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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Yvonne Rodriguez Gonzalez, Judge

ELON MUSK, et al.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	**NO. 4:24-CV-04722-YGR**
	)	
SAMUEL ALTMAN, et al.,	)	
	)	
Defendants.	)	
	)	

Oakland, California
Friday, April 4, 2025

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued on following page.)

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Friday - April 4, 2025 **1:55 p.m.**

P R O C E E D I N G S

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THE COURT: Good afternoon.

THE COURTROOM DEPUTY: Thank you. Please be seated. Good afternoon.

Your Honor, now calling the civil matter 24-CV-4722-YGR, Musk versus Altman, et al. Parties please step forward at the lecturns and state your appearances for the record starting with the plaintiff.

MR. TOBEROFF: Good afternoon, Your Honor. Marc Toberoff for the plaintiffs.

THE COURT: Good afternoon.

MR. COHEN: Good afternoon, Your Honor. Russell Cohen for the Microsoft defendants, and with me at counsel table is Nisha Patel and Jay Jurata.

THE COURT: I see a lot of people over there.

MR. COHEN: On this side Ms. Patel and Mr. Jurata.

THE COURT: Okay.

MS. EDDY: Good afternoon, Your Honor. Sarah Eddy for the OpenAI defendants, and with me today are William Savitt, Jordan Eth, Will Frentzen --

MR. FRENTZEN: Good afternoon, Your Honor.

THE COURT: Mr. Frentzen.

MS. EDDY: -- and Kelsey Borenzweig.

THE COURT: Okay. All right. Let's see where we are. I have a couple of questions, and then we will pull together a program and schedule.

One is that -- and this is to -- let me get your names in front of me again -- I guess you, Ms. Eddy. The OpenAI position included significantly more claims than the plaintiff but was silent on count 17 and count 18. I didn't know if that was a mistake or if that was intentional in terms of a trial. So 17 is the 17200 UCL, and 18 is the false advertising.

MS. EDDY: Yes, Your Honor. That was deliberate to have left those out, and the reason is with respect to count 17, as we read that count, it covers the entire landscape of the rest of the complaint, so it seems to be capturing in all the antitrust claims and other aspects, as well.

Count, I think it was 18, is the Lanham Act count, I believe.

THE COURT: Well, there are two Lanham Act counts, count 18 and count 19. You included 19, which is false advertising under 17500, and you did not include count 18, false advertising, under 1125.

MS. EDDY: The reason for that is that the factual predicates that are asserted in support of the two claims are distinct, so we propose to include the claim that has the factual predicate that essentially mirrors the other allegations that would be --

THE COURT: Well, what's the difference?

MS. EDDY: With respect to count -- sorry, I want to make sure I get them in the right order -- the federal Lanham Act count, that one is predicated on representations concerning safety over the years.

THE COURT: They're both federal Lanham Act claims, so that doesn't help me when you're trying to distinguish.

MS. EDDY: Sorry, Your Honor. Let me just pull up the actual ...

Right. So count 19 is the one that, as we understand it, is asserting a similar factual predicate. So it says that there were false representations made by OpenAI in connection with its init' -- same, same set of false representations that are alleged as the predicate for the charitable trust claim and for some of the contract claims and the fraud claims.

Whereas count 18 is against a broader set of defendants and also predicated on a number of different safety statements over the years.

THE COURT: All right. I have -- my notes indicate, my chart indicates that they're against the same set of defendants, but your second point may be accurate. I have the defendants the same.

MS. EDDY: I think the distinction, Your Honor, and I could be wrong about this, but I think the distinction is that count 19 names OpenAI, Inc. as the only OpenAI entity as a

defendant, and count 18 has a broader set of defendants. But as I've said, I could have that wrong.

THE COURT: Mr. Toberoff, do you agree that's how you structured your complaint?

MR. TOBEROFF: Yes, Your Honor.

THE COURT: Okay. All right. So my sense is that the defendants' approach to what should be in the trial makes more sense in terms of the facts and the factual issues that would be tried. So that means on this faster track we are looking at claims 1 through 8, 19 through 22, and 24 through 26. We still have motions to dismiss with respect to those claims, but we'll get to that in a minute.

