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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 IN THE MATTER OF A DEPOSITION
12 SUBPOENA SERVED IN:

13 UMG RECORDINGS, INC., CAPITOL
14 RECORDS, LLC and SONY MUSIC
ENTERTAINMENT,

15 Plaintiffs,

16 v.

17 SUNO, INC., and JOHN DOES 1-10,

18 Defendants.
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Case No. 3:26-MC-80303-VKD

**SUNO, INC.’S OPPOSITION TO NON-
PARTY APPLE INC.’S MOTION TO
QUASH DEPOSITION SUBPOENA OR, IN
THE ALTERNATIVE, MOTION FOR
PROTECTIVE ORDER**

Date: December 1, 2026
Time: 10:00 a.m.
Judge: Hon. Virginia K. DeMarchi
Courtroom: 2

STATEMENT OF THE ISSUES TO BE DECIDED

1. Whether Apple has met its burden to quash Suno's Rule 45 deposition subpoena, where the four narrowed topics seek testimony directly relevant to Plaintiffs' theory of harm and Suno's fair use and copyright misuse defenses, the testimony is not available from Plaintiffs, Apple has offered no evidence of undue burden, and any confidentiality concerns are addressed by the protective order in the underlying litigation.
2. Whether Apple, in the alternative, has shown good cause under Rule 26(c) for a protective order barring the deposition.

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I. INTRODUCTION

Plaintiffs UMG and Sony, two of the world’s largest record labels, sued Suno for alleged copyright infringement of their sound recordings in the United States District Court, District of Massachusetts. *UMG Recordings, Inc. v. Suno, Inc.*, No. 1:24-cv-11611-FDS (D. Mass.) (“Massachusetts Litigation”). They allege that Suno trained its generative AI music tool on their recordings, and that Suno users generate music that is flooding streaming services like Apple Music, “eroding” Plaintiffs’ market share and “diluting” the royalty pools those services pay out. Apple now asks the Court to prevent Suno from asking Apple a single question on these exact issues.

Apple casts itself as a bystander whose “sole connection” to this case is that its service is one of several places where music “can be played.” Non-Party Apple Inc.’s Motion to Quash Deposition Subpoena Or, In The Alternative, Motion for Protective Order, Dkt. 1 (“Mot.”) at 1:7-9.¹ But Plaintiffs made Apple Music central to this case. Plaintiffs’ complaint explicitly names Apple Music as a destination for Suno outputs. Plaintiffs’ theory of market harm depends on what happens on platforms like Apple’s, one of the labels’ biggest digital music partners. Plaintiffs have also focused on Apple specifically in their campaign to eliminate or demonetize AI-generated music across all music streaming platforms. Plaintiff UMG calls anti-AI terms [REDACTED] and [REDACTED]. Yet when Suno asked Plaintiffs’ witnesses [REDACTED] [REDACTED]. As UMG’s lead negotiator put it when asked about [REDACTED] That is exactly what Suno now seeks to do.

Suno has been more than reasonable in seeking targeted deposition testimony from Apple. It accepted a declaration in place of testimony on five of the nine noticed topics and on

¹ Citations to Apple’s Motion, deposition transcripts (Campbell Decl., Exs. 4-8), and the earnings call transcript (Campbell Decl., Ex. 10) are to the document’s internal page and line. Citations to the First Amended Complaint (Campbell Decl., Ex. 1), the Protective Order (Campbell Decl., Ex. 13), and declarations are to the relevant paragraph number. Citations to all other exhibits are to the ECF page number of the exhibit as filed.

1 many portions of its document subpoena; it offered to exclude past and signed agreements from
2 the deposition; and it carved the technical details of Apple’s fraud-detection methods out of the
3 streaming fraud topic to address Apple’s purported concerns. What remains in dispute are four
4 narrow deposition topics:

- 5 • Apple’s current license negotiations with Plaintiffs;
- 6 • whether Apple has evaluated its ability to operate Apple Music without one or both of
7 Plaintiffs’ catalogs;
- 8 • the alleged streaming fraud Plaintiffs invoke to justify their demands for anti-AI deal
9 terms; and
- 10 • Apple’s communications with Plaintiffs about Suno and this case.

11 Each topic goes to the heart of Plaintiffs’ alleged harm and to Suno’s fair use and copyright
12 misuse defenses.

13 The testimony Suno seeks is also not available in party discovery. Plaintiffs’ witnesses
14 testified they do not have insight into Apple’s knowledge or business positions, and Apple is
15 clearly in the best position to testify about how Apple has operationalized the many obligations
16 reflected in its contractual agreements and negotiations with Plaintiffs. Nor has Apple
17 established any burden in preparing a corporate witness on these narrow topics. Finally, Apple’s
18 concerns about confidentiality do not hold water; the underlying litigation is governed by a
19 robust protective order that provides, among other things, for a “Highly Confidential – Outside
20 Counsel Only” designation. Indeed, Apple has already availed itself of this protective order when
21 producing documents and declarations. The Motion should be denied.

22 **II. FACTUAL BACKGROUND**

23 **A. Suno’s Music Generation Tool**

24 Suno is a technology company that allows individuals to create new music using a
25 transformative generative artificial-intelligence tool. The foundation of that tool is a computer
26 program constructed by showing the program millions of instances of different kinds of music and
27 sound recordings. By analyzing their constitutive elements, the program derived a complex
28 statistical model of the auditory characteristics of the recordings—e.g., what types of sounds

1 typically appear in certain genres, what a pop song tends to sound like, how the drumbeat varies
2 from country to rock to hip-hop, and so on. The resulting tool allows ordinary people to use plain-
3 English descriptions of genres, styles, and other musical elements to create new music, making
4 Suno an engine for effectively limitless creativity. For example, a prompt to Suno to generate a
5 song in the style of early 1980s “new wave” synth-pop, with an upbeat tempo but a somber feel,
6 will yield an audio file with the characteristic instrumentation, timbres, and overall gestalt of the
7 category described. Users can also instruct the tool to incorporate their own original song lyrics
8 and information into the auditory output.

9 **B. Plaintiffs’ Claims and Suno’s Defenses**

10 Plaintiffs UMG and Sony are major record labels that control a substantial share of the
11 music recordings streamed, purchased, and listened to by U.S. consumers. Plaintiffs’ core
12 allegation is that Suno’s generative AI tool was trained on a discrete subset of Plaintiffs’ sound
13 recordings (the “Universal Works” and the “Sony Works,” collectively the “Asserted Works”), an
14 act that Plaintiffs contend was copyright infringement. Declaration of Christopher B. Campbell
15 filed herewith (“Campbell Decl.”), Ex. 1 (First Am. Compl. (“FAC”) ¶¶ 9, 19-21, 38).

16 Two points bear emphasizing. First, this initial copying during Suno’s training phase was
17 wholly internal, and Plaintiffs do not allege that Suno then distributed or attempted to monetize
18 any actual copies of Plaintiffs’ copyrighted works. FAC ¶ 89 (alleging only that Suno used
19 reproductions of the Universal Works and Sony Works “to train its generative AI models”).
20 Second, Plaintiffs also do not contend that any *outputs* from Suno’s generative AI tool infringe on
21 their copyrighted works; in fact, they disclaim that allegation. *Id.* ¶ 53.

