United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ELON MUSK, et al.,

Plaintiffs,

v.

SAMUEL ALTMAN, et al.,

Defendants.

Case No. 24-cv-04722-YGR (TSH)

DISCOVERY ORDER

Re: Dkt. Nos. 210, 221

The OpenAI Defendants challenge 8VC's claw back of 8VC000001 to 8VC000034. The Court has reviewed the documents *in camera* and now **SUSTAINS** 8VC's invocation of the attorney-client privilege.

The primary substantiation of the existence of an attorney-client relationship between Marc Toberoff and 8VC is the declaration of 8VC's general counsel, Ian Shannon (ECF No. 221-2). Paragraphs 4 and 5 are sufficient to establish that there was an attorney-client relationship. This declaration is supported by paragraphs 3-5 of Toberoff's own declaration (ECF No. 221-1), even if these paragraphs on their own fall short of establishing that the investors actually hired him. Shannon's declaration establishes that fact in paragraph 4. Shannon's declaration is additionally persuasive because he is the general counsel of 8VC, and it is normal for in-house counsel to be the ones to retain outside counsel.

As for the documents themselves, without the declarations, they might be hard to understand. But with the declarations, it becomes clear that the legal advice Toberoff provided was almost entirely oral, and considering the subject matter, this is unsurprising. The documents are all communications surrounding the letter of intent that was ultimately sent to OpenAI. They are communications about having privileged phone calls and follow up after privileged phone calls

took place. The purpose of these communications was to coordinate and facilitate the provision of legal advice and follow up concerning that legal advice, even if the legal advice is (mostly) not contained in the emails themselves. The Court thinks this is sufficient to bring these communications within the attorney-client privilege and therefore sustains 8VC's claw back.

IT IS SO ORDERED.

Dated: July 30, 2025



THOMAS S. HIXSON
United States Magistrate Judge

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