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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ELON MUSK, et al.,

Plaintiffs,

v.

SAMUEL ALTMAN, et al.,

Defendants.

Case No. 4:24-cv-04722-YGR

OPENAI DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

Date: May 28, 2025
Time: 10:00 a.m.
Courtroom: 1 – 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

INTRODUCTION

Defendants Samuel Altman, Gregory Brockman, OpenAI, Inc., OpenAI L.P., OpenAI, L.L.C., OpenAI GP, L.L.C., OpenAI OpCo, LLC, OpenAI Global, LLC, OAI Corporation, LLC, OpenAI Holdings, LLC, OpenAI Startup Fund Management, LLC, OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P., OpenAI Startup Fund SPV GP I, L.L.C., OpenAI Startup Fund SPV GP II, L.L.C., OpenAI Startup Fund SPV GP III, L.L.C., OpenAI Startup Fund SPV GP IV, L.L.C., OpenAI Startup Fund SPV I, L.P., OpenAI Startup Fund SPV II, L.P., OpenAI Startup Fund SPV III, L.P., OpenAI Startup Fund SPV IV, L.P., Aestas Management Company, LLC, and Aestas LLC (the "OpenAI Defendants") respectfully request that the Court take judicial notice of the following documents attached to the accompanying Declaration of David J. Wiener in Support of the OpenAI Defendants' Motion to Dismiss (the "Wiener Declaration") pursuant to Federal Rule of Evidence 201:

1. A true and correct copy of the complaint filed on February 29, 2024 in the case captioned *Musk* v. *Altman, et al.*, Case No. CGC-24-612746 (S.F. Sup. Ct.), attached as Ex. A to the Wiener Declaration;
2. A true and correct copy of the request for dismissal filed on June 11, 2024 in the case captioned *Musk* v. *Altman, et al.*, Case No. CGC-24-612746 (S.F. Sup. Ct.), attached as Ex. B to the Wiener Declaration; and
3. A true and correct copy of the opposition to demurrer filed on April 10, 2024 in the case captioned *Musk* v. *Altman, et al.*, Case No. CGC-24-612746 (S.F. Sup. Ct.), attached as Ex. C to the Wiener Declaration.

ARGUMENT

Under the Federal Rules of Evidence, a district court may take judicial notice of matters that are either (1) "generally known within the trial court's territorial jurisdiction" or (2) capable of accurate and ready determination by resort to "sources whose accuracy cannot reasonably be questioned." *See* Fed. R. Evid. 201(b)(1)-(2).

The Court may take judicial notice of the complaint, request for dismissal, and opposition to demurrer filed in *Musk* v. *Altman* (Exhibits A, B, and C) under this governing standard. Each of

these documents is a publicly available court filing in a related legal proceeding. It is well established that courts "may take judicial notice of court filings" in other actions. *See, e.g.*, *Reyn's Pasta Bella, LLC* v. *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of briefs, a hearing transcript, and "several other pleadings, memoranda, [and] expert reports" filed in related litigation); *Burbank-Glendale-Pasadena Airport Auth.* v. *City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking "judicial notice of pleadings filed in a related state court action"); *In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014) (taking judicial notice of court filings from bankruptcy proceeding).

Musk's complaint in California Superior Court (Ex. A), his voluntary request for dismissal of the complaint (Ex. B), and his opposition to defendants' demurrer to the complaint (Ex. C) all furnish relevant context for the claims Plaintiffs have asserted in this action, many of which bear substantial legal and factual similarity to the claims Musk asserted in the earlier state court action. Because these prior filings are publicly available and not reasonably subject to dispute, the Court can take notice of them in considering the OpenAI Defendants' concurrently-filed motion to dismiss.

For the foregoing reasons, the OpenAI Defendants respectfully request that the Court take judicial notice of Exhibits A-C to the Wiener Declaration.

Date: January 31, 2025

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/s/ Jordan Eth

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