will be liable,” not  
 9 “the identities of those receiving damage awards”); *In re HIV Antitrust Litig.*, 2022 WL 22609107, at \*19  
 10 (N.D. Cal. Sep. 27, 2022) (questioning whether “injury status of specific class members is of any real  
 11 significance” to the extent it was “simply a matter of damages allocation”). As Prof. Baker explains, these  
 12 are questions commonly addressed in administering class claims. Ex. 206 (“Baker Reb. Rpt.”) ¶¶6, 25-30.  
 13 The same objective inquiries Google has raised to test the Named Plaintiffs’ copyrights can be handled  
 14 post-trial or post-settlement, as in *Bartz*. *See* Opp. at 13-16; Auster Decl. ¶¶3, 30-35, 53-6, 70-71, 87-93,  
 15 109-111, 118-121.

16 Google’s reliance on *Kihn v. Bill Graham Archives, LLC*, 2022 WL 18935 (9th Cir. Jan. 3, 2022),  
 17 *Schneider v. YouTube, LLC*, 674 F.Supp.3d 704 (N.D. Cal. 2023), and *Football Ass’n Premier League Ltd.*  
 18 *v. YouTube, Inc.*, 297 F.R.D. 64 (S.D.N.Y. 2013), is misplaced. Opp. at 1-2, 12, 17. In *Kihn*, defendants  
 19 offered proof of differing agreements which may or may not have provided permission to use the  
 20 copyrighted work. 2022 WL 18935, at \*2 n.2. In *Schneider*, the jury would have been asked to resolve “a  
 21 multiplicity of disputes of fact about Schneider’s contractual arrangements and licenses, and related  
 22 issues;” Google has offered no proof and Google’s witnesses can identify no occasion when Google  
 23 obtained such permission. 674 F.Supp.3d at 713. And *Premier League* was a contributory infringement  
 24 action, turning on records of what potentially-infringing materials individual users uploaded and what  
 25 YouTube and Google actually knew about *each* upload. 297 F.R.D. at 65; Seeley Reb. Rpt. ¶52. As  
 26 Plaintiffs’ expert Baker explains, as long as objective criteria can be applied, money judgments from class  
 27 actions can be administered fairly and objectively. Baker Reb. Rpt. ¶¶7, 32-36. There is a “well-settled  
 28 presumption that courts should not refuse to certify a class merely on the basis of manageability.” *Briseno*,

844 F.3d at 1128.

#### D. Google's Fair Use Defense Depends on Common Proof

Google's fair use defense is the overarching and predominant legal and factual issue in this case. The fair use inquiry requires consideration of four factors: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount used; and (4) the effect on the potential market. 17 U.S.C. § 107. Google's proof as to each would be identical for each Plaintiff and class member.

As to the first factor, Google's purpose in using the copyrighted material is common and does not involve individualized issues. *See* Doermann Rpt. ¶¶51-53, 105-58; Ex. 68; Doermann Reb. Rpt. §III.E.2; Ex. 127 at -676 (

██████████); Ex. 59 (██████████). Dr. Doermann explains Google's ██████████ ██████████. Doermann Rpt. §III.B; Doermann Reb. Rpt. §III.E.2. He further opines that ██████████ ██████████. Doermann Rpt. §III.C; Doermann Reb. Rpt. §III.C.

Google misplaces its reliance on aspects of *Kadrey v. Meta Platforms, Inc.*, 788 F.Supp.3d 1026 (N.D. Cal. 2025), and *Bartz*. Opp. at 20. In *Bartz*, the litigation class was certified, followed by settlement class certification. In chief respects, *Bartz* is on point here. The *Bartz* court found fair use to be a common question, as *how* Anthropic obtained books for training AI models (copying pirated data sets) “concern[s] a common course of conduct that can be established with common evidence and methods,” certifying a class after summary judgment on fair use. *Bartz*, 791 F.Supp.3d at 1061. Here, Google’s

Compare *Bartz v. Anthropic PBC*, 787 F.Supp.3d 1007, 1015 (N.D. Cal. 2025) [REDACTED], with [REDACTED]

Google claims that no Named Plaintiff has identified a copyrighted work in pirated data sets. That is false. For example, Plaintiffs identified their works in pirated data sets in the operative complaint. *E.g.*, SACC ¶¶18-26, 35-44, 81-85, 90-91. Further, many of their works can be found in *The Atlantic*'s searchable compilation of pirated data sets used by AI companies for training, including Z-Library and

1 LibGen. *See The Atlantic*, AI Watchdog, <https://www.theatlantic.com/category/ai-watchdog/>. Plaintiffs  
 2 have shown that [REDACTED]. McCarron Rpt. ¶¶16(a)(ii), 16(e)  
 3 & §VIII. This is sufficient at this juncture. However, [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED].

