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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re Google Generative AI Copyright Litigation

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

REPLY IN SUPPORT OF MOTION TO INTERVENE

Hearing Date: February 20, 2026
Hearing Time: 1:00 p.m.
Courtroom: 7

Judge: Hon. Eumi K. Lee
Magistrate Judge: Susan van Keulen

Intervention by Cengage Learning, Inc. ("Cengage") and Hachette Book Group, Inc. ("Hachette") (together, "Proposed Intervenors") would be beneficial to the Class, as the Author Plaintiffs recognize. (Dkt. 382.) That is also, no doubt, why Google so vociferously opposes. (Google's Opp. to Mot. to Intervene, Dkt. 383 ("Opp."); Dkt. 384.) Google's over-the-top rhetoric aside, its primary objection to intervention is that Proposed Intervenors should have intervened at some prior point. While publishers are aware of a wave of author-driven copyright class actions, it was only when this case reached class certification that impairment of Proposed Intervenors' interests clearly manifested. (Indeed, there was a pending motion to dismiss until September 2025.) Next, Google asserts Proposed Intervenors have no interest in the case because they don't own Author Plaintiffs' works (or, strangely, even the works cited in the Proposed Complaint (Dkt. 342-1)). But Google is wrong on the law: Proposed Intervenors' interests are implicated whether or not they own one of Author Plaintiffs' works at the class certification stage. And Proposed Intervenors own certain rights to the works asserted in their Proposed Complaint and scores of others that will be impacted by this litigation. Google's professed misunderstanding of ownership exemplifies exactly the kind of value that Proposed Intervenors bring to the case. Third, Google claims Proposed Intervenors are changing the scope of the litigation—they aren't, and none of the Proposed Intervenors' claims go beyond Author Plaintiffs' core allegations. The Court should grant intervention.

I. The Proposed Intervention Is Timely.

Google argues intervention is untimely under Rule 24, because Proposed Intervenors should have intervened at the start of the case or when Hachette received a subpoena. (Opp. at 6.) Google also cites Rule 16, claiming Proposed Intervenors were not diligent. (*Id.* at 4–5.) Google wrongly advocates a standard that would demand premature interventions in class actions. This lawsuit is one of several brought by authors against companies developing LLMs, which were often presented as author-focused. *See, e.g., Kadrey v. Meta Platforms, Inc.*, 3:2023-cv-03417 (N.D. Cal.) Dkt. 407, at 2 ("Plaintiffs and Class members are authors of books[.]"). Here, like *Bartz*, the need for publishers to be involved to adequately represent their interests did not crystallize until the class certification process. *Bartz v. Anthropic PBC*, 3:2024-cv-05417 (N.D. Cal.), Dkt. 198 at 16–25 (the *Bartz* court raising questions about the need for publisher involvement given the per-work rule for statutory

damages and proposing providing class notice to publishers).[1] That is the point from which to measure timeliness.

"Mere lapse of time alone is not determinative" of timeliness. *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984). The "crucial date for assessing the timeliness of a motion to intervene is when proposed intervenors should have been aware that their interests would not be adequately protected by the existing parties." *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). Here, the crucial date is the briefing for class certification, which transforms a case and brings in absent class members' interests. *See Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011) ("[U]pon certification the class acquires a legal status separate from the interest asserted by the class representative, so that an Article III controversy now exists between a named defendant and a member of the certified class[.]" (citation modified)). Class certification briefing commonly revises initial class definitions to conform to the evidence, which could have altered, added or excluded different types of works or publishers or even added a proposed class representative. Indeed, Author Plaintiffs narrowed the class definition when seeking class certification, Dkt. 306, and filed a motion to intervene to add an additional author as named plaintiff, Dkt. 321. Publishers were reasonable to wait until briefing concluded—but before any hearing or decision—to assess how their interests were implicated by the proposed classes (as best publishers can tell given redactions). *Conant v. McCaffrey*, 172 F.R.D. 681, 693 (N.D. Cal. 1997) (allowing revisions to class definition in reply brief for class certification motion). This motion differs from those in cases Google cites to assert untimeliness. *Valentine v. Crocs, Inc.*, 2024 WL 5340074 (N.D. Cal. Sep. 19, 2024) (intervention would have delayed discovery and justifications offered for delayed intervention didn't fit case facts); *Lee v. Pep Boys-Manny Moe & Jack of Cal.*, 2016 WL 324015 (N.D. Cal. Jan. 27, 2016) (class certification denied before motion to intervene was heard and dispositive motions would have to be brought again due to intervention).

