Marc Toberoff (S.B. #188547)
*mtoberoff@toberoffandassociates.com*
Jaymie Parkkinen (S.B. #318394)
*jparkkinen@toberoffandassociates.com*
TOBEROFF & ASSOCIATES, P.C.
23823 Malibu Road, Suite 50-363
Malibu, CA 90265
Telephone: (310) 246-3333
Facsimile: (310) 246-3101

*Attorneys for Plaintiffs Elon Musk, Shivon Zilis, and X.AI Corp.*

**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**

ELON MUSK, et al.,

Plaintiffs,

v.

SAMUEL ALTMAN, et al.,

Defendants.

Case No. 4:24-cv-04722-YGR

Assigned to Hon. Yvonne Gonzalez Rogers

**ADMINISTRATIVE MOTION FOR LEAVE TO FILE PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTIONS TO EVIDENCE SUBMITTED WITH PLAINTIFFS' REPLY**

PLEASE TAKE NOTICE that, pursuant to Civil Local Rule 7-11, Plaintiffs Elon Musk, Shivon Zilis, and X.AI Corp. (collectively, "Plaintiffs") will, and hereby do, move the Court for an order permitting the filing of their response, submitted herewith, to Defendants' Objections to Evidence Submitted with Plaintiffs' Reply in Support of Their Motion for a Preliminary Injunction.[1] Dkt. Nos. 83 and 84. Defendants' latest filing represents nothing more than procedural gamesmanship that will prejudice Plaintiffs if they are not afforded an opportunity to respond.[2]

## I. BACKGROUND

On November 29, 2024, Plaintiffs filed their Motion for a Preliminary Injunction. Dkt. 46. In support of their Motion, Plaintiffs filed a declaration with 23 supporting exhibits. *Id*. On December 13, 2024, the OpenAI and Microsoft Defendants filed separate memoranda (Dkt. Nos. 64 and 65, respectively) in opposition to Plaintiffs' Motion. OpenAI filed a 25-page Opposition memorandum together with two declarations and 21 exhibits. Dkt. No. 64. Microsoft filed a 24-page Opposition memorandum attaching 6 declarations and 15 exhibits. Dkt. No. 65. On December 27, 2024, Plaintiffs filed a consolidated 24-page Reply memorandum attaching 5 declarations and 29 exhibits, Dkt. No. 73, all of which directly respond to arguments made in Defendants' Oppositions. On January 3, 2025, OpenAI filed a Local Rule 7-3(d)(1) Objection to Plaintiffs' Reply evidence, Dkt. No. 83, which Microsoft joined that same day (collectively, "Objections"), Dkt. No. 84.

## II. ARGUMENT

Although OpenAI's filing, Dkt. No. 83, purports to be evidentiary "objections," it is for all intents and purposes an improper sur-reply coupled with a motion to strike. Therein, OpenAI mischaracterizes the procedure and standard applied to evidence on a motion for a preliminary injunction as well as to rebuttal evidence, and inaccurately contends that Plaintiffs do not rely on

[1] The OpenAI Defendants and Microsoft, Reid Hoffman, and Deannah Templeton do not consent to this request. As of this filing, the California Attorney General has not informed Plaintiffs of his position.

[2] Plaintiffs intended to file this motion earlier in the week, but Plaintiffs' counsel's office in Malibu, Calif. was completely destroyed in the Palisades Fire.

all their exhibits. OpenAI also contends that the declarations and exhibits filed with Plaintiffs' Reply raise new factual matters which must be stricken. This, too, is incorrect, as detailed in Plaintiffs' proposed response.

Because Plaintiffs submitted the challenged declarations and exhibits to rebut claims Defendants raised in their Oppositions and respond to their misleading evidence, there is simply no basis to object to Plaintiffs' rebuttal evidence in reply under Local Rule 7-3(d)(1). *See, e.g., Huawei Technologies, Co., Ltd. v. Samsung Elec. Co., Ltd.* 340 F.Supp.3d 934, 996 (N.D. Cal. 2018) (explaining rebuttal evidence is proper when it is submitted to "contradict, impeach or defuse the impact of the evidence offered by an adverse party."). Given that Defendants' Objections are improper, Plaintiffs request leave to file a response to address these issues.

## III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file Plaintiffs' Response to Defendants' Objections, submitted herewith.

DATED: January 10, 2025

Respectfully Submitted,

TOBEROFF & ASSOCIATES, P.C.

*/s/ Marc Toberoff*
Marc Toberoff

*Attorneys for Plaintiffs Elon Musk, Shivon Zilis, and X.AI Corp.*