6 As with pirated works, Google knew it had no license to copy works it had obtained for other  
 7 purposes and train the models on them: the [REDACTED] (subclass one) and the [REDACTED]  
 8 [REDACTED] (subclass two). Google [REDACTED]  
 9 [REDACTED]. Seeley Reb. Rpt. ¶¶47-51. This shows “a common course of  
 10 conduct that can be established with common evidence and methods.” *Bartz*, 791 F.Supp.3d at 1061. Such  
 11 use, regardless of prior permissible uses, must be evaluated separately. *Bartz*, 787 F.Supp.3d at 1026 (“Each  
 12 use of a work must be analyzed objectively.”) (citing *Andy Warhol Found. for the Visual Arts, Inc. v.*  
 13 *Goldsmith*, 598 U.S. 508, 544-45 (2023)). Evidence that Google [REDACTED]  
 14 and copied the material for its commercial purposes is common to the class and defeats fair use.

15 Proof that the second and third factors weigh against fair use is also common. Google’s argument  
 16 that the “nature of each work and the amount of any work used will require individualized evidence” is  
 17 unsupported. Opp. at 20. Google copied books and images, which contain “expressive elements.” *See*  
 18 *Bartz*, 787 F.Supp.3d at 1029. Books and images are considered high-quality data uniformly coveted by  
 19 developers of AI (including Google) because of their expressive content. Doermann Rpt. §IV.D; Doermann  
 20 Reb. Rpt. §III.B. Google has not identified a single work that does not contain expressive elements. In  
 21 addition, the evidence [REDACTED]  
 22 [REDACTED]. McCarron Rpt. §VIII; McCarron Reb. Rpt. ¶3  
 23 & §VI ([REDACTED]  
 24 [REDACTED]); *see* Declaration of Gregory S. Mullens, ECF No. 252, ¶8 (collecting authority). This evidence is  
 25 common to the class and further supports class certification.

26 Proof of the fourth factor, market effects, is also common. Proof of the existence and nature of the  
 27 market for Plaintiffs’ works or for training data does not depend on any particular class member but instead  
 28 on proof of market players and market conduct. The evidence here shows such markets are well-developed.

1 Smith Rpt. ¶¶32-39; Ex. 205 (“Smith Reb. Rpt.”) ¶¶21-31. As to market effects, Smith shows how Google  
 2 systematically subverted and handicapped the [REDACTED]  
 3 [REDACTED]. Smith Rpt. ¶¶41-50; Smith Reb. Rpt. ¶¶33-46. Google’s  
 4 own documents confirm [REDACTED]. In particular,  
 5 Google refused to [REDACTED]  
 6 [REDACTED]” See Smith Rpt. ¶41; Smith  
 7 Reb. Rpt. ¶34. Google knew that were [REDACTED]  
 8 [REDACTED]. Google [REDACTED]  
 9 [REDACTED] Smith Rpt. ¶29; and [REDACTED]  
 10 [REDACTED], *id.* ¶¶34-35. Most significantly, Google developed  
 11 [REDACTED]. *Id.*  
 12 ¶29; Smith Reb. Rpt. ¶21, 23. Google’s own [REDACTED]. Smith Rpt. ¶¶29,  
 13 34. Google does not dispute that this evidence is common, instead challenging it as “speculative.” Whether  
 14 the evidence is speculative and whether Google’s internal records are to be believed are entirely common  
 15 questions. Its own economist, Sullivan, offers no opinion or evidence of his own that Google’s conduct  
 16 caused no market harm. *See McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 173-74 (S.D. Cal. 2019)  
 17 (“Where a party has not submitted any evidence of [affirmative defenses], courts will not presume that  
 18 resolving such issues requires individualized inquiries.” (quotation omitted)) (collecting cases).

