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**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

**PLAINTIFFS' OPPOSITION TO
REQUEST FOR LEAVE TO FILE
SUPPLEMENTAL MATERIAL IN
SUPPORT OF OPENAI DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

1 Plaintiffs submit this Opposition to OpenAI Defendants’ Request to File Supplemental
 2 Material. Dkt. 116. Plaintiffs’ letter of intent to purchase OpenAI, Inc.’s assets¹ is entirely
 3 irrelevant to their pending Motion for a Preliminary Injunction. The OpenAI Defendants’ Request
 4 introduces the letter to distract from the core issues before this Court.

5 Plaintiffs’ Motion seeks to enjoin Sam Altman and OpenAI from breaching the terms of
 6 Musk’s donations and OpenAI’s charitable trust through repeated self-dealing, putting profits
 7 over safety, transferring its technology and keeping it closed source, concentrating AI’s power in
 8 the hands of Microsoft, and operating a *de facto* for-profit entity without required regulatory
 9 approvals. *See* Dkt. 73 at 19-20 (“Absent such approval, the Court should enjoin OpenAI from
 10 further violating its obligations and abandoning its mission as a safety-first charitable
 11 organization.”). Whether Musk or any other party might purchase OpenAI, Inc.’s assets following
 12 regulatory approval of the “conversion” OpenAI itself initiated is immaterial to whether it is
 13 *currently* violating its charitable obligations. The purchase offer would become relevant only
 14 after—and if—(1) this Court denies Plaintiffs’ Motion, (2) OpenAI proceeds with its conversion,
 15 and (3) OpenAI obtains approvals from the IRS and California and Delaware Attorneys General.²

16 Should these hurdles be met and the charity’s assets proceed to sale, a Musk-led
 17 consortium has submitted a serious offer of \$97.375 billion—money that would go to the charity
 18 in furtherance of its mission. Yet, Altman, who plans to have significant equity in the corporation
 19 presently planned to result from OpenAI’s “conversion,” rejected the offer unilaterally, on behalf
 20 of the Board, before the Board had even seen the proposal. Ex. 1 at 1. These further breaches of
 21 fiduciary duty to the charity illustrate Altman’s continuing adverse domination of the Board.

22 If OpenAI, Inc.’s Board is prepared to preserve the charity’s mission and stipulate to take
 23 the “for sale” sign off its assets by halting its conversion, Musk will withdraw the bid. Otherwise,
 24 the charity must be compensated by what an arms-length buyer will pay for its assets.

25
 26 ¹ After Altman/OpenAI, Inc.’s prior breaches of charitable trust by transferring its intellectual
 27 property and employees, OpenAI, Inc.’s assets—that Defendants now seek to “convert”—consist
 almost entirely of its majority ownership and control over the OpenAI For-Profit Entities.

28 ² Even with regulatory approval, Altman and OpenAI are still liable to Musk for their broken
 promises, and Defendants are still liable to OpenAI for all past breaches of charitable trust.

1 DATED: February 12, 2025

Respectfully Submitted,

2 TOBEROFF & ASSOCIATES, P.C.

3 /s/ Marc Toberoff

4 Marc Toberoff

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