Regarding footnote number 2 in the case management statement, I agree with the plaintiff that the Court dismissed count 23 based upon the statutory elements of the claim. Those may or may not be the same as the common law elements. They frequently are different. So maybe they remain, maybe they don't, but I haven't ruled on that as a matter of law. Those two things do not rise and fall together. So I'll address that to the extent that there's anything there in the motions to dismiss, but it's not automatic.

By contrast, I agree with the defendants in footnote number 1 on count 16. The Court did not limit its ruling to the issue of mootness. The Court explicitly said in its order this is an issue of standing as a threshold issue. There is no

standing, therefore there can be no claim, period. Count 16 is out.

Any questions, Mr.Toberoff?

MR. TOBEROFF: No, Your Honor.

THE COURT: Ms. Eddy?

MS. EDDY: No, Your Honor.

THE COURT: Mr. Cohen?

MR. COHEN: No, Your Honor.

THE COURT: Okay. I don't understand, and, you know -- well, if we were on a long road, then I can understand why briefing on a motion to dismiss takes two to three months. We're no longer on a long road, we're on a short road. I want a reply, if you want to file a reply, by next Thursday. There will be no oral argument on that motion to dismiss. You will get an order very quickly. You've agreed on the elements. That's where I'm going to focus on. I'm going to look at the complaint, I'll take into consideration your arguments, but you're just going to get an answer. Does it comply? Is it plausible, or not? Yes or no. It's going to be an outline order. It is going to be quick and to the point. Okay? That way everybody knows what's in the case and what's not. Understand?

MR. TOBEROFF: Understood, Your Honor.

MR. COHEN: Understood, Your Honor.

MS. EDDY: Understood.

And to clarify, Your Honor, that's April 10th would be the deadline?

THE COURT: Yes.

Okay. If Microsoft is in the case, phase 1, then you get to engage in discovery. If you're not, you don't, period.

So all the antitrust claims are going to be stayed. The motions to dismiss those claims are going to be deemed withdrawn and stayed because those claims are going to be bifurcated. Microsoft does not -- you don't get to just intervene. If you're a defendant in a case then you can engage in discovery, and you've brought a motion on every single claim asserted against you. So if you win, you're happy. You're not in the case.

Do I make myself clear?

MR. COHEN: May I speak to it, Your Honor?

THE COURT: Well, does it mirror what you put in your statement?

MR. COHEN: I think it is.

THE COURT: So let me be clear. Under what federal rule of evidence -- of civil procedure do you get to engage in discovery when there are no claims in which you are a party?

MR. COHEN: Your Honor --

THE COURT: Answer that question first.

MR. COHEN: FRCP 19, necessary party. And I would also point to the corporate code of California, 5142(b). So as

you know --

THE COURT: I don't remember seeing a reference to -- is the OpenAI bringing you in as a necessary party?

MR. COHEN: Well, I don't believe they are, Your Honor.

THE COURT: Okay. So, again, back to my question. What civil rule of procedure allows you to participate as a party when you're not one?

MR. COHEN: Your Honor, if I could cite the Court to corporate code 5142(b), which is the section under which the Musk plaintiff brings the breach of charitable trust claim. 5142(b) says --

THE COURT: Hold on.

(Reporter clarification.)

MR. COHEN: Apologies, Mr. Reporter. It's Russell Cohen for the Microsoft defendants.

THE COURT: I don't see their pictures. Sorry about that, Mr. Franklin.

All right. You said 5121? Again, it's not in your statement.

MR. COHEN: 5142(b), Your Honor. And that's correct, it's not in our statement.

In our statement, we made the argument that because of Microsoft's interests particularly in whatever remedy, if there is a remedy that the Court might order, Microsoft has an

interest in communicating to the Court the public interest, the impact --

THE COURT: You could write an amicus.

MR. COHEN: I understand that, Your Honor, but if I could read to you what 5142(b) says. It says: In an action under this section, the Court may not rescind or enjoin the performance of a contract unless, number one, all of the parties to the contract are parties to the action.