Google also asserts that subpoenaing information from Hachette about an author's claim made Proposed Intervenors aware of how the class certification process would impact their interests. (Opp.

[1] Publishers' participation in *Bartz* was crucial to prepare for trial and settle that case. Google's attempt to oppose intervention with baseless arguments about that value doesn't merit the Court's attention (and in any event, will be considered at final approval of that $1.5 billion settlement).

at 6.) But a subpoena does not establish the contours of class certification or whether Proposed Intervenors' interests would be adequately represented in that process. Only recently were the proposed class definitions even available.

Google argues Rule 16 applies here, ignoring the discretionary and flexible nature of the timeliness inquiry, which does not require applying the "good cause" standard. *Constr. Laborers Tr. Funds for S. Cal. Admin. Co. v. Morrow-Meadows Corp.*, 2017 WL 11631998, at *4 (C.D. Cal. Aug. 1, 2017) ("[T]he scheduling order is not the end-all-and-be-all with respect to motions to intervene."). Google's cited authority for applying Rule 16 to intervention, unlike here, involved intervenors whose counsel was already involved in the litigation. *Harris v. Vector Mktg. Corp.*, 2010 WL 3743532, at *1 (N.D. Cal. Sep. 17, 2010). That makes sense: tests to assess diligence are an awkward fit when third parties with separate counsel move to intervene. Insofar as the Court chooses to amend the schedule to facilitate the requested intervention, there would be "good cause," given how class certification briefing proceeded. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

II. Establishing Copyright Ownership Does Not Create Prejudice or Individualized Issues.

Google advances a breathless series of presumptions: not only do Proposed Intervenors not own rights in the works in the Proposed Complaint, but intervention requires discovery about ownership of those works, leading to prejudice, delay, and individualized issues that undermine class treatment. (Opp. at 5–6, 10.) Not so. Proposed Intervenors are in the business of owning, licensing, and commercializing copyrights. Decl. of Jessica Stitt ("Cengage Decl.") ¶ 4; Decl. of Linda Janet Saines-Cardozo ("Hachette Decl.") ¶ 5. As a matter of corporate practice, they contract with authors for exclusive rights to their works in exchange for royalties. Cengage Decl. ¶ 4; Hachette Decl. ¶ 11. The Ninth Circuit refers to this exchange as the "classic example" of transferring rights from author to legal owner (here, a publisher). *See DRK Photo v. McGraw-Hill Glob. Educ. Holdings, LLC*, 870 F.3d 978, 988 (9th Cir. 2017). Unsurprisingly, establishing the "classic example" is routine in any copyright litigation, *see Sony Music Ent. v. Cox Commc'ns, Inc.*, 426 F. Supp. 3d 217, 229 (E.D. Va. 2019) (granting summary judgment on ownership of 10,022 works), and an insufficient basis to defeat class certification, *see Bartz v. Anthropic PBC*, 791 F. Supp. 3d 1038, 1051 (N.D. Cal. 2025) (granting class certification over same predominance objection and explaining "[i]f disputes arise over

ownership, which will be unlikely, the district court or as needed a jury will resolve them"). As Author Plaintiffs correctly argue, these are administrative issues routinely dealt with post-trial or settlement. (Dkt. 324 at 6.)

Of the works Google identifies, Hachette obtained exclusive rights in this classic manner from five authors, and Cengage from one. *See* Hachette Decl. ¶¶ 7–11; Cengage Decl. ¶ 5, 7. These six authors consented to Proposed Intervenors filing suit over their works. *See* Cengage Decl. ¶ 7; Hachette Decl. ¶ 12. They would not have done so if they disputed Proposed Intervenors' rights. *See Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1428–29 (9th Cir. 1996) (where "the copyright holder appears to have little dispute with its licensee on this matter, it would be anomalous to permit a third party infringer" to challenge the transfer) (quotation omitted). Google gripes that production and review of a few contracts might cause delay. But Proposed Intervenors produced them to Google on February 5, 2026. Its argument has no practical basis—typical grants of rights are straightforward, Hachette Decl. ¶ 6—and would preclude class treatment of virtually any copyright case. That would encourage infringement like Google's. Luckily, that is not the law, as the *Bartz* class demonstrates.