19 **E. Questions Regarding Google’s Licenses Are Subject to Common Proof**

20 Google claims resolving license issues demands an inquiry into “thousands” of individual licenses.  
 21 Not so. The class definition excludes any copyrighted material Google obtained by an express license.  
 22 Google points to form contracts, including [REDACTED], Google’s Terms of  
 23 Service, and YouTube’s Terms of Service, and to robots.txt protocols through which Google contends it  
 24 obtained licenses.<sup>3</sup> Opp. at 3, 4, 19. Whether robots.txt protocols or form contracts contain licenses is  
 25 disputed by Plaintiffs. *See, e.g., Associated Press v. Meltwater U.S. Holdings, Inc.*, 931 F.Supp.2d 537,  
 26

27 <sup>3</sup> The subclasses only vary based on whether source-dependent licenses, if any, are applicable to the works  
 28 Google copied and used to develop the at-issue models. Even these issues will be determined based on  
 common questions as to each subclass: do the applicable standardized license terms particular to each  
 source, if any, permit Google to use registered copyrighted works for AI training?

1 563-64 (S.D.N.Y. 2013) (explaining why robots.txt is not appropriate to enforce the Copyright Act). Courts  
 2 routinely conclude the meaning and interpretation of form contracts are common issues. *See Le v. Zuffa, LLC*, 2023 WL 5085064, at \*14, 22-24, 27 (D. Nev. 2023) (certifying class where at-issue agreements  
 3 contained common terms and clauses). For example, Google claims it possesses a license to train on  
 4 Plaintiffs Almond’s, Andersen’s, Barer’s, Larson’s, and McLennan’s works based on their use of Google  
 5 platforms such as YouTube, Blogger, or Photos. As to these contracts, Google offers no evidence  
 6 connecting these documents to works contained in Google’s sample training sets. *See* Auster Decl. ¶¶42-  
 7 44, 62-64, 77-80, 97-99, 126. And Google has never contended that it actually obtained the Works in Suit  
 8 from those platforms for training. Regardless, Plaintiffs dispute Google’s assertions that by posting content  
 9 to a Google property, users license Google to train AI. Resolution of that issue is another common question.  
 10

11 **1. Plaintiffs’ Statutory Damages Claims Are Subject to Common Proof**

12 Calculation of individualized damages is not an impediment to class certification. *See, e.g., Leyva*  
 13 *v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013). Even if they were, Plaintiffs avoid individualized  
 14 questions by pursuing statutory damages, as authorized by statute. 17 U.S.C. § 504(c). This also favors  
 15 class certification. *See, e.g., Napster*, 2005 WL 1287611, at \*10; *Mindgeek*, 702 F.Supp.3d at 950  
 16 (“Plaintiff seeks considerable statutory damages, which supports a finding of predominance.”). The case  
 17 upon which Google relies, *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253 (9th Cir. 2021), merely  
 18 stands for the proposition that statutory damages are a ready substitute for actual damages such that  
 19 plaintiffs are entitled to only one award from a group of jointly liable defendants. Where mass infringement  
 20 is at issue, the jury instructions and verdict form will ask for a “per work” amount to be multiplied by the  
 21 total number of works. *See, e.g., Hargis v. Pacifica Senior Living Mgmt., LLC*, 2024 WL 2967536, at \*4  
 22 (C.D. Cal. May 7, 2024); *Disney Enters., Inc. v. VidAngel, Inc.*, 2020 WL 2738233, at \*2 (C.D. Cal. Mar.  
 23 31, 2020). The amount of statutory damages is to be assessed by the jury based on factors including  
 24 Google’s conduct, willfulness, and knowledge. *See* Ninth Circuit Manual of Model Civ. Jury Instrs. § 17.35  
 25 (2017); 17 U.S.C. § 504(c). The “circumstances of infringement” likewise turn on Google’s conduct. And  
 26 the evidence showing that Google’s conduct was directed and managed by [REDACTED]

27 [REDACTED], highlights the commonality of the  
 28 proof. *See* Ex. 53 at -536 ([REDACTED]); Ex. 91 at -970

1 (“[REDACTED]”); Ex. 213 at 191:19-24

2 (“[REDACTED].”).