So the Musk plaintiffs are seeking to rescind or void all contracts. That's what paragraph 423 of the complaint says. And so Microsoft, as we explained in the preliminary injunction papers, is a party to a contract, a collaboration agreement, with OpenAI. It is the agreement by which Microsoft provides compute and funding, and OpenAI provides models and the output of its research and development. So this is one of the contracts that we understand that plaintiffs are challenging in this proceeding as a consequence of what they claim is a breach of trust.

So, Your Honor, what Microsoft is asking is not full party rights if it is not a defendant in any of the claims being tried. The point that we are trying to make is simply that there is a remedial interest that would impact Microsoft if the Court gets to a remedy. But there are also liability issues. Some of the conduct that plaintiffs say that OpenAI engaged in --

(Simultaneous crosstalk.)

THE COURT: -- necessary party, then. How can you bring a motion to dismiss on a claim where you're a necessary party?

MR. COHEN: Your Honor, we don't think any of these claims should go ahead against Microsoft, and we think we should be out of the case.

THE COURT: Assuming for purposes of argument it goes ahead.

MR. COHEN: Yes.

THE COURT: And you're saying you're a necessary party, but it should be dismissed against you because -- because what? Because you're not a necessary party? It's not logical.

MR. COHEN: Your Honor, I understand the Court's concern. What we are trying to convey --

THE COURT: What I'm saying is that your position is not logical.

MR. COHEN: And what I'm asking of the Court is that Microsoft have limited participation rights because there is an interest that can be affected by a remedy, and there are also conduct allegations in the case by the plaintiffs that relate to things that Microsoft may have done.

THE COURT: That's always the case. So what?

MR. COHEN: Well, the concern --

THE COURT: That is always the case. And the rules don't give you rights because someone else might be litigating and it might have some tangential effect if they're not seeking liability against you.

Now, if you're a necessary party, then you're in the case.

MR. COHEN: And, Your Honor, I understand that if the claims against us are out and they're not being litigated and we have a full opportunity to take discovery on those claims, if those claims ever go forward, then that mitigates our concern. But what we were trying to express in the status conference statement was that the effective remedy is an effect on the public interest that Microsoft could speak to, and I point to --

THE COURT: We can do that by amicus.

That doesn't give you the rights to engage in the manner in which you want to engage as a nonparty. So you're either part of the litigation or you're not. And if you're not, even if it has some impact on you, you can ask to be heard. I don't think that I generally deny people the opportunity to be heard, but I won't have you trying to get all of the benefits and none of the burdens of being a party. It's pretty simple.

So I'm going to issue a schedule. Do you want to -- and you took a tactical approach by not engaging in the schedule. Do you want to at this juncture, or do you want to waive that?

MR. COHEN: Your Honor, our client has a concern with

this proceeding going forward without it having an ability to participate. If our client is going to have the ability to participate and take discovery if these claims ever do go forward, then we are protected from that concern.

What we are concerned about is if findings are made in a phase 1 trial that could impact the liability of our client if there ever is a phase 2 trial. All of the claims against Microsoft are derivative of the claims against OpenAI. If there is no liability, if there is no contract, if there is no trust, there's no fraud, there's no breach of fiduciary duty, there really are no claims as alleged in this complaint that would go forward against Microsoft. That would be the end of it. And so there's no reason to be concerned under that scenario.

If there is a case that goes forward --

THE COURT: I'm going to stop you, because you're not answering my question. Usually at the end of the hearing I say, is there anything else, and when I say that, then you can engage on what you want to say. That wasn't my question. You need to listen to my question and answer that one.

We have a schedule, and I'm about to talk about the schedule. So do you want to engage in the schedule or not?

MR. COHEN: I do want to engage in the schedule, Your Honor, because you haven't yet ruled on the motion to dismiss, and there may be claims against Microsoft that are going

forward. So, yes.

THE COURT: So you will get -- like I said, you'll get a ruling pretty quickly on those, assuming that there's something going forward. Obviously if the whole thing is thrown out -- and I doubt it will be. I think it will get trimmed, but I doubt the whole thing will get thrown out. It's not clear to me whether or not Microsoft will participate, but let's work through this, then.

Discovery opens today under your proposal, correct?

MS. EDDY: Correct.

MR. TOBEROFF: Correct, Your Honor.

THE COURT: So ordered.

MR. TOBEROFF: Your Honor, before we get into the schedule, may I just speak to the issue of the number of claims that are the subject of the expedited trial?