22 As a result, Plaintiffs have been forced to pursue an incredibly broad and generalized theory
23 of harm. In particular, Plaintiffs assert that the mere existence of *non*-infringing Suno-generated
24 outputs on digital service provider (“DSP”) platforms like Apple Music causes them harm,
25 claiming these outputs divert listeners from Plaintiffs’ recordings and are eroding Plaintiffs’ share
26 of the market. Specifically, Plaintiffs allege that Suno “risks overrunning the market with AI-
27 generated music,” that Suno outputs are “finding their way onto the major streaming services”
28 where they “compete with the copyrighted sound recordings that enabled their creation,” FAC ¶

1 12, and that those outputs “compete for plays against real, copyrighted sound recordings” and
2 “substantially dilute the royalty pools that are paid out to artists,” *id.* ¶¶ 79-80. In discovery,
3 Plaintiffs confirmed that this theory relies directly on Plaintiffs’ market performance on digital
4 music platforms like Apple Music. For example, Universal contends that Suno outputs [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] Campbell
9 Decl., Ex. 2 at 19 (Response to Interrogatory No. 24); *see also id.* at 18 (identifying Apple Music
10 among the DSPs at issue); *id.*, Ex. 3 at 18 (Sony, same).

11 Plaintiffs’ executives elaborated on that theory in Rule 30(b)(6) depositions.² UMG’s
12 North American CFO described the [REDACTED]
13 [REDACTED]
14 [REDACTED] Campbell Decl., Ex. 6 (Gallien Dep.
15 51:4-11). Sony’s designee testified that Suno outputs have [REDACTED]
16 [REDACTED]
17 [REDACTED] *Id.*, Ex. 8 (Kooker Dep. 54:12-19). And UMG’s Chief Digital Officer described the
18 harm as [REDACTED] on the DSP
19 platforms. *Id.*, Ex. 4 (Nash Dep. 344:4-18).

20 For its part, Suno asserts that any internal copying of Plaintiffs’ sound recordings during
21 the training phase of its transformative tool constitutes fair use. The factors that govern fair use
22 are: “(1) the purpose and character of the use, including whether such use is of a commercial nature

23 _____
24 ²Suno has deposed, among others, UMG’s Executive Vice President and Chief Digital Officer,
25 Michael Nash (“Nash Dep.”); UMG’s Executive Vice President of Digital Business
26 Development and Strategy, Jonathan Dworkin, who [REDACTED]
27 [REDACTED] (“Dworkin Dep.”); UMG’s Chief Financial
28 Officer for North America, Jason Gallien (“Gallien Dep.”); Sony’s Executive Vice President and
Head of Business and Legal Affairs and Global Digital Business, Jeff Walker, whose team
[REDACTED] (“Walker Dep.”); and
Sony’s President of Global Digital Business and U.S. Sales, Dennis Kooker (“Kooker Dep.”).
Campbell Decl., Ex. 4 (Nash Dep. 11:19-21), Ex. 5 (Dworkin Dep. 14:8-18, 15:1-3), Ex. 6
(Gallien Dep. 25:8-11), Ex. 7 (Walker Dep. 11:9-12:19), Ex. 8 (Kooker Dep. 9:7-10).

1 or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount
2 and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the
3 effect of the use upon the potential market for or value of the copyrighted work.” 17 U.S.C. § 107.
4 Suno contends that its groundbreaking technology satisfies each of these factors—including that
5 the alleged infringement did not impact “the potential market for or value of the copyrighted work”
6 and, further, that Plaintiffs’ dilution theory fails as a matter of law. To counter Suno’s fair use
7 defense, Plaintiffs have pointed to the precise “dilution” on streaming services Suno now seeks to
8 contextualize in third-party depositions.³

9 Suno has also asserted the defense of copyright misuse, alleging that “Plaintiffs have
10 engaged in anticompetitive activities that extend an unlawful monopoly over the production and
11 commercialization of music.” Campbell Decl., Ex. 9 (Ans. to Am. Compl. at 24); *see also* Mot. at
12 4:1-3. As relevant here, Suno contends that Plaintiffs leveraged the “must have” status of their
13 entire music catalogs (each of which contain millions of sound recordings, including some of the
14 world’s most popular songs) to extract concessions from DSPs that have nothing to do with the
15 scope of Plaintiffs’ copyright rights—including restrictions on non-infringing AI-generated
16 content. Plaintiffs are loud and proud about their ongoing attempts to get music streaming
17 platforms to restrict AI-generated content on their platforms, even though Plaintiffs do not contend
18 that such content infringes their copyrights. *See* FAC ¶ 53 (“Plaintiffs are not presently alleging
19 that these outputs themselves infringe the Copyrighted Recordings”); Campbell Decl., Ex. 10
20 (Transcript of UMG Q4 2025 Earnings Call (Mar. 5, 2026) (“UMG Earnings Call Tr.”) at 21:4-9
21 (discussing “anti-AI dilution provisions in numerous UMG agreements”)). Indeed, UMG is
22 [REDACTED] Campbell Decl., Ex. 4 (Nash Dep.
23 263:11-22 ([REDACTED])).

24 **C. Apple Music Is Directly Relevant to the Underlying Litigation**

25 Apple attempts to minimize its importance to this case, claiming its “sole connection to the
26

27 ³Suno maintains that the salient question is whether there has been harm to the *Asserted Works*
28 (i.e., the allegedly copied sound recordings). But Plaintiffs are pursuing a broader theory that
looks to their catalog-wide performance and market share on music streaming platforms, and
Suno is entitled to discovery to test it.

1 matter is that its music streaming service, Apple Music, is one of several digital service providers
2 (‘DSPs’) where the labels’ and Suno’s music can be played.” Mot. at 1:7-9. That framing only
3 highlights the relevance of Suno’s requested discovery. Plaintiffs’ complaint names Apple Music
4 specifically as a service onto which Suno users upload their outputs. FAC ¶ 32. And Plaintiffs’
5 theory of harm—that Suno-generated content has allegedly swamped DSP platforms, competing
6 with and displacing their sound recordings—puts Apple Music (one of the largest music streaming
7 services in the United States) at the center of both the fourth fair use factor and Plaintiffs’ damages
8 claim. Each of the four disputed topics in Suno’s deposition subpoena goes to these core issues.⁴

9 **Apple’s current or ongoing negotiations with Plaintiffs regarding music licensing,**
10 **royalties, and artificial intelligence initiatives (Topic 2).** Notwithstanding Plaintiffs’ bombastic
11 allegations of harm in this litigation, Plaintiffs have been vocal about the protections they demand
12 from DSPs like Apple to ensure that AI-generated music cannot dilute their market share or
13 royalties. On UMG’s most recent year-end earnings call, its Chief Digital Officer described “the
14 thoughtful measures we’ve taken to neutralize any negative impact” from “AI revenue dilution”:
15 “anti-fraud provisions,” “demonetization of generic AI slop under UMG artist centric agreements,”
16 and “anti-AI dilution provisions in numerous UMG agreements,” which “generally mean that pure
17 AI generated content similar to other non-music content is removed from the calculation of share
18 of streams by the DSP for purposes of determining our artist royalties.” Campbell Decl., Ex. 10
19 (UMG Earnings Call Tr. at 19:1-3, 21:2-14). He told investors that, as a result, UMG is “seeing
20 no indication that AI royalty dilution is a material issue for UMG from a revenue perspective.” *Id.*
21 at 21:14-18.

