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(Additional party and counsel on the next page)

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

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTIONS *IN LIMINE*

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The Court, having considered Motions *in Limine* filed by the OpenAI Defendants ("OpenAI") and Microsoft, and all papers and arguments submitted in support and opposition thereto, hereby ORDERS as follows:

OpenAI Defendants' Motion *in Limine* No. 1: The Court GRANTS OpenAI's Motion *in Limine* No. 1 and precludes all testimony from Plaintiff's proffered expert Dr. Stuart Russell. Dr. Russell's Opinions 1-4 do not satisfy the "fit" requirement of Federal Rule of Evidence 702(a) and will not "help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702(a). Dr. Russell's Opinions 1-4 are independently excluded under Federal Rule of Evidence 403. Dr. Russell's Opinion 3 is independently excluded under Federal Rule of Evidence 702(a)-(c) and Federal Rule of Civil Procedure 26(a)(2)(B) as unreliable and unsupported. Dr. Russell's Opinion 4 is independently excluded under Federal Rule of Evidence 702(a)-(c) as unreliable, speculative, and unsupported.

OpenAI Defendants' Motion *in Limine* No. 2: The Court GRANTS OpenAI's Motion *in Limine* No. 2. Plaintiff's trial exhibits 324 (MIL 2, Ex. A), 363 (MIL 2, Ex. B), and 362 (MIL 2, Ex. C) are excluded as inadmissible hearsay. Plaintiff's counsel is precluded from questioning witnesses concerning these exhibits at trial, or from designating deposition testimony based on or incorporating the contents of these exhibits (including MIL 2 Ex. E 81:21-82:8; MIL 2 Ex. G at 155:5-157:14 and similar designated testimony) for use at trial.

Microsoft's Motion *in Limine* No. 1: The Court GRANTS Microsoft's Motion *in Limine* No. 1 and precludes Plaintiff from offering any evidence or argument relating to Microsoft's Damages expert Dr. Arnold's family law related litigations and associated judicial findings.

Microsoft's Motion *in Limine* No. 2: The Court GRANTS Microsoft's Motion *in Limine* No. 2 and precludes Plaintiff's expert Professor David M. Schizer from offering testimony assessing the propriety of Microsoft's conduct in its dealings with OpenAI. This includes but is not limited to the express testimony that he provided in his deposition that Microsoft took advantage of OpenAI's alleged misconduct and acted improperly by: (1) offering to hire OpenAI employees after Mr. Altman's November 2023 firing; (2) suggesting or "vetoing" board candidates for

OpenAI; and (3) negotiating a "really, really, really good deal" with OpenAI. Schizer Dep. at 299:12-20; 304:14-24; 306:21-307:18.

Microsoft's Motion *in Limine* No. 3: The Court GRANTS Microsoft's Motion *in Limine* No. 3 and precludes Plaintiff's expert Dr. Paul Wazzan from offering Opinion 5 of his report and related testimony regarding his calculations of wrongful gains attributable to Microsoft. Dr. Wazzan's Opinion 5 does not satisfy the "fit" requirement of Federal Rule of Evidence 702(a) and risks unfair prejudice, confusing the issues, and misleading the jury, requiring exclusion under Rule 403.

IT IS SO ORDERED.

Date: _____ _____

The Honorable Yvonne Gonzalez Rogers
UNITED STATES DISTRICT JUDGE