THE COURT: I'll give two minutes.

MR. TOBEROFF: So we -- our proposal was consistent with the Court's order which focused on an expedited trial as to those claims that it viewed are in the public interest having to do with the --

THE COURT: I'm not going to try this case three times, Mr. Toberoff. All of the claims that I've identified that were identified by OpenAI arise out of the same set of facts. You will not get, neither side or any three of you are going to get two bites at the apple. We are going to have one

jury who are going to decide all of these facts which relate to all of these claims, whichever ones survive. And like I said, it is not clear to me that all of them survive.

MR. TOBEROFF: I understand, Your Honor.

THE COURT: So that is what we are going to do.

Now, if you cannot address all those claims as quickly as you proposed, you let me know that now.

MR. TOBEROFF: That was my point, Your Honor. This schedule that we've set forth is a schedule, in our view, that was based on what we believed the trial would include based on your order, which is the breach of charitable trust --

THE COURT: That's not what it said, because it says the parties propose, and that's a joint recommendation. It didn't give me two sets of dates, and the defendants had all of these claims identified.

MR. TOBEROFF: I understand. I'm just explaining --

THE COURT: All right.

MR. TOBEROFF: -- what went into it from our end.

Now that there are going to be more claims included, I think it impacts the schedule and impacts the number of witnesses just as a practical matter.

THE COURT: Okay.

MR. TOBEROFF: And we didn't want to burden the Court with duplicate sets of everything. We wanted to try to come to an agreement with opposing counsel rather than have dueling

positions on too many things.

THE COURT: Well, I spent time trying to understand your perspectives. So now I don't have a full picture, but we can work through it.

So discovery opens today.

I think that if I can have ... you'll have an answer on this motion for summary judgment by the end of the month. No later than that; not sooner. So answers probably will be due within two weeks. You've had this case for a while. You've seen the claims. It's not at if these -- if these are all -- not all of them. It's not like these are complicated claims. You know what the standard affirmative defenses are. You should have some view. It should not take you 30 days to answer a complaint. So you're going to get 14 days to answer the complaint.

MS. EDDY: Your Honor, may I just speak to that briefly? Because the proposal we had made was that we would -- we would file an answer by next week, but respecting those claims --

THE COURT: I thought you were only filing an answer as to some of the claims, not all of them.

MS. EDDY: Right. As to the claims that as to which the motion to dismiss has been denied already.

THE COURT: Right; but there are a number of things that I haven't ruled on.

MS. EDDY: I agree, Your Honor. But do you mean 14 days from the ruling on the motion to dismiss?

THE COURT: Correct.

MS. EDDY: Oh, I'm sorry, I misunderstood. Okay.

THE COURT: Okay. You'll exchange initial disclosures April 11th. That's ordered.

April 10th is the replies in support of the motions to dismiss.

Are there counterclaims that are being contemplated by the defendants that are not just the opposite of the claims that are being asserted?

MS. EDDY: There are counterclaims being contemplated by the OpenAI defendants that arise from the same narrative and underlying facts as are asserted in the claims that would otherwise be going to trial.

THE COURT: Well, are they merely the opposite of what the plaintiffs are alleging?

MS. EDDY: No, Your Honor, they're not merely the opposite.

THE COURT: So give me an example.

MS. EDDY: So, for example, a claim alleging unfair and fraudulent practices arising from Mr. Musk's campaign of harassment against OpenAI beginning a couple of years ago and culminating in his recent bid -- I put that in air quotes -- for the purchase of OpenAI, Inc.'s assets.

THE COURT: Okay. What else?

MS. EDDY: The only other counterclaim that is being contemplated right now would be a tortious interference with prospective economic advantage arising out of that same underlying fact pattern.

THE COURT: Anything else?

MS. EDDY: No, Your Honor.

THE COURT: Okay. So how much time do you all want to complete document discovery? Sounds like you want beyond June 12th. So what is it that you want?

Mr. Toberoff?

MR. TOBEROFF: I would say an additional 30 days.

THE COURT: Okay. July 14th, does that ... any comments?

MS. EDDY: No, Your Honor, except I guess to clarify.

THE COURT: I'm just going off your own chart.