22 Critical to this motion, Plaintiffs are [REDACTED]

23 [REDACTED] UMG’s Chief Digital Officer [REDACTED]
24 [REDACTED]
25 [REDACTED]

27 ⁴The topics as served appear in the Declaration of Miranda D. Means (“Means Decl.”), Dkt. 1-1,
28 Ex. 8 at 7-9. Each was narrowed during the meet-and-confer process, and Suno seeks testimony
only on the topics as narrowed. *See* Means Decl. ¶ 24; *id.*, Ex. 5.

1 [REDACTED]
2 [REDACTED] Campbell Decl., Ex. 4 (Nash Dep. 262:2-24, 263:11-22). The
3 executive responsible for UMG's negotiations with Apple testified that [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] *Id.*, Ex. 5 (Dworkin Dep.
7 32:17-23, 33:14-20, 35:14-36:2). He added that [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] *Id.* (Dworkin Dep. 37:17-38:5). Sony's designee likewise confirmed that [REDACTED]
11 [REDACTED]
12 [REDACTED] *Id.*, Ex. 7 (Walker Dep. 177:6-21). [REDACTED]
13 [REDACTED] UMG's CEO told investors that UMG is "working with" its established DSP partners,
14 including Apple, on consumer-facing AI products, *id.*, Ex. 10 (UMG Earnings Call Tr. at 54:19-
15 55:7), and Sony testified that [REDACTED]
16 [REDACTED]
17 *id.*, Ex. 8 (Kooker Dep. 230:7-232:7, 233:9-18). Apple's testimony about the existence and scope
18 of these negotiations is directly relevant to, among other issues, the alleged market for the
19 Plaintiffs' works.

20 **Apple's ability to operate, and the viability of the Apple Music service, without the**
21 **catalog of one or more Plaintiffs (Topic 4).** Plaintiffs are candid about the market impact of their
22 catalogs and the negotiation leverage they provide. UMG tells investors that its catalog is "the
23 biggest driver of new subscribers to the DS[Ps]" and has "earned a unique level of credibility and
24 influence." *Id.*, Ex. 10 (UMG Earnings Call Tr. at 17:13-21). Its Chief Digital Officer testified that
25 [REDACTED] *Id.*, Ex. 4 (Nash
26 Dep. 140:20-22). This isn't just bluster: in early 2024, UMG pulled all of its content from TikTok
27 in part because TikTok would not capitulate to UMG's demands regarding AI content on the
28 platform, and UMG did not allow its content to return to TikTok until those demands and others

1 were met. Campbell Decl., Ex. 11 (Universal Music Group, *An Open Letter to the Artist and*
2 *Songwriter Community – Why We Must Call Time Out on TikTok* (Jan. 30, 2024)); *id.*, Ex. 12 (Jem
3 Aswad, *TikTok and Universal Music Group Settle Royalty Dispute With New Licensing*
4 *Agreement*, *Variety* (May 1, 2024)).

5 **The types and frequency of streaming fraud on Apple Music, how it is discovered, its**
6 **causes, and Apple’s policies for responding to it (Topic 5).** The core of Suno’s copyright misuse
7 defense is that Plaintiffs use their copyright monopoly and “must have” catalog as a cudgel to
8 extract broad, anti-AI concessions from DSPs. Plaintiffs’ response is to assert that their crusade to
9 extract anti-AI provisions from every DSP is, in fact, just a well-intentioned attempt to combat
10 “streaming fraud.” UMG’s Chief Digital Officer told investors that most AI-generated content
11 uploaded to streaming platforms “is AI slop or fraud fodder associated with royalty diversion
12 schemes,” and pointed to Apple itself: “Apple recently reported that its efforts to address the flood
13 of AI uploads included exclusion of 2 billion fraudulent streams last year.” Campbell Decl., Ex.
14 10 (UMG Earnings Call Tr. at 20:6-17); *id.*, Ex. 4 (Nash Dep. 243:21-244:2 (confirming
15 statement)). Suno explained to Apple during the meet-and-confer process that, because Apple—
16 not Plaintiffs—actually confronts streaming fraud, only Apple can say whether the fraud it
17 encounters is in fact related to AI-generated content. Means Decl., Ex. 5 at 6, 12. As explained
18 below, Suno has further narrowed this topic and, to address any security concerns, will exclude
19 the technical details of Apple’s detection and security methods. *See infra* § III.D.

20 **Apple’s communications with Plaintiffs or their agents concerning Suno or this case**
21 **(Topic 7).** As narrowed, this topic is limited to communications between Apple and Plaintiffs or
22 their agents (such as Plaintiffs’ trade organization the Recording Industry Association of America
23 or the “RIAA”) regarding Suno or this case. Means Decl., Ex. 5 at 12, 16. Plaintiffs have
24 communicated directly with Apple about AI issues—including [REDACTED]
25 [REDACTED], Campbell Decl., Ex. 5 (Dworkin Dep. 35:14-36:25), and
26 [REDACTED], Campbell Decl., Ex. 7 (Walker
27 Dep. 175:6-176:6), though Sony [REDACTED], *id.* (Walker Dep. 176:20-
28 177:5).

D. Suno’s Efforts to Seek Relevant Testimony From Apple

Apple devotes much of its Motion to a misleading summary of the meet-and-confer history, beginning with subpoenas that *Plaintiffs* served more than a year before Suno served anything. *See* Mot. at 1:13-22, 4:7-9:13. In truth, Suno served Apple with one document subpoena and one deposition subpoena, which it later was forced to serve again with a new date after Apple refused to provide witness availability. Means Decl. ¶¶ 11, 16, 23. Apple’s recitation is inaccurate and not supported by the emails it attaches, and a few key moments bear emphasis.

Suno’s July 31, 2026 cover letter for its deposition subpoena made clear that Suno was ready to work with Apple collaboratively to schedule the deposition. Means Decl., Ex. 6 at 4 (Suno’s counsel offering that “[t]he date and location are entirely open to discussion”). When Apple objected to every topic and demanded wholesale withdrawal, Suno immediately offered to “meet and confer regarding the deposition subpoena, both with respect to the topics and the date of the deposition,” *id.*, Ex. 5 at 21-22, and later agreed to take the noticed date off calendar so the discussions could continue, *id.* at 15-16.⁵ Suno then narrowed the dispute at every turn to address Apple’s concerns and reduce any perceived burden. Suno agreed to accept a declaration in lieu of testimony on five of the nine topics (Topics 1, 3, 6, 8, and 9) and on various aspects of its document subpoena, *id.* at 2-3, 5-6—and it has kept that agreement, accepting the Supplemental Bottoms Declaration Apple served on October 13 as resolving those matters. *See* Mot. at 8:21-23, 9:1-2. It narrowed Topic 7 to communications with Plaintiffs or their agents regarding Suno or this case, Means Decl., Ex. 5 at 12, 16; narrowed Topic 5 and explained that it would not be “a significant focus of a deposition,” *id.* at 6, 12; and on Topic 2, identified the specific provisions and agreements at issue and then offered to “exclude past/signed agreements with Plaintiffs and limit this topic to any current or ongoing negotiations,” *id.* at 6, 10-12.

Apple did not budge and flatly refused to provide any testimony, no matter what narrowing Suno proposed. On September 25, it stated that it “will not provide a witness” on Topics 2, 4, or

⁵Apple asserts that Suno “refused, that same day, to withdraw” the subpoena, Mot. at 7:16, but omits that the same email offered to confer on both the topics and the date. Means Decl., Ex. 5 at 21-22.