III. Intervention Would Not Expand the Scope of the Lawsuit.

Citing one paragraph from the Proposed Complaint, Google argues that intervention would mean trying "a new case altogether," prejudicing it and creating timeliness issues and delay. (Opp. at 5–6.) Google misreads the allegations. The at-issue paragraph says Google "unlawfully reproduced . . . copyrighted works through its unauthorized downloading of their works *in connection with sourcing content for training* Gemini Models and additional copying *as part of its AI training process*." (Dkt. 342-1 ¶ 109 (emphasis added).) Proposed Intervenors also discuss Google's outputs to demonstrate market harm, not to assert infringement based on outputs, as Google claims. (*See, e.g., id.* ¶ 83 ("Gemini output crowds the market and competes with legitimate travel guides[.]").) Intervention wouldn't change the existing case's scope, and Google's arguments about prejudice fail.

IV. Proposed Intervenors' Interests as Publishers Should Be Adequately Represented.

Google argues Proposed Intervenors—book publishers who own numerous copyrights—have no protectable interest in a class that puts those rights squarely at issue. (Opp. at 7.) In support, it cites a case with competing class actions raising claims under different state laws, where the court found an

intervenor's claims of plaintiff-defendant collusion did not establish inadequate representation. *Calderon v. Clearview AI, Inc.*, 2020 WL 2792979, at *4, *7 (S.D.N.Y. May 29, 2020). Proposed Intervenors have an interest now in how certification goes. It's true intervention is often denied "in the class action *settlement* context," where opting out or objecting is sufficient to protect class members, but this is not a settlement context. *Zepeda v. Paypal, Inc.*, 2014 WL 1653246, at *4 (N.D. Cal. Apr. 23, 2014) (emphasis added). Intervention in class actions is permissible during and after class certification. (*See* Mot. to Intervene at 5, Dkt. 342.) Google says *Kamakahi* differs from this case, because that intervention caused no delay or need for "significant additional discovery." (Opp. at 7.) But Proposed Intervenors explained their request won't lead to delay or significant further discovery.

Here, Proposed Intervenors focus on adequacy to ensure that the publishing industry's discrete interests are fairly treated in class litigation where both authors and publishers' rights are at stake. Google disagrees. But a class without publisher representatives risks arguments unmade and necessary evidence missing. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003); Dkt. 342 at 8 (discussing publisher evidence). A proposed intervenor's "expertise" and "materially" different perspective from existing parties supports intervention. *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983). As publishers, Proposed Intervenors' broad portfolio of copyrights gives them a distinct perspective on market harms impacting the fair use analysis. *See* 17 U.S.C. § 107(4). They (and other publishers) also have agreements with Google for specific uses by Google Books. (Dkt. 380 (discovery dispute related to Google Books).) Proposed Intervenors have only the redacted record, but copying and use beyond the scope of those agreements (including for training) would be infringement, and establishes their important interest in litigating on publishers' behalf. Cengage Decl. ¶ 8; Hachette Decl. ¶ 13. Further, intervention is justified if a statute provides a single award per work and there are allocation issues to be decided where one set of parties is absent. *See Fed. Agric. Mortg. Corp. v. Assemi Bros., LLC*, 783 F. Supp. 3d 1250, 1257 (E.D. Cal. May 16, 2025) (finding risk of inadequate representation given divergence of interests on recovery). Google's attempt to reduce publishers and authors' different economic roles to litigation strategy fails. (Opp. at 8.)

CONCLUSION

Intervention as of right or permissive intervention should be granted.

Respectfully submitted,

Dated: February 5, 2026

/s/ *Ryan D. Andrews*

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re Google Generative AI Copyright Litigation	Master File Case No.: 5:23-cv-03440-EKL Consolidated with Case No.: 5:24-cv-02531-EKL **DECLARATION OF JESSICA STITT IN SUPPORT OF PROPOSED INTERVENORS CENGAGE LEARNING, INC. AND HACHETTE BOOK GROUP, INC.'S MOTION TO INTERVENE** Judge: Hon. Eumi K. Lee

I, Jessica Stitt, hereby declare pursuant to 28. U.S.C. § 1746 as follows:

1. I am currently employed as Manager, Global Anti-Piracy for Cengage Learning, Inc. ("Cengage"). I have held this position for the past 12 years and have worked for Cengage since February 18, 2003. I have worked in the publishing industry for 22 years. I submit this Declaration in support of Proposed Intervenors Cengage and Hachette Book Group, Inc.'s Motion to Intervene. I have personal knowledge of the facts set forth below and/or have learned of these facts as a result of my position and responsibilities at Cengage. If called upon and sworn as a witness, I could and would testify competently as to the matters set forth herein.

2. Cengage is a leading educational publisher devoted to creating and publishing high quality textbooks and other learning materials with deep historic roots. Cengage develops, markets, distributes, and sells a comprehensive range of traditional and digital educational content, including textbooks, to educators and students.