MS. EDDY: And our proposal had been to complete fact discovery as of July 3rd in order to permit the other steps in the schedule. So as long as those are sort of moving as well, then ...

THE COURT: Well, we're going from the top to the bottom here. So I'm at line 8; that's at line 11. Are you with me?

MS. EDDY: I am, Your Honor.

THE COURT: Okay. He's suggesting 30 days after

June 12th. Do you have an objection to that? Do you want more time?

MS. EDDY: No, we do not want more time.

THE COURT: Any comments?

MR. COHEN: No, Your Honor.

THE COURT: All right. So substantial completion of document discovery, then, July 14th.

Under this approach you had fact depositions beginning a week later. Does that still work? That would be July 21st. Agree, or is someone asking for a different date?

MR. TOBEROFF: No, Your Honor.

THE COURT: No, you don't agree with me, or, no, you're not asking?

MR. TOBEROFF: No, we're not asking. I would like to avoid a double negative. We can move the dates by 30 days so they follow in the same progression.

THE COURT: So the same progression would be one week. Is that fine with you? Depositions start July 21st.

MR. TOBEROFF: I think two weeks would be better.

THE COURT: Mr. Cohen?

MR. COHEN: That's fine, Your Honor.

MS. EDDY: That's fine, Your Honor.

THE COURT: All right. July 28th.

The next is the close of fact discovery you had two weeks after the depos. Now, are you going to have -- there are many

counts, and you say you're contemplating an even wider scope with the counterclaims. Can you get all the depositions done in two weeks?

MS. EDDY: We believe we can, but Mr. Toberoff may have a different view.

MR. TOBEROFF: I believe two weeks is too tight. I think three weeks would make more sense.

THE COURT: Okay. Mr. Cohen, any objection?

MR. COHEN: No objection, Your Honor.

THE COURT: All right. Three weeks, then, is August 18th. That would be the same -- under your approach, that would be the same deadline to identify your opening experts. Everybody agree that that still works, August 18th, or do you want more time?

MR. TOBEROFF: I'd make it one week later, one or two weeks later.

MS. EDDY: That's fine with us, Your Honor.

MR. COHEN: It's fine, Your Honor.

THE COURT: Okay. Which do you prefer?

MR. TOBEROFF: Two weeks, please.

THE COURT: You want it before the Labor Day weekend or after? On the 2nd or -- the 2nd is Tuesday. The 29th is Friday. You want to enjoy your Labor Day weekend or not? Let's say you enjoy your Labor Day weekend. August 29th. Your experts aren't going to be around anyway.

Okay. Exchange of opening reports. And by the word "exchange," understand a couple of things:

One, well, as a side note, make sure you've read my standing order on civil cases. I require expert reports to be constructed in a particular way. That helps me with *Dauberts*, which probably wouldn't happen in this case. If it is, you are limited in the number that you can file. But you must have an executive summary in advance. That should be the very first thing. Tell me what the opinions are. Then the rest of the report identifies the basis for the opinion. It is the opinion that matters.

It is not a proper motion to strike a report for hearsay. Experts rely on hearsay all the time. That's kind of what they do. That's not the point. The point is what is the actual opinion.

The report does not come into evidence. So just because an expert puts you on notice of the basis for their opinion doesn't mean I should be getting a motion to strike the hearsay from their report. Okay? I want to know what the expert's opinions are upfront. Everything has to be numbered, so if you do have to bring a motion, you can cross-reference the actual paragraphs that you're referring to. Okay? Just make sure to read the standing order.

The other thing is when you exchange your opening reports, you must exchange and produce all background information at the

exact same time as the report. No one should have to ask for that. It should be automatically delivered to the other side.

Understood?

MS. EDDY: Understood.

MR. TOBEROFF: Understood, Your Honor.

MR. COHEN: Understood, Your Honor.

THE COURT: Okay. So under the current -- under your current approach you had those due eight days later. You still want eight days? Well, that's Friday. So that would be September 8th.

MR. TOBEROFF: I think that works, Your Honor.

MS. EDDY: That works, Your Honor.

THE COURT: All right. Mr. Cohen?

MR. COHEN: Yes, Your Honor, that works.

THE COURT: All right. September 8th.

