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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELON MUSK, et al.,

Plaintiffs,

v.

SAMUEL ALTMAN, et al.,

Defendants.

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

Assigned to Hon. Yvonne Gonzalez Rogers

PLAINTIFFS' RESPONSE RE: OPENAI DEFENDANTS' NOTICE (DKT. 157)

As the OpenAI Defendants note, Plaintiffs' application for relator status has received a preliminary denial from the California Attorney General's deputy, Dkt. 157, Ex. A, but that decision is not yet final. Plaintiffs have requested the Attorney General reconsider his deputy's decision for several key reasons. *See* Ex. 8. *First*, there is substantial public interest in this matter as demonstrated by multiple formal petitions from diverse coalitions, including a recent petition from fifty-five labor and non-profit organizations, urging the Attorney General's intervention. Exs. 1-7.[1] *Second*, his deputy's decision appears to misapprehend Musk and Zilis's First Amended Complaint and their *derivative* claims in this case. *Third*, the decision mischaracterizes or misunderstands Musk's recent assemblage of a consortium of investors to bid on OpenAI, Inc.'s assets to ensure fair market value for such assets and responsible control thereof—*contingent upon* Altman and other Board members persisting with their plan to sell those assets to Altman's for-profit company in what is undeniably a self-dealing transaction. In and outside this case, Musk has repeatedly asserted that he strongly prefers that the charity retain its current control of OpenAI and adhere to its founding principles and mission. *See* Dkt. 117 at 2. It is not clear whether Plaintiffs will secure a final decision from the Attorney General on these issues in time to include the self-dealing claim (Count 23) in the Phase One trial, but they are diligently seeking an expeditious resolution.

Failing reconsideration, Plaintiffs are evaluating the potential for state judicial review of the Attorney General's decision, as it prevents due representation of the People's interest in these proceedings concerning issues of public importance.

DATED: April 15, 2025

Respectfully Submitted,

TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff
Marc Toberoff

Attorneys for Plaintiffs Elon Musk, Shivon Zilis, and X.AI Corp.

[1] All "Ex." Citations are to the Declaration of Marc Toberoff, submitted herewith.