RUSSELL P. COHEN (SBN 213105)
Russ.cohen@dechert.com
HOWARD M. ULLMAN (SBN 206760)
Howard.ullman@dechert.com
DECHERT LLP
45 Fremont Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 262-4500
Facsimile: (415) 262-45555

NISHA PATEL (SBN 281628)
Nisha.patelgupta@dechert.com
DECHERT LLP
633 West 5th Street, Suite 4900
Los Angeles, CA 90071
Telephone: (213) 808-5700
Facsimile: (213) 808-5760

ANDREW J. LEVANDER (admitted *pro hac vice*)
Andrew.levander@dechert.com
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
Telephone: (212) 698-3500
Facsimile: (212) 698-3599

JOHN (JAY) JURATA, JR. (admitted *pro hac vice*)
Jay.jurata@dechert.com
DECHERT LLP
1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 261-3300
Facsimile: (202) 261-3333

Attorneys for Defendants Microsoft Corporation, Reid Hoffman, and Deannah Templeton

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

Assigned to Hon. Yvonne Gonzalez Rogers

DEFENDANTS MICROSOFT CORPORATION, REID HOFFMAN, AND DEANNAH TEMPLETON'S OPPOSITION TO ENCODE'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF THE PART OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION SEEKING TO ENJOIN THE RESTRUCTURING OF OPENAI INTO A FOR-PROFIT ENTERPRISE

Defendants Microsoft Corporation, Reid Hoffman, and Deannah Templeton ("Microsoft Defendants") oppose Encode's Motion for Leave to File Amicus Curiae Brief in Support of the Part of Plaintiffs' Motion for a Preliminary Injunction Seeking to Enjoin the Restructuring of OpenAI into a For-Profit Enterprise (Dkt. No. 72).

A district court may deny leave to file an amicus brief when the brief is untimely or would otherwise be unhelpful. *See Hualapai Indian Tribe v. Haaland*, No. CV-24-08154-PCT-DJH, 2024 WL 4475094, at *1 (D. Ariz. Oct. 11, 2024) (quoting *Cmty. Ass'n for Restoration of Env't (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999)). The Federal Rules of Civil Procedure do not address the filing of amicus briefs in district courts, so "courts therefore rely on Federal Rule of Appellate Procedure 29 in addressing such requests." *See Earth Island Inst. v. Nash*, No. 119CV01420DADSAB, 2019 WL 6790682, at *1 (E.D. Cal. Dec. 12, 2019); *see also Church of Celestial Heart v. Garland*, No. 1:23-CV-00545-SAB, 2024 WL 3569219, at *1, n.2 (E.D. Cal. July 29, 2024); *In re Calpine Corp.*, No. 08 CIV. 1286 VM, 2008 WL 2462035, at *1 (S.D.N.Y. June 9, 2008).

Under Rule 29, "[a]n amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed." Fed. R. App. 29(a)(6). This allows the opposing party an opportunity to address the amicus filing in any opposition papers. Here, Encode's proposed brief expressly supports Plaintiffs' motion for a preliminary injunction, Dkt. No. 72, Ex. 1, and the principal brief for Plaintiffs' motion was filed on November 29, 2024. Dkt. No. 46. Accordingly, Encode should have filed its proposed brief by December 6, 2024 to meet Rule 29's timing requirement. Instead, without explanation, Encode did not file until December 27, 2024 – 21 days later – and two weeks after the Microsoft Defendants filed their opposition. Dkt. No. 65.

Microsoft Defendants respectfully request that the Court exercise its discretion to deny Encode's motion for leave as untimely.

DATED: January 10, 2025

Respectfully Submitted,

DECHERT LLP

By: */s/ Russell P. Cohen*

Russell P. Cohen (SBN 213105)
Russ.cohen@dechert.com
Howard M. Ullman (SBN 206760)
Howard.ullman@dechert.com
45 Fremont Street, 26th Floor
San Francisco, CA 94105
Telephone: (415) 262-4500
Facsimile: (415) 262-45555

Nisha Patel (SBN 281628)
Nisha.patelgupta@dechert.com
DECHERT LLP
633 West 5th Street, Suite 4900
Los Angeles, CA 90071
Telephone: (213) 808-5700
Facsimile: (213) 808-5760

Andrew J. Levander (admitted *pro hac vice*)
Andrew.levander@dechert.com
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
Telephone: (212) 698-3500
Facsimile: (212) 698-3599

John (Jay) Jurata, Jr. (admitted *pro hac vice*)
Jay.jurata@dechert.com
DECHERT LLP1900 K Street, N.W.
Washington, DC 20006
Telephone: (202) 261-3300
Facsimile: (202) 261-3333

Attorney for Defendants Microsoft Corporation, Reid Hoffman, and Deannah Templeton