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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' RESPONSE TO MOTION FOR LEAVE TO FILE AN AMICUS BRIEF

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

Leave to file an amicus brief will be granted where the brief would "assist [the] court" in resolving the matter at issue by "supplementing the efforts of counsel [or] drawing the court's attention to law that escaped consideration." *Cody* v. *Ring LLC*, 718 F. Supp. 3d 993, 1004 (N.D. Cal. 2024) (quoting *Miller-Wohl Co.* v. *Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982)).

The OpenAI Defendants do not object to the filing of the former employees' proposed amicus brief. That said, the proposed brief does not "assist [the] court" in resolving the OpenAI Defendants' pending motion to dismiss, nor "draw[] the court's attention to law that escaped consideration" during prior, and now completed, briefing. *Id.* The proposed brief consists of factual assertions and personal opinions and cites no legal authority. It has no bearing on the legal sufficiency of the allegations in Plaintiffs' First Amended Complaint.

Confirming this, the brief says nothing in support of Plaintiffs' primary allegations of breach. Musk alleges that in 2019 OpenAI formed a for-profit entity, OpenAI, L.P, "to siphon assets from the non-profit" in violation of OpenAI's charitable mission. Dkt. 128 at 2-3. By contrast, proposed amici emphasize that this exact structure—"a 501(c)(3) public charity" that "controls several for-profit subsidiaries"—was "a crucial part" of OpenAI's "overall strategy," "critical to OpenAI's ability to attract and retain talent," and a "fundamental safeguard ensuring OpenAI would never stray" from its charitable mission. Dkt. 154-1 at 1, 2, 5, 11.

Proposed amici thus identify no past or present "breach" or harm to Musk or anyone else flowing from OpenAI's existing structure, which has been in place for over six years. Rather, proposed amici argue that a "violation" of OpenAI's "mission" *may* occur in the future *if* OpenAI were to "change . . . [its] corporate structure" to "remove[] the Nonprofit's controlling role." *Id.* at 2, 10-11. Proposed amici's views on a hypothetical organizational change—that has not yet occurred and may never occur—provide no support for, and are irrelevant to, Musk's allegations that OpenAI long ago breached purported commitments to him. In any event, OpenAI has made clear that the nonprofit will remain in place under any contemplated restructuring, and recently announced the formation of a NonProfit Commission to inform the organization's philanthropic

efforts and ensure that it continues to tackle urgent global challenges—from health and education to public service and scientific discovery.

Date: April 22, 2025

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/s/ Jordan Eth

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