1 5, and treated Topic 7 as withdrawn. *Id.* at 4. Suno confirmed it was not withdrawing Topic 7 and
2 re-served the subpoena with a new date, confirming in its cover email that—given the parties’
3 agreement to resolve certain topics by declaration—the deposition would be limited to the four
4 narrowed topics. *Id.* at 2-3; *id.*, Ex. 8.⁶ If the record demonstrates anything, it is that Suno
5 approached this process collaboratively and constructively, while Apple largely stonewalled.⁷

6 **III. ARGUMENT**

7 **A. Legal Standard**

8 The scope of discovery under Rule 45 is the same as under Rule 26(b). Fed. R. Civ. P. 45
9 Advisory Comm.’s Note (1970); *see also Waymo LLC v. Uber Techs., Inc.*, No. 17-cv-00939, 2017
10 WL 2929439, at *2 (N.D. Cal. July 7, 2017). A party may obtain discovery of “any nonprivileged
11 matter that is relevant to any party’s claim or defense and proportional to the needs of the case,”
12 considering, among other things, “the parties’ relative access to relevant information” and “the
13 importance of the discovery in resolving the issues.” Fed. R. Civ. P. 26(b)(1). Relevance “is
14 defined broadly,” *Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679-80 (N.D. Cal. 2006), and
15 information “need not be dispositive of the entire issue disputed in the litigation in order to be
16 discoverable by subpoena,” *id.* at 686. Because this Court supervises discovery ancillary to an
17 action pending in another district, it “should be especially hesitant to pass judgment on what
18 constitutes relevant evidence thereunder,” and “[w]here relevance is in doubt . . . the court should
19 be permissive.” *Id.* at 681 (quoting *Truswal Sys. Corp. v. Hydro-Air Eng’g, Inc.*, 813 F.2d 1207,

20
21 ⁶Apple’s Motion repeatedly mischaracterizes these discussions. Apple asserts that “Suno decided
22 the parties were at an impasse,” Mot. at 8:25, but it was Apple that had just declared, topic by
23 topic, that it “will not provide a witness.” Means Decl., Ex. 5 at 4. Apple asserts that “Suno
24 admitted it had not reviewed the Bottoms Declaration,” Mot. at 6:17-18, but the record shows
25 only that Suno’s counsel, after reviewing it, agreed it was “helpful context for a few of these
26 points” and was willing to rely on it for portions of Suno’s requests. Means Decl., Ex. 5 at 34.
Apple asserts that Suno “continues to expand the scope of its requests” and “demanded more,”
Mot. at 2:4, 7:2-4, but Suno *narrowed* its data request to U.S.-only data from 2022 forward—
which Apple ultimately agreed to provide. Means Decl., Ex. 5 at 3, 7, 31, 37. And Apple asserts
that Suno seeks testimony on “agreements that long predate Suno,” Mot. at 2:25-27, whereas
Suno expressly offered to exclude past and signed agreements. Means Decl., Ex. 5 at 6.

27 ⁷Apple notes that Plaintiffs have indicated a supplemental declaration may resolve their own
28 deposition subpoena. Mot. at 2:1-3, 8:4-8. But Plaintiffs expressly reserved their right to depose
Apple, Means Decl., Ex. 7 at 2, and Plaintiffs’ view of what *they* need says nothing about what
Suno needs to defend against Plaintiffs’ theory of harm.

1 1211-12 (Fed. Cir. 1987)). And while the Court must limit discovery that it determines is
2 unreasonably cumulative or obtainable from a more convenient source, Fed. R. Civ. P.
3 26(b)(2)(C)(i), it “must be careful not to deprive a party of discovery that is reasonably necessary
4 to afford a fair opportunity to defend and prepare the case.” *Gonzales*, 234 F.R.D. at 680 (quoting
5 Fed. R. Civ. P. 26 advisory committee’s note to 1983 amendment).

6 Apple, as the party moving to quash, bears the burden of persuasion to show that the
7 requested testimony is disproportionate or is unduly burdensome, while Suno must demonstrate
8 that the information sought is relevant to the allegations and claims at issue. *Soto v. Castlerock*
9 *Farming & Transp., Inc.*, 282 F.R.D. 492, 504 (E.D. Cal. 2012); *Hager v. Ariosa Diagnostics,*
10 *Inc.*, No. 23-mc-80261-LB, 2023 WL 8654388, at *3 (N.D. Cal. Dec. 14, 2023) (denying a motion
11 to quash a third-party deposition). In determining whether a subpoena poses an undue burden,
12 courts “weigh the burden to the subpoenaed party against the value of the information to the
13 serving party,” *Soto*, 282 F.R.D. at 504 (quoting *Travelers Indem. Co. v. Metro. Life Ins. Co.*, 228
14 F.R.D. 111, 113 (D. Conn. 2005)); *Gonzales*, 234 F.R.D. at 680 (court must balance “the relevance
15 of the discovery sought, the requesting party’s need, and the potential hardship to the party subject
16 to the subpoena”). A subpoenaed person’s non-party status is a factor in that balance, but it does
17 not relieve the movant of its burden: a party resisting discovery bears “the burden of clarifying,
18 explaining and supporting its objections with competent evidence.” *Philhower v. Philhower*, No.
19 8:24-cv-00074, 2024 WL 4720932, at *2 (C.D. Cal. Oct. 15, 2024) (quoting *La. Pac. Corp. v.*
20 *Money Mkt. 1 Inst. Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012)); *see also Lantiq*
21 *Deutschland GmbH v. Ralink Tech. Corp.*, No. C-11-00234 EJD (PSG), 2011 WL 13394713, at
22 *2 (N.D. Cal. Sept. 15, 2011) (rejecting a claim of undue burden because the party “only presents
23 attorney argument” which “is insufficient to substantiate a claim of undue burden”).

24 While courts have expressed “a preference for parties to obtain discovery from one another
25 before burdening non-parties with discovery requests,” *Soto*, 282 F.R.D. at 505, that preference is
26 not a bar. It yields where the serving party shows “a need to obtain [the information] from” the
27 non-party. *Id.* (denying motion to quash in part); *cf. ATS Prods., Inc. v. Champion Fiberglass, Inc.*,
28 309 F.R.D. 527, 530 (N.D. Cal. 2015) (“the scope of discovery through a subpoena is the same

as that applicable to Rule 34 and the other discovery rules,’ which in turn is the same as under Rule 26(b)’’).

A court may also quash or modify a subpoena that requires disclosure of “confidential research, development, or commercial information.” Fed. R. Civ. P. 45(d)(3)(B)(i). But “there is no absolute privilege for trade secrets and similar confidential information.” *Gonzales*, 234 F.R.D. at 685 (quoting *Centurion Indus., Inc. v. Warren Steurer and Assoc.*, 665 F.2d 323, 325 (10th Cir. 1981)). The non-party must first show that the information is “important proprietary information” and make “a strong showing that it has historically sought to maintain the confidentiality of this information.” *Id.* at 684 (quotation omitted). Only then does the burden shift to the serving party to show a substantial need. *Id.* And even where that showing is made, the Court may, “instead of quashing or modifying a subpoena, order appearance or production under specified conditions.” Fed. R. Civ. P. 45(d)(3)(C).

Finally, a non-party seeking a protective order under Rule 26(c) must show “good cause,” which requires a showing “that specific prejudice or harm will result” absent the order. *Williams v. County of San Diego*, No. 17-cv-00815-MMA (JLB), 2019 WL 5963969, at *4 (S.D. Cal. Nov. 13, 2019) (quotation omitted). The movant bears a “heavy burden,” *United States v. Capriotti*, No. 1:11-cv-847, 2012 WL 2994244, at *2 (E.D. Cal. July 20, 2012), and “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test,” *Fausto v. Credigy Servs. Corp.*, No. C 07-5658, 2008 WL 4793467, at *2 (N.D. Cal. Nov. 3, 2008) (quoting *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992)).