3 **F. Class Resolution Is Superior to Individual Actions**

4 Google misses the point when it claims that there should be no class actions under the Copyright  
 5 Act because the statutory damages and attorneys' fees it allows provide sufficient incentives for those  
 6 injured to seek redress. The real question is whether the class action is a viable alternative to the thousands  
 7 of actions Google advocates. *See Phillips Petrol. Co. v. Shutts*, 472 U.S. 797, 809 (1985) (“Class actions  
 8 may permit the plaintiffs to pool claims which would be uneconomical to litigate individually.”); *Parko v.*  
 9 *Shell Oil Co.*, 739 F.3d 1083, 1085 (7th Cir. 2014) (“Predominance of issues common to all class members,  
 10 like the other requirements for certification of a suit as a class action, goes to the efficiency of a class action  
 11 as an alternative to individual suits.”). Google's real goal is avoiding liability, not judicial efficiency. The  
 12 more likely alternative to a class action is that many viable claims will never be vindicated at all. *Baker*  
 13 *Reb. Rpt.* ¶41; *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (“The *realistic*  
 14 alternative to a class action is not 17 million individual suits, but *zero* individual suits.”) (second emphasis  
 15 added); *Mindgeek*, 702 F.Supp.3d at 952-53.

16 Google relies on *Premier League*, but that decision preceded *Briseno*, is not controlling, and  
 17 contrasts with Judge Alsup's recent finding in *Bartz* that “there is no serious prospect that [plaintiffs’  
 18 copyright] claims can be addressed through individual actions.” *Bartz*, 791 F.Supp.3d at 1064. Here, every  
 19 class member's work was copied by one company, Google, to develop its AI models. Class litigation is the  
 20 superior method for adjudicating these claims. *See Herrera v. LCS Fin. Servs. Corp.*, 274 F.R.D. 666, 681-  
 21 82 (N.D. Cal. 2011).

22 **G. Injunctive Relief and Issues Certification Pursuant to Rule 23(c)(4)**

23 Plaintiffs seek certification of an injunctive relief class pursuant to Rule 23(b)(2). The injunction  
 24 would provide forward-looking protection for creators of copyrighted texts and images: transparency and  
 25 choice. First, Plaintiffs would require Google to disclose, based on its own internal records, the works have  
 26 been or are being used to train the at-issue models. *See* Doermann Rpt. §VI; Doermann Reb. Rpt. §III.A.  
 27 Second, Plaintiffs should have the opportunity to choose to opt in or out of such training, achieving the  
 28 purposes of the Copyright Act, which is to give creators control. Google's two sentence opposition to

1 injunctive relief rests entirely on the same failed administrative feasibility and ascertainability as shown  
 2 above. “[A] Rule 23(b)(2) class does not require predominance.” *Calhoun v. Google LLC*, 349 F.R.D. 588,  
 3 598 (N.D. Cal. 2025).

4 Under Rule 23(c)(4), even if the common issues do not predominate as a whole, the district court  
 5 is authorized “to isolate the common issues under Rule 23(c)(4)[] and proceed with class treatment of these  
 6 particular issues.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996); *see Mejdrich v.*  
 7 *Met-Coil Systems Corp.*, 319 F.3d 910, 911-12 (7th Cir. 2003) (efficiency and fairness can be achieved by  
 8 “carving at the joints” of the dispute and resolving any common issues on a class-wide basis). Rule 23(c)(4)  
 9 is to be interpreted broadly to accomplish the purpose of the class action Rule. Here, Plaintiffs have  
 10 identified a number of common issues suitable for class treatment, including the nature and scope of  
 11 Google’s copying of copyrighted works, and whether Google had obtained permission. As shown above,  
 12 proof of fair use, and Plaintiffs’ opposition to it, relies on evidence common to the class.