And then rebuttal reports. Again, and these are simultaneous openings and simultaneous rebuttals. To the -- how many experts are you expecting? That kind of impacts the schedule.

From the plaintiff, what kind of experts do you expect?

MR. TOBEROFF: We expect to have now four, four experts.

THE COURT: Okay. What?

MR. TOBEROFF: We have a financial expert, financial damages expert. We would have a technical expert speaking to

AI safety and protocols for open sourcing, which dovetails with safety.

THE COURT: Okay.

MR. TOBEROFF: We would have an expert as to governance of a charity. And we might have two experts on that, one focused more on what is considered proper engagement in for-profit activities by a charity, but then also an additional expert having to do with -- possibly another expert on charity governance dealing with where you draw the line with respect to transactions engaged in by interested directors.

THE COURT: And the fourth?

MR. TOBEROFF: Those are the four, the financial expert, technical AI expert, and then two experts dealing with the charitable organizations.

MS. EDDY: We expect, Your Honor, to have between four and six experts at this point, an accounting and tracing expert, valuation expert, an expert focused on specialized aspects of the not-for-profit structure and governance, an industry expert to talk about the capital and compute demands and investor considerations in this space, and potentially an expert concerning open sourcing. And I should say one or more of those topics might entail two different experts.

THE COURT: Okay. Mr. Cohen?

MR. COHEN: Your Honor, it's not clear to what extent with the claims remaining against Microsoft there would be a

need for expert testimony. The principal issues would be knowledge and substantial participation. Those may not be expert issues. There may be expert issues relating to the tortious interference claim to the extent it's tried, and maybe there would be experts on some of the issues that Ms. Eddy identified, but at this point I'm not certain.

THE COURT: Okay. So a couple of notes as I hear you talk about your experts:

One, you will be on time limits, so I would suggest that you not have experts who are duplicative of each other. I don't tend to grant motions based upon 403, that it's -- wastes time. The reason I don't grant them is because you're going to have time limits, and that's all the time you're gonna get. I'm going to let you put on whatever it is you want to put on within the confines of time limits, and if the other side thinks it's a waste of time, well, that's only their opinion. So you'll be able to try your case that way.

Two, do not have -- to the extent that there are issues that you want your experts to testify on with respect to governance or factual issues that will help the jury, just remember to have them focus on the factual issues. Law professors who want to opine on what the law is will be struck. Don't waste your time. You can hire them as amicus to your team to brief issues, but law professors do not tell the jury what the law is. It's inappropriate in my view. And there may

be trial judges who allow it, but I do not. Okay?

All right. So that's a lot of experts, and I don't know how big your teams are. What you've told me is anywhere from 15, maybe more. So do you want to do that in two weeks, or do you want more time to do that?

MR. TOBEROFF: We're going to need more time to depose their experts if they have seven experts.

THE COURT: Well, right now we're at four to six, and we don't know about Microsoft.

Ms. Eddy?

MS. EDDY: Your Honor, I think we could conduct the expert -- if we're focused on the expert deposition period, I think we could do that in two weeks, but we're happy to accommodate more time.

THE COURT: All right. Three weeks, Mr. Toberoff?

MR. TOBEROFF: I think that sounds right, Your Honor.

THE COURT: In terms of the -- I didn't give you a date on the rebuttal reports. So under your proposal originally, you had said three weeks. Do you still want three weeks for rebuttals?

MR. TOBEROFF: Yes, Your Honor.

THE COURT: That would be September 29th, then, for exchange of rebuttal reports. And then three weeks for depos, that takes you to October 20th.

Does anyone anticipate needing expert testimony for

purposes of summary judgment?

MS. EDDY: We don't anticipate that, Your Honor.

THE COURT: Mr. Toberoff, do you anticipate needing expert testimony?

MR. TOBEROFF: I don't currently anticipate it.

THE COURT: Do you anticipate bringing a motion for summary judgment?

MR. TOBEROFF: Yes, Your Honor.

THE COURT: On what grounds?

MR. TOBEROFF: I'm reserving the right. I mean, I'm reserving the ability to bring a motion for summary judgment. I have -- it --

THE COURT: It is pretty rare that a plaintiff in this kind of case would bring a motion for summary judgment. That's why I'm asking the question.

