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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' MOTION IN LIMINE #2: TO EXCLUDE NEWS ARTICLES AND RELATED HEARSAY

Date: March 13, 2026
Time: 9:00 AM
Courtroom: 1 – 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

The OpenAI Defendants move to exclude Plaintiff's Trial Exhibits ("PX") 324, 362, and 363 (Exs. A-C of this motion), and to preclude testimony concerning the same. These exhibits are third party news articles and social media posts relating to (1) the removal and reinstatement of Sam Altman as CEO of OpenAI, and (2) OpenAI's safety practices. They are hearsay barred by Federal Rule of Evidence 802.

BACKGROUND

Plaintiff Elon Musk's claim rests on the (false) contention that OpenAI, Altman, and Greg Brockman made two "fundamental promises" to him a decade ago: that OpenAI would be "open-source" and "nonprofit." Ex. D (Musk Tr. 286:17-24). Plaintiff claims these supposed promises were "broken" when OpenAI purportedly transformed into a "closed source for-profit." *Id*. Musk testified that the "boiling point" for him was reached in January 2023 when OpenAI's nonprofit board of directors approved a $10 billion investment from Microsoft, which Musk says revealed to him that OpenAI wasn't what he thought it was. *Id.* 287:12-14. The directors who approved that transaction—confident they were acting in accordance with their fiduciary duties to the nonprofit and its mission—included Tasha McCauley, Helen Toner, and Shivon Zilis. Ex. E (McCauley Tr. 195:25-196:10); Ex. F (Zilis Tr. 264:15-18).

Alongside these claims, however, Musk appears intent on introducing evidence on collateral matters with little or no relevance to the issues to be tried. Musk plans to introduce evidence about certain now-departed directors' decision to remove (and immediately reinstate) Altman as CEO in November 2023, nearly a year after those same directors approved the Microsoft deal, and for purported reasons having nothing to do with that transaction. Musk also appears determined to paint artificial intelligence as a whole as a dangerous technology that is likely to harm jurors and their families. *See* MIL # 1.

To prop up these irrelevant collateral issues, Musk proposes to put in front of the jury news articles, op-eds, and social media posts that constitute inadmissible and prejudicial hearsay:

- Ex. A (PX 324) is an anonymously sourced *Wall Street Journal* article published March 28, 2025 that purports to recount the events surrounding Mr. Altman's dismissal and reinstatement as

CEO in November 2023, sensationally billed as "one of the wildest business stories of all time…" Ex. A at 3;

- Ex. B (PX 363) is a May 26, 2024 opinion piece in the *Economist* written by McCauley and Toner in which they seek to justify their removal and prompt reinstatement of Altman six months earlier (while also disclosing further hearsay from unnamed OpenAI employees); and
- Ex. C (PX 362) is a series of May 2024 tweets by Jan Leike, a former OpenAI employee, supplying his views on certain of OpenAI's safety practices. Leike is one of the few former OpenAI employees Musk *did not* subpoena during discovery—despite seeking documents from *61* other third parties. Leike was not deposed and will not be a trial witness.

ARGUMENT

Hearsay is a statement "the declarant does not make while testifying at the current trial or hearing," and that "a party offers in evidence to prove the truth of the matter asserted in the statement." Fed. R. Evid. 801(c). As this Court has recognized, "newspaper articles are classic hearsay and, in a court of law, cannot be relied upon for the truth of statements made therein." *Musk v. OpenAI, Inc.*, 769 F. Supp. 3d 1017, 1026 (N.D. Cal. 2025). That is precisely what Musk wishes to do with Exs. A-C. All are inadmissible under Rule 802.

Hearsay related to Altman's removal and reinstatement should be excluded. The 2025 *Wall Street Journal* article concerning Altman's removal and reinstatement (Ex. A) is hearsay and should be excluded. An excerpt from the writer's book, the article relies on "dozens" of anonymous sources to sensationalize events that occurred sixteen months before the article was published. Toner's and McCauley's after-the-fact recounting of their perspectives on these same events in the *Economist* (Ex. B)—published long after Toner and McCauley had resigned from OpenAI's board—is likewise patent hearsay; an out-of-court statement offered to establish the truth of the facts it describes. Fed. R. Evid. 801(c).