B. The Four Topics at Issue Are Directly Relevant to the Claims and Defenses in the Case

Apple measures relevance against the wrong question, asserting repeatedly that the topics have “no apparent relevance to Suno’s training models on Plaintiffs’ works.” Mot. at 2:5-6; *see also id.* at 2:27-28. But discovery extends to any nonprivileged matter “relevant to any party’s claim or defense,” Fed. R. Civ. P. 26(b)(1), not merely to the act of alleged infringement.

In this case, Apple’s position as one of the premier music streaming platforms in the United States places it squarely at the center of this case—most notably Plaintiffs’ allegations of harm and

1 market impact, which rely almost exclusively on what allegedly happened on DSP platforms like
2 Apple Music, as well as Suno’s copyright misuse defense, which concerns Plaintiffs’ efforts to
3 force DSPs like Apple to suppress AI content. *See supra* § II.B-C. Critically, in testing Plaintiffs’
4 theory, Suno “need not rely solely on what Plaintiff[s] contend[] is relevant,” *Waymo*, 2017 WL
5 2929439, at *2, and is entitled to seek discovery from the music streaming platforms that Plaintiffs
6 put squarely in the middle of this case.⁸

7 **1. Apple’s Contract Negotiations With Plaintiffs And Implementation of**
8 **Such Contracts Are Relevant**

9 Apple’s contracts with Plaintiffs bear on three issues in the case. *First*, they bear on
10 Plaintiffs’ claimed harm—i.e., the alleged dilution of Plaintiffs’ royalties and share of the music
11 streaming market (including on Apple Music) as a result of AI-generated music. Plaintiffs’
12 contracts with Apple define what Plaintiffs are paid for the use of their recordings on Apple’s
13 platform, when they are paid, how Apple assesses Plaintiffs’ share of the streaming market, and
14 exactly how royalties are calculated. This includes things like guaranteed minimum royalties
15 (which are paid regardless of whether AI content is or is not present in the market) and contractual
16 provisions that specifically *exclude* AI-generated content from the royalty pool (meaning that,
17 mathematically, AI content cannot “dilute” Plaintiffs’ royalties). Further, the ways in which Apple
18 *implements* those provisions in the real world will determine what actually happened to Plaintiffs
19 during the period at issue. *Second*, Apple’s contracts and negotiations with Plaintiffs are relevant
20 to Suno’s fair use defense, particularly to the extent they address whether and on what terms Apple
21 will license Plaintiffs’ content, e.g., to develop Apple’s own AI models. Indeed, a core question
22

23 ⁸Apple’s authorities do not suggest otherwise. In *Williams v. County of San Diego*, the court
24 quashed a subpoena to a seven-year-old non-party whose therapist attested that a deposition
25 would “likely cause psychological decompensation,” and found the testimony irrelevant only
26 after the plaintiffs’ counsel represented “under penalty of perjury” that the primary issue on
27 which testimony was sought was “not an issue—or even a subissue—in this case.” 2019 WL
28 5963969, at *6-8. Nothing similar is true here. Apple’s other authorities are likewise inapposite.
In *Gilead Sciences*, the requesting party already had a laboratory notebook and confirming letter
disproving the very thing it sought to probe. *Gilead Sciences, Inc. v. Merck & Co.*, No. 5:13-cv-
04057, 2016 WL 146574, at *1-2 (N.D. Cal. Jan. 13, 2016). And *Cacique* holds only that
enforcing a request for *irrelevant* information is an abuse of discretion. *Cacique, Inc. v. Robert*
Reiser & Co., 169 F.3d 619, 622-25 (9th Cir. 1999). Neither case is relevant here, where the
topics go directly to Plaintiffs’ core theories and Suno’s defenses.

1 behind fair use factor four is “the effect of the use upon the potential market for or value of the
2 copyrighted work.” 17 U.S.C. § 107(4). Plaintiffs allege that Suno threatens “the future market for
3 licensing sound recordings to generative AI companies,” FAC ¶ 78—and [REDACTED]
4 [REDACTED]. *See supra* § II.C. **Third**,
5 Apple’s negotiations with Plaintiffs bear on Suno’s copyright misuse defense, because
6 negotiations to restrict Apple’s ability to offer AI-generated content, or to steer toward lower-cost
7 content, would show that Plaintiffs are using their copyrights to extract limits on non-infringing
8 AI content. [REDACTED]
9 [REDACTED]. *See supra* § II.C.

10 If anything, Apple’s testimony about its contractual relationship with Plaintiffs has become
11 more significant as this case has progressed. [REDACTED]
12 [REDACTED]
13 [REDACTED]. Campbell Decl., Ex. 7 (Walker Dep. 88:22-89:3 [REDACTED]
14 [REDACTED]
15 [REDACTED]); *id.*, Ex. 4
16 (Nash Dep. 344:19-345:1 [REDACTED]
17 [REDACTED]); *id.*, Ex. 5 (Dworkin
18 Dep. 340:5-9). Universal’s interrogatory responses say the same: [REDACTED]
19 [REDACTED]
20 [REDACTED] *Id.*, Ex. 2 at
21 7 (UMG Response to Interrogatory No. 15). Because Plaintiffs put the give-and-take of their DSP
22 negotiations at issue, including as a discrete form of the actual damages claimed, Suno must be
23 entitled to develop testimony and hear from the other side of the table: Apple.

24 Apple’s contrary arguments do not withstand scrutiny. *First*, Apple asserts that its
25 negotiations with Plaintiffs “long predate Suno’s existence in 2021.” Mot. at 11:16-17; *see also*
26 *id.* at 2:25-28. As an initial matter, the evolution of these relationships over time—and specifically
27 how they changed after Suno launched publicly in 2023—is clearly relevant to assessing Plaintiffs’
28 claims. Regardless, Suno agreed to narrow this deposition topic to exclude past and signed

1 agreements and to limit the deposition topic to current and ongoing negotiations. Means Decl., Ex.
2 5 at 6.

3 *Second*, Apple asserts that it “does not currently exclude AI-generated content from its
4 royalty pool,” and that Suno “can see what is being paid for” Suno-identified tracks. Mot. at 11:23-
5 26. But [REDACTED]
6 [REDACTED]—underscoring the need to understand what Plaintiffs are demanding and
7 how Apple has responded. *See supra* § II.C. Apple’s position also conflicts with UMG’s testimony
8 that [REDACTED]
9 [REDACTED],” Campbell Decl., Ex. 5 (Dworkin Dep. 37:17-25), indicating both [REDACTED]
10 [REDACTED] and that Suno needs Apple’s testimony
11 to understand how it has been operationalized, an issue that only Apple can address.

12 *Third*, Apple asserts that “Suno has never identified any specific contractual provision at
13 issue.” Mot. at 12:2-3. That is false. The subpoena identifies four specific categories of provisions,
14 Means Decl., Ex. 8 at 8, and Suno’s counsel later identified the specific agreements on which Suno
15 intended to focus, *id.*, Ex. 5 at 10-12.