MR. TOBEROFF: I understand.

There may be discrete issues in which we bring a motion, but I can't tell you. It depends what claims survive. And we may cross-move for summary judgment. We may move for summary judgment.

THE COURT: Given the schedule, you all probably have to parallel process in terms of motions for summary judgment. Things like fraud, implied contracts, breach of fiduciary duty, rarely would those things lend themselves to summary judgment. There might be something else, but those are pretty fact-

specific types of claims. So since you don't need expert testimony, from the date of close of fact discovery, by then you'll know what your case looks like.

Just give me a minute. I'm going to pull up my trial schedule.

All right. So I can meet with you all to talk about your summary judgment motions September 17th, 2025, at 2:00 p.m. You need to follow my process, again, in the standing order for filing our letters in advance of the conference. If you want to file a motion for a summary judgment, you need to file that letter by September 5th. Any opposing motion, I need your letter by September 10th. There are page limits. Make sure to follow the page limits. And then I'll talk to you on the 17th at 2:00 p.m.

MR. TOBEROFF: Your Honor, I'd like to clarify one point as to the motions for summary judgment. Given a little more thought, I would anticipate bringing motions on their counterclaims.

THE COURT: Well, like I said, those are pretty fact-based claims. We'll see what you have to say.

I'm just suggesting to you -- look, this is what I will tell you at the conference. There are frequently times when I encourage people to bring summary judgments when you have legal issues. I see them all the time in ERISA cases. I see them all the time in insurance cases. Why? Because there are no

disputes of fact. Does the insurance contract, you know, cover the claim at issue? Yes/no. We look at the language of the contract. It's in or out. These are really straightforward issues. Employment cases, rarely. Fraud cases, rarely. Anything where it's he said/he said or he said/she said, rarely.

So if you want to waste your time and paper on filing that motion, my general response is you get five pages back, half of which are standards, that say "denied," material dispute of fact. So I can't stop you from bringing it under the Ninth Circuit law, but I certainly don't have to write much.

Understood? Think about it.

MR. TOBEROFF: Understood, Your Honor.

MS. EDDY: Understood.

MR. COHEN: Understood, Your Honor.

THE COURT: And there is absolutely no way that I'm going to pick Mr. Altman's testimony over Mr. Musk or vise versa. That's just not my job. That's the job of a jury.

Okay. At the conference to the extent there is motion practice on summary judgment, we will determine the dates then.

Okay. If there are cross motions for summary judgment, I suspect we won't even be looking at those until the end of October, the beginning of November, and then I need to rule on them. So it is unlikely we can do a pretrial conference on November 21st.

Under my standing order, you need to exchange all of your exhibits and all of your trial filings approximately 30 days prior to the pretrial conference. That means all your motions, everything. So given what we have so far, when do you want to start engaging in that process? December? January?

MR. TOBEROFF: I think we're looking at now it would be in January.

MS. EDDY: That's fine for the OpenAI defendants.

MR. COHEN: Yes, same for Microsoft defendants, Your Honor.

THE COURT: Okay. So beginning of January? End of January?

MR. TOBEROFF: Towards the end of January would be preferred by us.

MS. EDDY: That's fine with us, Your Honor.

MR. COHEN: Fine, Your Honor.

THE COURT: Okay. So that means we are look at a March trial date.

All right. March 2nd. Your pretrial conference will be -- well, no, it's got to be later than that. All right. March 16th. That means your pretrial conference, we're going to put that February 20th, which is one week more time, because I don't exactly know what it is you're going to get me. That will be your pretrial conference, March -- or February 20th.

Your statements, then, are due February ... it's even

later. March 30th. For pretrial conference, then, March 13th. Your statement is due February 27th. That means you'll start exchanging everything by the end of January. Okay?

There was a note in your filing about reserving on judge versus jury. This is a jury trial. The only thing that is required by the Court to be resolved by the Court is the UCL. The UCL is not a jury claim. 17200 is a court claim. But what I always do with 17200s is ask for -- I give the jury questions and usually base the decision on the factual findings as a -- as advice to the Court regarding what the factual finding should be.

