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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ELON MUSK,

Plaintiff,

v.

SAMUEL ALTMAN, et al.,

Defendants.

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

OPENAI DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS COMPLAINT OF PLAINTIFF ELON MUSK

Date: November 12, 2024
Time: 2:00 p.m.
Courtroom: 1 – 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers
Compl. Filed: August 5, 2024

INTRODUCTION

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 that the Court take judicial notice of the following documents attached to the accompanying Declaration of David J. Wiener in Support of the OpenAI Defendants' Motion to Dismiss (the "Wiener Declaration") pursuant to Federal Rule of Evidence 201:

1. A true and correct copy of the complaint filed on February 29, 2024 in the case captioned *Musk* v. *Altman, et al.*, Case No. CGC-24-612746 (S.F. Sup. Ct.), attached as Ex. A to the Wiener Declaration;
2. A true and correct copy of the motion to strike filed on March 27, 2024 in the case captioned *Musk* v. *Altman, et al.*, Case No. CGC-24-612746 (S.F. Sup. Ct.), attached as Ex. B to the Wiener Declaration;
3. A true and correct copy of the opposition to demurrer filed on April 10, 2024 in the case captioned *Musk* v. *Altman, et al.*, Case No. CGC-24-612746 (S.F. Sup. Ct.), attached as Ex. C to the Wiener Declaration; and
4. A true and correct copy of the webpage, titled *OpenAI and Elon Musk*, published on March 5, 2024, and available at https://openai.com/index/openai-elon-musk/, attached as Ex. D to the Wiener Declaration.

ARGUMENT

Under the Federal Rules of Evidence, a district court may take judicial notice of matters that are either (1) "generally known within the trial court's territorial jurisdiction" or (2) capable of accurate and ready determination by resort to "sources whose accuracy cannot reasonably be

questioned." *See* Fed. R. Evid. 201(b)(1)-(2).

Judicial notice is appropriate under these governing principles with respect to each of the documents addressed in this motion.

The Court may take judicial notice of the complaint, motion to strike, and opposition to demurrer filed in *Musk* v. *Altman* (Exhibits A, B, and C), as they are publicly available court filings in a related legal proceeding. It is well established that courts "may take judicial notice of court filings" in other actions. *See, e.g.*, *Reyn's Pasta Bella, LLC* v. *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of briefs, a hearing transcript, and "several other pleadings, memoranda, [and] expert reports" filed in related litigation); *Burbank-Glendale-Pasadena Airport Auth.* v. *City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking "judicial notice of pleadings filed in a related state court action"); *In re Icenhower*, 755 F.3d 1130, 1142 (9th Cir. 2014) (taking judicial notice of court filings from bankruptcy proceeding).

Musk's complaint in California Superior Court (Ex. A), defendants' motion to strike certain demands for relief from that complaint (Ex. B), and Musk's opposition to defendants' demurrer to that complaint (Ex. C) all furnish relevant context for the claims Musk has asserted in this action, which are substantially similar but not identical to the ones he asserted in the earlier state court action. Because these prior filings are publicly available and not reasonably subject to dispute, the Court can take notice of them in considering the OpenAI Defendants' concurrently-filed motion to dismiss.

The Court may likewise take judicial notice of the webpage titled *OpenAI and Elon Musk* (Ex. D) because it is publicly available and its contents "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Courts have repeatedly recognized that publicly available materials on broadly accessible websites may be considered in ruling on a motion to dismiss. *See Perkins* v. *LinkedIn Corp.*, 53 F. Supp. 3d 1190, 1204-06 (N.D. Cal. 2014) (taking judicial notice of the contents of public webpages and explaining that "[p]roper subjects of judicial notice when ruling on a motion to dismiss include . . . publically accessible websites"); *see also In re Google Assistant Priv. Litig.*, 457 F. Supp. 3d 797, 813-14 (N.D. Cal. 2020) (taking judicial notice of a news report, Google's Terms of Service, Privacy

Policy, and a Google blog post); *Al-Ahmed* v. *Twitter, Inc.*, 603 F. Supp. 3d 857, 868-69 (N.D. Cal. 2022) (publicly accessible webpages such as a public post on Twitter and a press release page were "properly subject to judicial notice" in granting motion to dismiss). This webpage provides relevant context concerning Musk's new allegation that he abandoned OpenAI only after attempting (and failing) to have it merged with Tesla—in Musk's words, to use "Tesla as OpenAI, Inc.'s 'cash cow.'" ECF No. 1, Compl. ¶ 83. Musk did not include this contextual information in his previously filed action in California Superior Court; it appeared in his court filings only after OpenAI published the web post. The existence and authenticity of this publicly accessible webpage cannot reasonably be disputed, and the Court may thus properly take judicial notice of it in ruling on the OpenAI Defendants' motion to dismiss.

For the foregoing reasons, the OpenAI Defendants respectfully request that the Court take judicial notice of Exhibits A-D to the Wiener Declaration.

Date: October 8, 2024

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/s/ Jordan Eth

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