3. I am generally familiar with Cengage's business records, including documents such as copyright registration documents, author agreements, and other agreements with third parties (including those referenced in this Declaration) pursuant to which Cengage acquires ownership of, and control of exclusive rights to, the textbooks at issue in this litigation. I have personal knowledge of the information contained in this Declaration through my position at Cengage and my understanding of the processes through which it acquires copyrighted works, including through past acquisitions of other corporate entities and copyright catalogs, as well as my understanding of Cengage's business and contractual relationships. Through my position, I am also familiar with Cengage's efforts to protect its copyrights through registrations and the company's copyright registration process in the United States.

4. Textbooks and other educational materials are among Cengage's core assets and are the foundation of Cengage's publishing business. In the course of regular operations, Cengage's routine practice is to obtain copyright ownership of the copyrights in, or exclusive licenses to publish, reproduce, and distribute, the works it publishes through agreements with the author(s) of those works, typically in exchange for a royalty stream. Cengage is in the business of owning, licensing, and commercializing copyrights.

5. When Cengage agrees to publish a work, it is Cengage's standard practice to execute an agreement with the author(s) of that work in which the author(s) either assign the copyright in the work to Cengage or grant Cengage an exclusive right to publish, reproduce, and distribute the work for the full term of copyright. These agreements between Cengage and the author(s) typically contain a clause in which the author represents that he or she owns the copyright in the work to be published and has all necessary authority to assign that copyright or grant an exclusive license as to the rights under Section 106 of the Copyright Act, including as to reproduction and distribution, to Cengage. Cengage often registers those copyrights with the U.S. Copyright Office. Cengage has complied with this corporate practice for all of works in this case. Each of the copyrights for Cengage's Sample Works is registered with the U.S. Copyright Office. *See* ECF 384-1 through 384-10.

6. As Google acknowledges, Cengage is the registered claimant on four copyright registration certificates for Cengage's Sample Works. This includes E. Bruce Goldstein, *Cognitive Psychology: Connecting Mind, Research, and Everyday Experience* (5th edition); Maura Scali-Sheahan et al., *Milady Standard Barbering* (6th edition); Frances Slenklewicz Sizer and Ellie Whitney, *Nutrition: Concepts and Controversies* (14th edition); and James Stewart, Daniel Clegg, and Saleem Watson, *Calculus: Early Transcendentals* (9th edition). *See* ECF Nos. 384-1, 384-3, 384-4, and 384-5.

7. N. Gregory Mankiw, an individual author, is the named claimant on the copyright registration certificate for Cengage's final work, *Principles of Economics*, 8th edition. ECF No. 384-2. Cengage controls exclusive rights to publish, reproduce, and distribute *Principles of Economics*, 8th edition, pursuant to an author agreement with Mr. Mankiw, acquired through corporate transactions. Cengage and Mr. Mankiw also jointly executed a Notice of Exclusive Rights in Copyright for *Principles of Economics*, 8th edition, confirming Cengage's exclusive rights to publish, reproduce, and distribute the work. Mr. Mankiw consented to Cengage's filing this suit over *Principles of Economics*, 8th edition.

8. Cengage has entered into agreements with Google for specific limited uses of Cengage works by Google Books. Cengage has not authorized Google to copy or use Cengage's works provided for Google Books (including for AI training), beyond the scope of those agreements.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my personal knowledge and belief.

Executed in Brighton, Michigan, this 5th day of February, 2026.

Jessica Stitt

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re Google Generative AI Copyright Litigation

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

Consolidated with Case No.: 5:24-cv-02531-EKL

DECLARATION OF LINDA JANET SAINES CARDOZO IN SUPPORT OF PROPOSED INTERVENORS CENGAGE LEARNING, INC. AND HACHETTE BOOK GROUP, INC.'S MOTION TO INTERVENE

Judge: Hon. Eumi K. Lee

I, Linda Janet Saines Cardozo ("Janet Saines"), hereby declare pursuant to 28. U.S.C. § 1746 as follows:

1. I am currently employed as Vice President, Head of Contracts for Hachette Book Group, Inc. ("Hachette"). I have held this position since April 2024 and have worked for Hachette since 2016. I have worked in the publishing industry for over 36 years, including at Perseus Books as Director of Contracts from 2004 to 2013 and Director, Contracts & Legal Affairs from 2013 to 2016 before joining Hachette. I submit this Declaration in support of Proposed Intervenors Cengage Learning Inc. and Hachette's Motion to Intervene. I have personal knowledge of the facts set forth below and/or have learned of these facts as a result of my position and responsibilities at Hachette. If called upon and sworn as a witness, I could and would testify competently as to the matters set forth herein.