Unjust enrichment. If the breach of express contract survives, and I don't know that it will, you will be given an election date. Unjust enrichment is a form of restitution. It is not a standalone cause of action in California, but I let it through all the time. And I let it through all the time, because California law also allows you to plead it in the alternative. But it is an alternative claim. You will have to elect.

MR. TOBEROFF: Understood, Your Honor.

THE COURT: Okay? All right. I think we have a plan. Does anybody -- oh. You need to follow the federal rules. The federal rules say that limits on interrogatories include subparts. You are bound by that. So subparts are not in addition.

I think those were all the open questions I had based upon your joint case management statement. Is there anything else you wish to be heard on?

Now is the time, Mr. Cohen.

MR. COHEN: There is one thing, Your Honor. And we did flag this in the status report. It has to do with the defendants, Mr. Hoffman and Ms. Templeton. They were named in the Clayton Act Section 8 claim. That we understand has been dismissed. They were also named in the UCL claim, but the only predicate relating to them is the interlock. I would like for them to be out of this case.

THE COURT: I don't think there's a pending claim against them.

MR. COHEN: Well, I think there is. I think the plaintiffs have asserted that they have a damages claim. There are of course no damages under the UCL either. It is a restitutionary disgorgement or injunctive relief. So I don't believe there should be a claim against them, but I would like to clarify that they are out of the case and no longer defendants and have no further responsibilities.

THE COURT: Okay. Well, I don't -- I don't see how there is a pending claim against them.

Mr. Toberoff, to the extent that you believe there's a pending claim against them in light of my rulings, by next Friday file a brief that explains to me how they're still in

this case in light of my rulings. I thought part of your argument was that I hadn't fully dismissed the, I think it was, as I'm looking at footnote 1 -- I'm pulling up my order.

So according to my chart, I had those two defendants as being named in count 16, which I dismissed, and count 17. So I understand what you're saying. I mean, count 17 hasn't been ruled on, but count 16 has been dismissed because there's no standing. In his -- in the statement, the plaintiff was arguing that 16 was not fully dismissed because it was based on mootness, which I said earlier and clarified earlier today I disagree with. I didn't say -- in fact, I explicitly said that it's not -- well, I guess that went to the other one.

Okay. So what's the theory under the 17200 for those two individuals?

MR. TOBEROFF: Your Honor, I need to study that further, and if we don't submit a brief within a week addressing that, then they are no longer parties.

THE COURT: Okay. So file something, then. Today's the 4th, so file it by the 11th. If nothing is filed on the 11th, then, Mr. Cohen, send us a proposed form of order so that the docket is clear that all the claims as to them are dismissed.

MR. COHEN: Thank you, Your Honor.

MR. TOBEROFF: Thank you, Your Honor.

THE COURT: If there -- if he does file something, you

can file a response a week later, on the 18th. Okay?

Other issues, Mr. Cohen?

MR. COHEN: I don't have anything else, Your Honor. Thank you.

THE COURT: Okay. Other issues, Mr.Toberoff?

MR. TOBEROFF: Nothing further, Your Honor. Thank you.

THE COURT: Ms. Eddy, other issues?

MS. EDDY: Nothing further, Your Honor. Thank you.

THE COURT: Okay. I've not litigated with any of you, but I do see Mr. Frentzen in the courtroom. He spent a lot of time in this courtroom. And what I'm hoping, Mr. Frentzen, you and I have joked about this in the past, the criminal bar is more civil than the civil bar. As you know, it is always best for people to figure out what's important for trial and resolve their differences. Try not to bother the Court. We spent three months together in trial, and when he got involved in the case I didn't have to worry about discovery, which I appreciated. We're very, very busy.

So if people aren't being reasonable, Mr. Frentzen, I'm going to be asking you why.

MR. FRENTZEN: Understood, Your Honor.

THE COURT: All right. Anything else? No?

MR. TOBEROFF: Nothing further, Your Honor.

MS. EDDY: Nothing further, Your Honor. Thank you.

THE COURT: Okay. We're adjourned. Thank you.

VOICES: Thank you.

THE COURTROOM DEPUTY: Court is adjourned.

(Proceedings concluded at 2:56 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Tuesday, April 8, 2025



Stephen W. Franklin, RMR, CRR, CPE
Official Reporter, U.S. District Court