16 *Fourth*, Apple asserts that its existing declaration describes its AI policies, “none of which
17 support Suno’s theory.” Mot. at 12:3-5. Apple’s description of its own policies is not a substitute
18 for testimony about what Plaintiffs have demanded, what is being negotiated now, and how Apple
19 has implemented what it has agreed to—and Suno is entitled to test Apple’s characterization, not
20 simply accept it.

21 **2. Apple’s Assessment of the Commercial Viability of Its Platform**
22 **Without Plaintiffs’ Content Is Relevant**

23 Topic 4 goes to Suno’s copyright misuse defense. Apple argues that misuse “turns on
24 Plaintiffs’ conduct,” so Apple’s assessments “have no bearing on whether or how Plaintiffs
25 improperly leveraged their copyrights.” Mot. at 12:15-20. But whether Plaintiffs had the leverage
26 and ability to engage in the misuse Suno alleges is plainly relevant. *See Lasercomb Am., Inc. v.*
27 *Reynolds*, 911 F.2d 970, 979 (4th Cir. 1990) (finding copyright misuse where plaintiff attempted
28 “to use its copyright in a particular expression, the Interact software, to control competition in an

1 area outside the copyright”); *see also* *Covetrus, Inc. v. Actian Corp.*, No. 21-cv-00097, 2024 WL
2 4581285, at *2 (D. Me. Oct. 25, 2024) (permitting discovery relating to plaintiffs’ copyright
3 misuse defense to defendant’s counterclaim where plaintiffs alleged that defendant participated in
4 an impermissible licensing scheme).

5 A copyright holder whose catalog is easily replaced has little ability to extract concessions
6 beyond the scope of its copyright; one whose catalog is a “must have” has a great deal. Plaintiffs
7 will surely contend at trial that they could not possibly “misuse” their copyrights against a
8 company as large and powerful as Apple. Suno is entitled to test that contention against Apple’s
9 own view of how essential Plaintiffs’ catalogs are to Apple Music—particularly given Plaintiffs’
10 statements about their leverage and the [REDACTED]
11 they spend to extract AI-related terms. *See supra* § II.C; Campbell Decl., Ex. 5 (Dworkin Dep.
12 142:15-23); *id.*, Ex. 7 (Walker Dep. 236:7-16).

13 Apple’s own authority establishes the relevance of this testimony. In *Practice Management*
14 *Information Corp. v. American Medical Ass’n*, the Ninth Circuit found misuse because the AMA’s
15 license imposed a “limitation . . . on [the licensee’s] rights to decide whether or not to use”
16 competing products, and it emphasized that “[t]he adverse effects of the licensing agreement are
17 apparent.” 121 F.3d 516, 521 (9th Cir. 1997), *amended by* 133 F.3d 1140 (9th Cir. 1998). The
18 misuse inquiry thus includes evidence regarding the licensee (here, Apple), including the
19 restrictions imposed on it and their effects. Apple’s dependence on Plaintiffs’ catalogs, and the
20 constraints Apple faces in deciding whether to accede to Plaintiffs’ demands to suppress competing
21 music content, are squarely relevant.

22 Apple’s remaining objections fare no better. The term “commercial viability” is not vague,
23 Mot. at 12:8-9; the topic clearly defines what it covers, Means Decl., Ex. 8 at 8, and Apple
24 understood it well enough to object at length, *id.*, Ex. 5 at 24. Nor does the topic call for Apple’s
25 speculation, Mot. at 15:8-10; it seeks Apple’s actual analyses and the actual effects of any loss of
26 access that “has resulted.” Means Decl., Ex. 8 at 8. If no such assessments exist, the testimony will
27 not be extensive or burdensome, which weighs *against* quashing the topic. Further, Apple’s charge
28 of “a fishing expedition by a new entrant to the music industry,” Mot. at 12:10-11, ignores that the

1 testimony can be designated “Highly Confidential – Outside Counsel Only,” so that no one at Suno
2 would ever see it. *See infra* § III.D.

3 **3. Apple’s Approach to Streaming Fraud Is Relevant**

4 Apple’s principal argument against Topic 5 is that Suno has pointed only to Plaintiffs’
5 *public* statements about streaming fraud, rather than statements made “in this litigation.” Mot. at
6 12:26-13:4. That distinction is irrelevant. Plaintiffs’ position is their position—whether stated “in
7 this litigation” or not—and UMG’s Chief Digital Officer explaining to investors why UMG has
8 extracted anti-fraud and anti-dilution provisions from DSPs is hardly a “vague public statement.”
9 *Supra* § II.C. In any event, Plaintiffs’ witnesses testified repeatedly in this litigation that AI-
10 generated content is supposedly linked to streaming fraud. Campbell Decl., Ex. 7 (Walker Dep.
11 15:3-6 [REDACTED]
12 [REDACTED] *id.*, Ex. 8 (Kooker Dep. 62:21-25 [REDACTED]
13 [REDACTED])); *id.*, Ex. 4 (Nash Dep. 248:16-
14 23 ([REDACTED])

15 The record thus belies Apple’s assertion that Plaintiffs “disclaimed” any streaming-fraud
16 argument and “expressed confusion and surprise” when Apple raised it. Mot. at 2:20-23, 12:28-
17 13:1. Indeed, Plaintiffs’ own deposition subpoena to Apple included a streaming-fraud topic, and
18 according to Apple’s summary of its conferral, Plaintiffs “indicated they intend to stand on
19 whatever position Suno takes on this topic.” Means Decl., Ex. 7 at 3. Apple’s contrary
20 characterization rests entirely on its counsel’s description of an unrecorded call. Means Decl. ¶ 20.
21 Moreover, what Apple seems to be saying is that Plaintiffs’ public statements concerning
22 streaming fraud contradict what they told Apple in private. Resolving that conflict is all the more
23 reason for testimony from Apple.

24 Apple’s other arguments miss the mark. That Suno itself “is not accused of streaming
25 fraud,” Mot. at 2:16-18, is beside the point. Streaming fraud is relevant because Plaintiffs invoke
26 it to justify their attempts to prevent competition from non-infringing music content, conduct that
27 is at the heart of Suno’s copyright misuse defense. And Apple faults Suno for not identifying “what
28 restrictions it is claiming Apple took related to AI based on Plaintiffs’ supposed concerns about

streaming fraud.” *Id.* at 13:5-10. Exactly—that is why Suno needs the testimony. Suno cannot be faulted for failing to describe in advance the very facts it seeks to discover from the only entity that has them.

4. Apple’s Communications With Plaintiffs Regarding Suno Are Relevant

Communications between Plaintiffs and Apple about Suno or this case go directly to whether Plaintiffs have targeted Suno-generated content on Apple’s platform, what they have demanded of Apple with respect to it, and what they have told Apple about the claims in this case.

These are not hypothetical concerns: [REDACTED]

[REDACTED]. *See supra* § II.C.