2. Hachette is a leading book publisher, with a history stretching back to 1837, that works with authors published all over the world. Hachette books and authors have won Pulitzer Prizes, National Book Awards, Newbery Medals, Caldecott Medals, and Nobel Prizes. Its many publishing imprints regularly publish bestselling titles, and include prominent brands such as Little, Brown and Company, Little, Brown Books for Young Readers, Grand Central Publishing, Basic Books, Public Affairs, Orbit, FaithWords, Running Press, Workman Publishing, Moon Travel, Back Bay Books, Center Street, and Union Square.

3. Hachette supports thousands of authors in this regard—including by paying advances upon acquisition, providing editorial support to improve the manuscript, providing marketing, production, distribution services, managing royalties and many other publishing services. A basic principle of book publishing is that the publisher is the guardian of the authors' rights and assumes an obligation to exploit and protect those exclusive rights.

4. I am generally familiar with Hachette's business records, including documents such as copyright registration documents, author agreements, and other agreements with third parties (including those referenced in this Declaration) pursuant to which Hachette acquires ownership of, and/or control of exclusive rights to, the books at issue in this litigation. I have personal knowledge of the information contained in this Declaration through my position at Hachette and my

understanding of the processes through which it acquires copyrighted works, including through past acquisitions of other corporate entities and copyright catalogs, as well as my understanding of Hachette's business and contractual relationships. Through my position, I am also familiar with Hachette's efforts to protect its copyrights and its authors' copyrights through registrations and the company's copyright registration process in the United States.

5. In the course of regular operations, Hachette's routine practice is to obtain copyright ownership or control of the copyrights in, or exclusive licenses to publish, reproduce, and distribute, the works it publishes through agreements with the author of those works. Hachette is in the business of owning or controlling, licensing, and commercializing copyrights.

6. When Hachette agrees to publish a work, it is Hachette's standard practice to execute an agreement with the author of that work in which the author either assigns the copyright in the work to Hachette or grants Hachette an exclusive right to publish, reproduce, and distribute the work for the full term of copyright. These agreements between Hachette and the author typically contain a clause in which the author represents that he or she owns all rights granted and has all necessary authority to assign that copyright or grant an exclusive license as to the rights under Section 106 of the Copyright Act, including as to reproduction and distribution, to Hachette. Hachette often registers those copyrights with the U.S. Copyright Office.

7. Each of the copyrights for Hachette's Sample Works is registered with the U.S. Copyright Office. *See* ECF Nos. 384-6 through 384-10. It is Hachette's common practice to file copyright registrations for its published books on behalf of the authors, listing the author on the registration as the author and the copyright claimant. Thus, following this practice, the 5 authors of Hachette's 5 Sample Works are each respectively the registered authors and copyright claimants of their books.

8. In line with its routine business practices, Hachette entered into publishing agreements or duly acquired exclusive publishing rights to the 5 Sample Works.

9. Specifically, Hachette entered into author publishing agreements with Scott Turow for *Innocent*, with N.K. Jemisin for *The Fifth Season*, with Peter Brown for *The Wild Robot*, and with Daniel Handler writing as Lemony Snicket for "Who Could That Be at This Hour?".

10. Becky Lomax published the first six editions of *Moon Glacier National Park* through agreements with previous publishers. Hachette acquired the publishing assets of those previous publishers, including their exclusive publishing rights to *Moon Glacier National Park*. Hachette has published subsequent *Moon* travel books with Becky Lomax.

11. These author publishing agreements set forth the grant of rights to the publisher, royalty and other payment structures, and other commercial and business strategy. Specifically, Hachette contracts for the exclusive rights to publish, reproduce, and distribute their works in exchange for royalties. The *Wild Robot* author publishing agreement provides an emblematic example of grant language: "Author hereby grants and assigns to the Publisher exclusive print, audio and electronic rights in the Work …, in whole or in part for the full term of copyright, … including the right to reproduce, publish, distribute, transmit, deliver, transfer, market and/or sell the Work, by any means …"

12. Hachette secured the consent of all 5 authors for the Sample Works prior to filing the Motion to Intervene.

13. Hachette has entered into agreements with Google for specific limited uses of Hachette works by Google Books. Hachette has not authorized Google to copy or use Hachette's works provided for Google Books (including for AI training), beyond the scope of those agreements.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my personal knowledge and belief.

Executed in New York, New York, this 5th day of February, 2026.

Linda Janet Saines Cardozo ("Janet Saines")