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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' REQUEST FOR A CURATIVE INSTRUCTION**

Judge: Hon. Yvonne Gonzalez Rogers

The OpenAI Defendants respectfully move for a brief instruction to cure counsel Mr. Molo's improper questioning of Greg Brockman, which falsely suggested to the Court and the jury that OpenAI's lawyers and Mr. Brockman had invented the phrase "small adjunct" in reference to the for-profit contemplated, and that Mr. Musk had not previously used the term during trial. That allegation was simply false because the phrase was elicited many times by Mr. Molo during his questioning of Mr. Musk.

On direct examination of Mr. Brockman, counsel for OpenAI Defendants asked, "What, if anything, did Mr. Musk say about **a small adjunct for-profit** in 2017?" Trial Tr. vol. 6, 1138:11-12. Mr. Brockman responded: "I literally never heard those words until the beginning of this trial." *Id*. at 1138:13-14. During Plaintiff's cross examination of Mr. Brockman today, Mr. Molo then asserted that Mr. Musk had not used the term "adjunct" and accused counsel of inventing the phrase, stating: "Those are words your lawyers have come up with?" Trial Tr. vol. 7, 1366:6-25.

**Q.** YOU WERE ASKED IN AUGUST AND SEPTEMBER OF 2017, "DID YOU DISCUSS WITH MR. MUSK THE IDEA OF CREATING AN OPENAI FOR-PROFIT EXTENSIVELY?" ALSO, "WERE THOSE DISCUSSIONS ABOUT A SMALL ADJUNCT TO THE NONPROFIT?"

"NO."

"WHAT, IF ANYTHING, DID MR. MUSK SAY ABOUT A SMALL ADJUNCT FOR-PROFIT IN 2017?"

"ANSWER: I LITERALLY NEVER HEARD THOSE WORDS REALLY UNTIL THE BEGINNING OF THIS TRIAL."

**HE [MR. MUSK] DIDN'T USE THE WORDS "ADJUNCT." RIGHT?**

**A.** NO.

**Q. THOSE ARE WORDS THAT YOUR LAWYERS CAME UP WITH?**

**A.** ISN'T IT A WORD THAT YOU WERE USING?

**Q.** NO, I WASN'T USING THE WORD ADJUNCT. YOUR LAWYERS WERE?

**MS. EDDY:** OBJECTION.

**THE COURT:** SUSTAINED AS TO THE FORM.

**BY MR. MOLO:**

**Q.** HE WAS TALKING ABOUT CREATING A FOR-PROFIT THAT WOULD FUND THE NONPROFIT THOUGH; RIGHT?

**A.** ONCE AGAIN, I HAVE NOT HEARD THIS FORMULATION, I THINK, BEFORE THIS TRIAL. *Id.* at 1366:10-1367:7 (emphasis added).

Mr. Molo's assertion that he and his client had not used the phrase "small adjunct for-profit" or "adjunct" was false. The term "adjunct" first came up in this trial during Mr. Musk's direct examination by Mr. Molo. In response to Mr. Molo's question asking Mr. Musk to explain how the "formation of the for-profit… came up in conversations," Mr. Musk testified: "So there was discussion of creating a for-profit, but it was very much in the vein of it being **a small adjunct** to the nonprofit." Trial Tr. vol. 2, 369:2-7. Later in the same examination, Mr. Musk repeated the term again: "[i]t was essentially as a **small adjunct** to the nonprofit, but the profits from the for-profit would flow to the nonprofit." *Id*. at 369:19-22.

Mr. Musk then repeatedly used the same phrase and concept again the following day. In response to questioning by his counsel about whether anyone had ever corrected Mr. Musk that "they were not on the same page with you about creating an independent 501(c)(3)," Mr. Musk testified: "No. Everyone was in complete agreement that OpenAI would be an independent pure play 501(c)(3). It could have an **adjunct for-profit** where the profits would flow to the nonprofit." Trial Tr. vol. 3, 410:17-23. Mr. Musk further testified: "Well, the for-profit, as long as it is effectively a subsidiary of the nonprofit, and as long as the for-profit was an **adjunct** to the nonprofit, and not the main event -- like what you can't have is the for-profit becomes the main event, and that's the issue we've got really at stake here." *Id*. at 415:23-416:2. Mr. Musk also testified: "Yeah, I don't think -- [t]here's any problem with creating a capped **for-profit adjunct** to a non-profit." *Id*. at 551:15-18. And he later reiterated: "Well, I'm okay with a capped profit that is an **adjunct** to a nonprofit." *Id*. at 575:23-24. In total, Mr. Musk used this exact phrase five times in response to Mr. Molo on direct and then twice on cross.

Mr. Brockman's testimony was accurate. He first heard it "at the beginning of this trial."

But Mr. Molo's cross examination improperly attempted to turn that testimony into a false accusation that counsel for OpenAI invented the phrase "adjunct." They did not.

A curative instruction is warranted to correct Mr. Molo's false accusations and to prevent the jury from retaining an improper and incorrect and provably false impression that Mr. Brockman or OpenAI's counsel invented this phrase. To prevent any prejudice, the Ninth Circuit has endorsed the use of a curative instruction. *Navellier v. Sletten*, 262 F.3d 923, 943 (9th Cir. 2001).

Accordingly, the OpenAI Defendants respectfully request the Court provide the following curative instruction to the jury:

> During Mr. Brockman's testimony yesterday you heard a reference to the phrase "small adjunct" or "small adjunct for-profit." Mr. Molo's suggestion that OpenAI's lawyers created that phrase and that Mr. Musk had not used the term himself in his testimony at this trial was false. The phrase was first used by Mr. Musk during his direct examination by Mr. Molo.

Date: May 5, 2026

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