Apple argues that the topic would “sweep in even a passing comment about Suno’s existence,” and that Apple’s “thoughts about Suno are not relevant.” Mot. at 13:12-14. But the topic is limited to Apple’s communications *with Plaintiffs and their agents*; it does not seek Apple’s internal views. And a “passing comment” by Plaintiffs to Apple about Suno is exactly the kind of evidence that would show whether Plaintiffs have pressed Apple to act against Suno-generated content. Nor must Suno identify “specific documents on which it wants a witness prepared,” Mot. at 13:18-19; Suno is equally entitled to testimony about any meetings or oral communications that may never have been reduced to writing.⁹

C. The Four Topics Are Not Equally Obtainable From Party Discovery

Apple suggests that if Suno can obtain *any* discovery from Plaintiffs on a topic, it should be barred from obtaining deposition testimony from Apple. Mot. at 14:2-15:18. That is not the law. Apple’s own authorities show that the preference for party discovery yields where the requesting party explains what it needs and why the non-party is the source. In *Soto v. Castlerock Farming & Transport, Inc.*—the case Apple cites for that preference—the court *denied* the non-party’s motion to quash in part, because the requesting party “established a need to obtain these

⁹Apple asserted in conferral that this topic implicates privileged communications. Means Decl., Ex. 5 at 14-15, 27. It has abandoned that objection, as it must: the topic concerns only communications between Apple and third parties.

documents from” the non-party and there was “no evidence” that compliance “would pose any significant burden.” 282 F.R.D. at 505-07. And in *In re Subpoena to Produce Documents of Clapp, Moroney*, the court denied the motion to quash the deposition subpoena (the witness having agreed to sit again), compelled the documents bearing on the claims notwithstanding the non-party’s confidentiality objection, and quashed only requests for which the requesting party had “made no showing as to relevance” and that sought a *party’s* knowledge, not the non-party’s. 2014 WL 3784112, at *1, *4 (N.D. Cal. July 31, 2014). Apple’s remaining cases involved information that sat with a party, or that the non-party had already provided, and requesting parties that offered no justification at all for going to the non-party. *Intermarine* involved a storage provider (Dropbox) asked about a party’s own account—on which that party was “the best witness”—and information already public or covered by a records certification. *Intermarine, LLC v. Spliethoff Bevrachtungskantoor, B.V.*, 123 F. Supp. 3d 1215, 1217-19 (N.D. Cal. 2015). In *In re Subpoena to Apple Inc.*, the requesting party sought Apple’s communications with the defendant, which the defendant also possessed, and “ha[d] not provided any reason” it could not get them from the defendant. 2014 WL 2798863, at *3 (N.D. Cal. June 19, 2014). By contrast, here [REDACTED]

[REDACTED] See *supra* § II.C.¹⁰

Indeed, the testimony Suno seeks can only come from Apple. On Topic 2, every negotiation has two sides, and Plaintiffs’ account of their own demands is no substitute for the account of the

¹⁰ Apple’s other authorities are similarly inapposite. In *Electronic Scripting Products, Inc. v. HTC America, Inc.*, the non-party had already sat for “a broad and lengthy deposition,” the requesting party offered “little more than labels and conclusory statements,” and the topics sought the non-party’s own business information “without even a hint of relevance” to the claims. 2021 WL 3773607, at *1, *3-4 (N.D. Cal. Aug. 25, 2021). In *Personal Audio LLC v. Togi Entertainment, Inc.*, the information sought—whether the defendants had funded or assisted the non-party’s patent challenge—“should be in the possession of the party defendants,” and its relevance turned on a ruling the Patent Trial and Appeal Board had not yet made. No. 14-mc-80025 RS (NC), 2014 WL 1318921, at *2-3 (N.D. Cal. Mar. 31, 2014). In *Price v. Peerson*, a pro se plaintiff sought testimony from Department of Justice employees about a video recording that did not exist, after he had already deposed the responsible agency’s witness, from deponents with “less or no information” than the party. No. CV 13-03390, 2014 WL 12687411, at *1 (C.D. Cal. Apr. 8, 2014). In *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, the requesting party conceded it did “not know whether [the witness] has relevant information.” 300 F.R.D. 406, 411 (C.D. Cal. 2014). None of that describes this case.

1 counterparty that received them. For example, Apple’s unique perspective on licensing Plaintiffs’
2 copyrighted works—including whether Apple considered licensing the Plaintiffs’ works for its
3 own AI-related projects, or whether Apple’s licensing position was influenced by the emergence
4 of Suno—are relevant to Suno’s fair use defense, including “the effect of the use upon the potential
5 market for or value of the copyrighted work.” 17 U.S.C. § 107(4); *see also Harper & Row,*
6 *Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 566 (1985) (“This last factor is undoubtedly the
7 single most important element of fair use.”). Apple will also have unique testimony about its
8 approach to Plaintiffs’ demands that Apple restrict non-infringing AI-generated content, *see supra*
9 § II.C, which is directly relevant to copyright misuse and whether Plaintiffs are trying “to secure
10 an exclusive right or limited monopoly not granted by the Copyright Office.” *Practice Mgmt.*, 121
11 F.3d at 520 (quoting *Lasercomb*, 911 F.2d at 977-79). And while prior executed agreements have
12 been produced, Means Decl., Ex. 7 at 8-9, those agreements cannot possibly show what is being
13 negotiated now, what restrictions Apple currently faces, or how Apple has actually operationalized
14 the provisions it agreed to. Indeed, while [REDACTED]
15 [REDACTED], they could not answer many basic questions about the process or
16 Apple’s position. Campbell Decl., Ex. 7 (Walker Dep. 178:3-11 [REDACTED]
17 [REDACTED]
18 [REDACTED]); *id.*, Ex. 5 (Dworkin Dep. 33:16-18 [REDACTED]
19 [REDACTED]), 37:25-38:3 [REDACTED] Plaintiffs’
20 witnesses also repeatedly disclaimed the ability to testify about DSPs’ positions or how they have
21 implemented various provisions and restrictions on AI content. *Id.*, Ex. 6 (Gallien Dep. 75:20-76:4
22 [REDACTED]),
23 170:12-15 [REDACTED]); *see also id.*
24 (Gallien Dep. 76:16-22). Topic 7 is the same: Plaintiffs’ productions cannot capture oral
25 communications or Apple’s side of them, and [REDACTED]
26 [REDACTED]. *See supra* § II.C.

27 Topics 4 and 5 are even more plainly within Apple’s unique knowledge. Only Apple can
28 testify to *Apple’s* view of whether Apple Music would be viable without Plaintiffs’ catalogs. And

1 because Apple is the only entity to observe, detect, and combat actual streaming fraud that occurs
2 on its platform, that is a topic that must be explored with Apple itself. Plaintiffs’ witnesses concede
3 that fraud is “[REDACTED]” and handled differently “[REDACTED],” Campbell Decl.,
4 Ex. 4 (Nash Dep. 245:19-25); that their understanding of any AI-fraud link comes from what they
5 “[REDACTED],” *id.*, Ex. 5 (Dworkin Dep. 78:6-11); and [REDACTED]
6 [REDACTED], *id.*, Ex. 7 (Walker Dep. 120:5-18).

7 Apple misses the point in arguing that Plaintiffs can explain their reasons for demanding
8 contractual concessions. Mot. at 15:6-18. Suno seeks the facts—e.g., Apple’s dependence on
9 Plaintiffs’ catalogs and the reality of streaming fraud on Apple Music—against which those
10 reasons must be tested. Nor does it matter that Apple is “one of the many subpoenaed non-party
11 music services.” *Id.* at 3:8-10. Each DSP uniquely knows its own negotiations and its own
12 platform. *See Gonzales*, 234 F.R.D. at 685-86 (finding substantial need for the market leader’s
13 data even though other search engines were producing similar data, because the study “may be
14 significantly hampered if it did not have access to some information from the most often used
15 search engine”).