### 13 **III. THE PROPOSED CLASSES ARE TARGETED AND MANAGEABLE**

#### 14 **A. Plaintiffs’ Proposed Narrowed Class Definitions Conform to Proof**

15 Google challenges Plaintiffs’ proposed subclasses on two fronts: (1) it claims Plaintiffs should have  
 16 conferred about them prior to bringing the instant motion, and seeks sanctions on that basis; and (2) it  
 17 claims the definitions are “fail safe” for carving out works covered by license agreements executed by  
 18 Google that contain express language referring to AI uses. This is a reprise of Google’s sanctions motion  
 19 and Plaintiffs oppose on the same grounds. ECF Nos. 298, 308-1; Suppl. Mullens Decl. ¶¶3-9. Plaintiffs’  
 20 proposed subclasses are defined by objective criteria, based on the sources from which common proof  
 21 shows Google made unauthorized copies: (1) the [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]; (2) the [REDACTED]

24 [REDACTED], not to be repurposed as fuel  
 25 for unrelated AI models; and (3) web-crawled shadow libraries, including vast repositories of known  
 26 pirated books and images that Google copied without authorization and used to develop the at-issue models.

27 Google notes that the amended classes are not limited to persons “domiciled in the United States.”  
 28 This is an improvement. The classes are to beneficial or legal owners of registered U.S. copyrights, which

will be determined through more objective, simpler criteria than requiring proof of domicile. This refinement does not add any new claim or defense and can be handled through administration. *Bartz*, 791 F.Supp.3d at 1065 (certifying a class of owners of registered U.S. copyrights over defendant's foreign law objection) (see Def's Opp. to Mot. for Class Cert. at 16-17, No. 3:24-cv-05417 (N.D. Cal. Apr. 17, 2025), ECF No. 148). Google has also not been prejudiced. Google has unequivocally stated that there is no class definition it would agree with. It has not identified specific discovery it would have sought, or arguments it would have developed, had Plaintiffs disclosed the narrowed definitions earlier. Nor has Google sought any additional discovery on these points since Plaintiffs' motion was filed. Suppl. Mullens Decl. ¶11.

## B. The Class Definitions Are Not Fail-Safe

**C. Each Named Plaintiff Satisfies the Rule 23 Requirements**

Google raises issues with the validity of the registrations and ownership of rights with respect to certain Works in Suit. As explained below, each of these attacks is peripheral, and should not impede certification. Nonetheless, even accepting Google’s arguments as true (and they are not), certain Named Plaintiffs have uncontested valid registrations and are owners under the law to bring suit. Google has not raised issues with the validity of the registration or ownership of rights as to the Works in Suit of Plaintiffs Fink and Zhang. Plaintiff Almond has four Works in Suit (*All the Secrets of the World*, *Candyfreak*, *Rock and Roll Will Save Your Life*, and *Truth Is the Arrow, Mercy Is the Bow*) for which Google concedes the

1 validity of registration, but argues that his publishers may have coterminous rights and are not parties to  
 2 this litigation. With respect to Plaintiff Larson, Google merely challenges that her wholly-owned loan-out,  
 3 Girlcomix, is the proper owner—they do not challenge her registration’s validity. But these issues are, at  
 4 bottom, allocation issues. Plaintiffs Almond and Larson are, *at minimum*, beneficial owners with standing  
 5 to bring suit. 17 U.S.C. § 501(b); *see also Bartz*, 791 F.Supp.3d at 1054 (“But this situation nevertheless  
 6 shows why ambiguities between authors and loan-outs will not metastasize.”).

7 Thus, the Named Plaintiffs satisfy the requirements of Rule 23 and can represent each subclass.  
 8 None have interests antagonistic to the class. Each has a copyright registration that is presumptively valid.  
 9 Exs. 156–181 (registrations); Suppl. Mullens Decl. ¶¶24–47. Plaintiffs’ expert McCarron has confirmed  
 10 that the following [REDACTED].

11 McCarron Rpt. ¶¶136 ([REDACTED]), 140 ([REDACTED]), 154 ([REDACTED]), 165 ([REDACTED]  
 12 [REDACTED]) & App’x G ([REDACTED]). This includes works included in  
 13 [REDACTED] Google produced. *See* McCarron Rpt. ¶16(a)–(b);  
 14 McCarron Reb. Rpt. ¶3 & §VI. This is all that is necessary at this stage to demonstrate Plaintiffs’ copyright  
 15 ownership and Google’s copying of such works. *Dream Games of Ariz., Inc. v. PC Onsite*, 561 F.3d 983,  
 16 987 n.2 (9th Cir. 2009); Seeley Reb. Rpt. ¶¶14–19. That their works are in Google’s [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]. McCarron Rpt. ¶¶25, 41.

