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

Hon. Yvonne Gonzalez Rogers

PLAINTIFFS' RESPONSE TO THE STATEMENT OF INTEREST OF THE UNITED STATES AND FEDERAL TRADE COMMISSION

Date: February 4, 2025
Time: 2:00 p.m.
Place: Courtroom 1 (4th Fl.)
1301 Clay St.
Oakland, CA 94612

Plaintiffs Elon Musk, Shivon Zilis, and X.AI Corp. (collectively, "Plaintiffs") agree with the analytic frameworks provided in the Statement of Interest by the United States and Federal Trade Commission ("FTC"). Dkt. No. 87. The January 10, 2025, Statement of Interest, however, should be viewed in the context of the subsequent January 17, 2025, FTC report on the relationships between cloud service providers, such as Microsoft, and generative AI companies, such as OpenAI. *See* Toberoff Decl. Ex. 2 ("FTC Report"). This FTC Report, released on a 5-0 vote (except as to one section), *id.* Ex. 1, confirms the allegations in Plaintiffs' First Amended Complaint ("FAC") and Motion for a Preliminary Injunction ("MPI") concerning the anticompetitive conduct of Microsoft and OpenAI. *E.g.,* FAC ¶¶ 168, 371, 380 (alleging Microsoft obtained a non-voting seat on OpenAI's board giving it access to competitively sensitive information); MPI at 10-14 (explaining continuing harm from Defendants' interlocking directorates); Ex. 2 at 18 (confirming "Microsoft previously occupied an observer seat on the board of OpenAI" and "continue[s] to receive information from OpenAI" even after relinquishing its seat), *id*. at 17-29 (detailing the competitive advantages to Microsoft and OpenAI of their conduct); FAC ¶¶ 98, 112, 147-48, 157-59, 288 (alleging that OpenAI became dependent on Microsoft through OpenAI's exclusive use of Microsoft as its cloud computing provider); MPI at 6-7 & n.4 (explaining that Microsoft's leverage over OpenAI provides a basis for imputing OpenAI's conduct to Microsoft); Ex. 2 at 33-34 (confirming Microsoft is OpenAI's "exclusive cloud provider" and describing the significant cost and difficulty experienced by AI developers such as OpenAI if they try to switch cloud providers, leaving AI developers "lock[ed] in" to such partnerships). Plaintiffs therefore believe the Court should have the benefit of this FTC Report, which adds important factual context to the Statement of Interest.

DATED: January 20, 2025

Respectfully Submitted,

TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff
Marc Toberoff

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