16 **D. Confidentiality Is Not a Bar to a Deposition**

17 An extensive protective order is in place in the Massachusetts Litigation. Campbell Decl.,
18 Ex. 13 (Amended Confidentiality Stipulation and Protective Order (“Protective Order”)). It
19 extends its protections to non-parties, *id.* ¶ 19, and includes a “Highly Confidential – Outside
20 Counsel Only” tier, *id.* ¶ 15, under which testimony cannot be shared with Plaintiffs’ or Suno’s
21 business personnel or with any other DSP. That fully answers Apple’s concern about its
22 “negotiating positions with the business partners that are parties to this litigation” and its
23 “competitive standing with other services.” Mot. at 3:14-16. Apple has identified no deficiency in
24 that order. To the contrary, under that very same protective order, Apple already produced data
25 and a declaration that it now calls highly sensitive, *see* Mot. at 5 n.3, 9 n.5, and further agreed to
26 let Plaintiffs disclose Apple’s “HIGHLY CONFIDENTIAL” information to Plaintiffs’ experts,
27 Means Decl., Ex. 7 at 6, 8-9.

28 Apple’s showing of confidentiality is also conclusory. Its declarant attests only in general

1 terms that Apple treats its negotiations, its streaming-fraud policies, and its internal assessments
2 “to the extent any exist” as confidential. Decl. of Sam Bottoms, Dkt. 1-10 (“Bottoms MTQ Decl.”)
3 ¶¶ 4-6. But confidential commercial information is not immune from discovery, as the court
4 recognized in *Gonzales v. Google, Inc.*, the case on which Apple principally relies. Mot. at 10:18-
5 23, 16:11-12. There, the court ordered production, explaining that “the selective disclosure of
6 protectable trade secrets is not per se unreasonable and oppressive, when appropriate protective
7 measures are imposed,” and directing that the information “be subject to the protective order in
8 the underlying case.” *Gonzales*, 234 F.R.D. at 686, 688 (internal quotation marks omitted). The
9 same result follows here: Suno has shown a substantial need for testimony from one of Plaintiffs’
10 largest DSP partners, *see supra* §§ III.B-C, and the appropriate condition is designation under the
11 existing Protective Order.¹¹

12 Apple’s concern about streaming-fraud detection methods is likewise misplaced. Apple
13 asserts that if “the ‘how’ behind Apple’s detection and security methods regarding streaming
14 fraud” became public, “malicious actors would plot ways to bypass Apple’s security measures.”
15 Mot. at 15:25-27; *see also* Bottoms MTQ Decl. ¶ 5. Suno is not interested in the “how,” and Apple
16 never raised this concern in its written meet-and-confer correspondence. *See Means Decl.*, Ex. 5
17 at 4, 14, 24. To eliminate any doubt, Suno agrees that the technical details of Apple’s detection
18 and security methods are outside the scope of Topic 5. Suno seeks only (1) the categories of
19 streaming fraud of which Apple is aware; (2) generally, how Apple responds to streaming fraud;
20 and (3) whether Apple is aware of any link between AI-generated content and streaming fraud and,
21 if so, what that link is. None of that would reveal how Apple’s security measures work.

22 Apple’s reliance on *Philhower v. Philhower* is misplaced. The subpoenas there sought
23 fourteen years of personnel files for up to 100 non-party employees and an individual’s personal
24 bank records, implicating constitutional privacy rights; the requesting party had refused to narrow
25 them; and the court found the asserted relevance “at-best speculative.” 2024 WL 4720932, at *3-
26

27 ¹¹Similarly, in *Waymo*, the court compelled the plaintiff’s commercially sensitive deal
28 documents on an outside-attorneys’-eyes-only basis, explaining “that the documents are
commercially sensitive does not make them non-discoverable.” 2017 WL 2929439, at *2.

1 6. Moreover, the court specifically noted the plaintiffs’ production of protected material in a
2 separate state-court action (which the defendants argued violated the protective order at issue) in
3 concluding that the protective order was not a sufficient safeguard. *Id.* at *5-6. Apple omits that
4 predicate, Mot. at 16:8-10, and nothing comparable has happened here.¹²

5 **E. Apple Has Not Shown Any Undue Burden**

6 Apple invokes Rule 45’s “undue burden” standard, Mot. at 10:4-16, but identifies no actual
7 burden in preparing a witness on four narrow topics. Neither of its declarants says anything about
8 the time, cost, or effort that would require. *See generally* Means Decl.; Bottoms MTQ Decl. That
9 silence is telling, because Apple bears the burden on this point. *See supra* § III.A.

10 Apple instead relies on the cumulative history of “six subpoenas,” “over 90 emails,” and
11 “over 10 conferrals.” Mot. at 1:13-18. But Suno served only two subpoenas: a limited document
12 subpoena and a limited deposition subpoena, which has now been winnowed down to four narrow
13 topics. Apple’s gymnastic attempts to warp the procedural history—such as counting separately a
14 single deposition subpoena that Suno was forced to serve again with a new date after Apple refused
15 to present a witness, *see* Means Decl. ¶¶ 16, 23 (conceding the re-served subpoena is “identical to
16 the original except for the date”)—should be rejected. *See* Mot. at 1:14 (claiming “six subpoenas”).

17 **F. A Protective Order Is Also Inappropriate**

18 Apple does not explain what protective order it seeks or how that relief differs from its
19 motion to quash. To the extent Apple seeks to forbid the deposition entirely, its request is the
20 motion to quash by another name, and it fails for the same reasons. Apple has not made the
21 particularized showing of specific harm that its own authorities require, *see supra* § III.A, and the
22 protective orders it cites bear no resemblance to this case. *See* Mot. at 16:21-17:7; *Capriotti*, 2012
23 WL 2994244, at *1-3 (improperly noticed depositions of individual IRS employees, rather than
24 the government plaintiff, on matters the party lacked standing to contest); *Fausto*, 2008 WL

25
26
27 ¹² *SPS Technologies, LLC v. Briles Aerospace, Inc.* is likewise inapposite: the non-party there was
28 a direct competitor of both parties, documented its confidentiality measures in detail, and was
asked about its own unsuccessful efforts to qualify a competing product—information that was
“duplicative or superfluous” to evidence already before the court. 2019 WL 13108018, at *1-2
(C.D. Cal. June 24, 2019).

4793467, at *1-2 (deposition of opposing counsel of record, which was subject to a heightened test for attorney depositions that the issuing party failed to meet).

G. Transfer Pursuant to Rule 45(f)

Rule 45(f) permits the court where compliance is required to transfer a motion to the issuing court “if the person subject to the subpoena consents or if the court finds exceptional circumstances.” Fed. R. Civ. P. 45(f). The schedule in the underlying litigation is brisk. Fact discovery will close on November 20; expert disclosures are due on January 28, 2027; and dispositive motions are due in June 2027. *UMG Recordings, Inc. v. Suno, Inc.*, No. 1:24-cv-11611-FDS (D. Mass.), Dkt. 284. Suno’s priority is therefore to obtain all outstanding discovery as soon as possible, including Apple’s deposition on the four disputed topics. Given that this dispute is already on file in this district and is set for hearing on December 1, Suno respectfully submits that transfer is not appropriate and that this Court should resolve the pending dispute.

IV. CONCLUSION

For the foregoing reasons, Suno respectfully requests that the Court deny Apple’s Motion in its entirety and order Apple to produce a designee to testify on Topics 2, 4, 5, and 7 of the deposition subpoena, as narrowed during the parties’ meet-and-confer discussions, within fourteen days of the Court’s order or on another date agreed by the parties, subject to designation under the Protective Order.

Respectfully Submitted,

DATED: October 27, 2026

CAMPBELL FIRM, PC

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