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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' OPPOSITION TO PLAINTIFFS' ADMINISTRATIVE MOTION FOR LEAVE TO FILE RESPONSE TO AMICUS BRIEF OF KATHLEEN JENNINGS IN HER CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Judge: Hon. Yvonne Gonzalez Rogers
Compl. Filed: August 5, 2024

Pursuant to Civil Local Rule 7-11(b), Sam Altman, Greg Brockman, OpenAI, Inc., and affiliated OpenAI entities (the "OpenAI Defendants") oppose Plaintiffs' Administrative Motion for Leave to File a Response to the Amicus Brief of Kathleen Jennings in Her Capacity as the Attorney General of the State of Delaware (the "Amicus Brief") (Dkt. No. 81).

The Amicus Brief notifies the Court of the Attorney General's "concurrent review" of OpenAI's contemplated organization changes, and is not offered in support of, or in opposition to, any position taken by the parties. Dkt. No. 77-1 at 1. To the contrary, the Attorney General expressly "takes no position on the propriety of a preliminary injunction in this case." *Id*. As such, there is no "[d]ue process" concern (Dkt No. 81 at 1) requiring a response from Plaintiffs. Instead, as Plaintiffs' proposed response makes clear, Plaintiffs seek leave to improperly rehash arguments made in support of their preliminary injunction motion, while further assailing the OpenAI Defendants. *See* Dkt. No. 81-1 at 3 (complaining of Defendants' supposed "escalating self-dealing," "recent anticompetitive conduct," and "extensive self-dealing").

Denial of the requested leave is especially appropriate here because the request is transparently tactical. Plaintiffs previously urged the Attorney General to become involved in the matters here at issue. Attached to Plaintiffs' proposed response is correspondence from November 14, 2024, transmitting Plaintiffs' First Amended Complaint to the Delaware Department of Justice, with an offer to provide further information. *See* Dkt. No. 81-3. Plaintiffs welcomed the Attorney General's engagement then, so long as it did not interfere with their preferred litigation strategy. But now that the Attorney General has informed the Court that she is conducting the review Plaintiffs claimed to want—but apparently doing so independently, not on Musk's terms—Plaintiffs propose a response denigrating her review as inadequate and demanding that the Court ignore it. *See* Dkt. No. 81-1. Plaintiffs' request should be denied.

Date: January 7, 2025

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/s/ Jordan Eth

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