19 Notably, Google’s challenges still turn on objective factors that can be administratively resolved  
 20 when the time comes to determine class membership. For example, Google does not contest Steve  
 21 Almond’s registered copyrights but claims, with no proof, that his publishers may have coterminous rights,  
 22 or that two of Almond’s at-issue works may include previously published content. Speculation is  
 23 insufficient and rights can be determined according to objective tests. *E.g.*, Baker Reb. Rpt. ¶¶25–31.

24 Google also argues that Almond’s, Leovy’s, Barer’s, and McLennan’s publishers—Zando, LLC,  
 25 Spiegel & Grau, WildBlue Press, and Arbordale, respectively—[REDACTED]  
 26 [REDACTED] Opp. at 17–18 (citing Price Decl. ¶13); Auster Decl. ¶¶81,  
 27 102, 116, 125. Specifically, Google contends (and Plaintiffs challenge) that because [REDACTED]  
 28 [REDACTED]

1 [REDACTED].  
 2 See Price Decl. ¶¶13-14; *see also* Seeley Reb. Rpt. ¶¶50-51. That determination is a common question.  
 3 *Zuffa*, 2023 WL 508064, at \*22-24.

4 Similarly, Google claims Plaintiff Andersen's collective work registrations "exclude material  
 5 previously published." Opp. at 7. This ignores the registrations' presumptive validity. And Google's claims  
 6 [REDACTED] can be administratively resolved by allowing  
 7 publishers to assert coterminous rights. Opp. at 18. Whether Andersen's works were [REDACTED]  
 8 [REDACTED] can also be resolved through form inquiries about the timing of first publication;  
 9 registration dates; and allowing [REDACTED]. Objective determinations can then be  
 10 used to make the call as to whether a claim is included or not.

11 Google argues that Plaintiff Larson has no ownership right in her at-issue work because the rights  
 12 are assigned to Girlcomix, her wholly-owned loan-out. Opp. at 6. But as Judge Alsup recognized, "this  
 13 problem is readily resolved." *Bartz*, 791 F.Supp.3d at 1053. It is undisputed that she is sole owner of her  
 14 loan-out. Auster Ex. 25 at 79:21-25, 81:21-23. Whether she or an entity she wholly owns possesses the  
 15 claim does not defeat standing or undercut her suitability as a class representative, and plainly, there is no  
 16 "disagreement as between the two." *Bartz*, 791 F.Supp.3d at 1052-53 (distinction between legal and  
 17 beneficial owner in copyright law is no impediment to standing); 17 U.S.C. § 501(b). For similar reasons,  
 18 Google's claim that Plaintiff Larson may not bring claims because *All Summer Long* is a work-for-hire  
 19 fails. *See, e.g.*, *Bartz*, 791 F.Supp.3d at 1052-53 (whether a claim is owned by author or work-for-hire  
 20 employer is a claims administration issue). In any event, Plaintiffs are moving to intervene Girlcomix. ECF  
 21 No. 321. Google's assertion that her (and others') claims are barred by a YouTube one-year statute of  
 22 limitations also is a common question and/or can be administratively addressed. Baker Reb. Rpt. ¶31.

23 Finally, Google challenges inconsistencies between Leovy's valid registration and her interrogatory  
 24 responses, where she identified her publishers as beneficial owners. Opp. at 14-15. The existence of  
 25 additional beneficial owners does not undercut her adequacy or typicality. *See Bartz*, 791 F.Supp.3d at  
 26 1053. Again that is a simple issue that can be administratively addressed.

27 **IV. CONCLUSION**

28 For the foregoing reasons, the Court should certify the proposed Class and Subclasses.

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1 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

2 I, Lesley E. Weaver, attest that concurrence in the filing of this document has been obtained from  
3 the other signatories. Executed this 30th day of December, 2025.

4 */s/ Lesley E. Weaver*

5 Lesley E. Weaver

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