Musk now seeks to backdoor this hearsay into the trial record through his deposition designations. During McCauley's and Toner's depositions, Musk's counsel introduced both articles as exhibits, then incorporated the substance of the articles into leading questions, asking the witnesses to confirm whether the portions read were accurate, then using the articles to guide the

witnesses' testimony about the events in question. For example, during McCauley's deposition, counsel repeatedly read lengthy excerpts from the *Wall Street Journal*, relaying the reporter's account of the events, and then merely asking McCauley: "Is that description accurate?" *See, e.g.* Ex. E 81:21-82:8. Counsel used the same tactic when questioning Toner, introducing the *Economist* article as an exhibit, reading lengthy portions of it into the record, and then using those excerpts as a springboard for further leading questions that incorporated the substance of the hearsay. *See* Ex. G at 155:5-157:14.

None of this permissible. As the Ninth Circuit has emphasized, "a line of questioning that repeatedly incorporates inadmissible evidence can be just as improper as the direct admission of such evidence." *United States* v. *Sine*, 493 F.3d 1021, 1031–32 (9th Cir. 2007) (collecting authorities and rejecting "suggestive shortcut" of introducing hearsay through witness questioning); *United States* v. *Rusnak*, 981 F.3d 697, 707 (9th Cir. 2020) (improper to introduce "hearsay statements" on direct "in the guise of speaking questions"); *Thomas* v. *Stephens-Lyman, Denny, Caetana, & Turner*, 2007 WL 2669497, at *5 (E.D. Cal. Sept. 7, 2007) (striking deposition questions and testimony that "contain hearsay"); *United States* v. *Check*, 582 F.2d 668, 678 (2d Cir. 1978) (rejecting questioning and testimony that served "as a transparent conduit for the introduction of inadmissible hearsay"). Questions and answers from the McCauley and Toner depositions premised on the inadmissible hearsay in Exs. E and G to this motion should be stricken. Pursuant to the Court's pre-trial procedures, additional examples of objectionable questions and answers from these depositions will be submitted to the Court in the parties' forthcoming joint submission of disputes over designations and excerpts from discovery material.

Hearsay statements of former OpenAI employee should be excluded. Social media posts from May 2024 (Ex. C) by Jan Leike, a former OpenAI employee who left to join a competitor, made after he had left the company, should be excluded. *See United States* v. *Lindsay,* 931 F.3d 852, 867 (9th Cir. 2019) (affirming exclusion of Facebook messages as hearsay). Here again, Musk seeks to rely on out-of-court statements to prove the truth of matters collateral to the issues to be tried—to present unfounded criticism of OpenAI's approach to AI risks in 2024, nearly a decade after the two "fundamental promises" Musk alleges were made to him. Musk did not subpoena

Leike, receive any documents from him, seek his deposition, or name him as a trial witness. Musk should not be permitted to present Leike's views through social media posts that the OpenAI Defendants have had no opportunity to test and that qualify under no hearsay exception.

During the parties' meet and confer on this motion, Musk's counsel argued that Leike's posts were admissible for the non-hearsay purpose of demonstrating "notice" for statute of limitations purposes. That argument is unavailing. Musk contends that he was on notice of his claims in January *2023*, more than a year before Leike's posts. Dkt. 350 at 9 (Musk SJ Brief). He further contends that he hired counsel to begin investigating his claims in May 2023, still a year before Leike's posts. *Id.* Musk even sued OpenAI in state court before Leike's posts. *See* Complaint & Demand for Jury Trial, *Musk* v. *Altman*, CGC-24-612746 (Cal. Super. Ct. Feb. 29, 2024). The posts are irrelevant to Musk's purported "notice."

Date: February 24, 2026

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