JORDAN ETH (CA SBN 121617)
JEth@mofo.com
DAVID J. WIENER (CA SBN 291659)
DWiener@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

WILLIAM SAVITT (admitted *pro hac vice*)
WDSavitt@wlrk.com
SARAH K. EDDY (admitted *pro hac vice*)
SKEddy@wlrk.com
NATHANIEL CULLERTON (admitted *pro hac vice*)
NDCullerton@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000

Attorneys for 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

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

REQUEST FOR LEAVE TO FILE SUPPLEMENTAL MATERIAL IN SUPPORT OF OPENAI DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Local Rule 7-3(d), 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 the Court's permission to file in support of their Opposition to Plaintiffs' Motion for a Preliminary Injunction a copy of a "letter of intent" from Plaintiffs' counsel to the Board of Directors of OpenAI, Inc., dated February 10, 2025. *See* Ex. A.

The letter, sent on behalf of a group of private investors led by Elon Musk, in his capacity as CEO of Plaintiff xAI, purports to make an unsolicited bid "to acquire all assets . . . of OpenAI, Inc." *Id.* at 1. The investors backing Musk's takeover bid include private equity firms managed by Antonio Gracias and Gavin Baker, who have submitted declarations in support of Plaintiffs' motion for a preliminary injunction. *See* Dkt. Nos. 73-31, 73-33; *see also* Ex. A at 1, 3.

Musk's purported takeover bid cannot be reconciled with the charitable trust claim he is advancing in this Court, or the injunction he is seeking on the back of that claim. In this Court, Musk argues that OpenAI, Inc.'s assets cannot be "transferred away" for "private gain." Dkt. No. 46 (PI Mot.) at 17. Accordingly, he seeks an injunction barring any "conversion" of OpenAI, Inc. into a "for profit enterprise," or any effort to "achieve the same end" by "transferring any material assets, including intellectual property owned, held, or controlled by OpenAI, Inc." *Id.* at ii, 17; *see also* Dkt. No. 46-25 (Proposed Order) at 8.

But out of court, those constraints evidently do not apply, so long as Musk and his allies are the buyers. Musk would have OpenAI, Inc. transfer all of its assets to him, for his economic benefit and that of his competing AI business and hand-picked private investors.

The OpenAI Defendants respectfully submit that Musk's February 10 letter further exposes Plaintiffs' preliminary injunction motion as an improper bid to undermine a competitor.

Date: February 12, 2025

MORRISON & FOERSTER LLP

/s/ Jordan Eth

JORDAN ETH (CA SBN 121617)
JEth@mofo.com
DAVID J. WIENER (CA SBN 291659)
DWiener@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

WILLIAM SAVITT (admitted *pro hac vice*)
WDSavitt@wlrk.com
SARAH K. EDDY (admitted *pro hac vice*)
SKEddy@wlrk.com
NATHANIEL CULLERTON (admitted *pro hac vice*)
NDCullerton@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ
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