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OpenAI Holdings, LLC, OpenAI Startup Fund Management, LLC,
16 *OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P.,*
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18 *OpenAI Startup Fund SPV III, L.P., OpenAI Startup Fund SPV IV, L.P.,*
Aestas Management Company, LLC, and Aestas LLC

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 ELON MUSK, et al.,
23 Plaintiffs,
24 v.
25 SAMUEL ALTMAN, et al.,
26 Defendants.
27

Case No. 4:24-cv-04722-YGR
**OPENAI DEFENDANTS' AMENDED
COUNTERCLAIMS, ANSWER, AND
DEFENSES**

1 Defendants and Counterclaim Plaintiffs OpenAI, Inc., OpenAI OpCo, LLC, and OpenAI
2 Global, LLC (collectively “Counterclaim Plaintiffs” or “OpenAI”) allege, upon knowledge as to
3 themselves and their own acts, and otherwise upon information and belief:

4 **COUNTERCLAIMS**

5 **PRELIMINARY STATEMENT**

6 1. Since its founding as an AI research lab in December 2015, OpenAI has had one
7 mission: to ensure that artificial intelligence with the ability to outperform humans—artificial
8 general intelligence, or “AGI”—benefits all humanity.

9 2. Counterclaim Defendant Elon Musk worked with Sam Altman, Greg Brockman,
10 and Ilya Sutskever to help launch OpenAI. He sat on OpenAI’s board and pledged \$1 billion in
11 donations to the organization, which was set up as a nonprofit.

12 3. But Musk’s involvement with OpenAI was short-lived. In 2017 and 2018, Altman,
13 Brockman, and Sutskever refused to bow to Musk’s demands for control of the enterprise or,
14 alternatively, its absorption into Musk’s electric car company, Tesla. So Musk quit, declaring that
15 OpenAI would fail without him and that he would focus on AI development at Tesla. The \$1 billion
16 commitment he’d made to OpenAI was never satisfied—not even close.

17 4. Years later, in 2022, OpenAI launched ChatGPT, an AI chatbot that attracted
18 attention and users on an unprecedented scale. ChatGPT drew a new spotlight onto OpenAI. Musk
19 had nothing to do with it.

20 5. In March 2023, GPT-4, OpenAI’s then-latest technology, was hailed as a
21 transformative breakthrough on the path to AGI. Again Musk was on the sidelines.

22 6. Musk could not tolerate seeing such success for an enterprise he had abandoned and
23 declared doomed. He made it his project to take down OpenAI, and to build a direct competitor that
24 would seize the technological lead—not for humanity but for Elon Musk.

25 7. The ensuing campaign has been relentless. Through press attacks, malicious
26 campaigns broadcast to Musk’s more than 200 million followers on the social media platform he
27 controls, a pretextual demand for corporate records, harassing legal claims, and a sham bid for
28 OpenAI’s assets, Musk has tried every tool available to harm OpenAI.

1
2 **FACTUAL ALLEGATIONS**

3 **A. OpenAI is founded**

4 19. In May 2015, Sam Altman proposed to Elon Musk an idea he had discussed with
5 Greg Brockman: the formation of an “AI lab” with the mission of “creat[ing] the first general AI
6 and us[ing] it for individual empowerment.”

7 20. Altman and Brockman understood that attaining AGI—highly advanced artificial
8 intelligence systems that are generally smarter than humans and can outperform humans at most
9 economically valuable work—could prove transformative. The technology could exponentially
10 advance scientific and medical knowledge, expand the limits of human ingenuity and creativity,
11 and turbocharge the economy. But the technology presented risks. The new AI lab would therefore
12 be committed to developing AGI in the interests of humanity as a whole.

13 21. Musk expressed support for these ideas. In July 2015, he had dinner with Altman,
14 Brockman, and Ilya Sutskever, among others, to explore the project under contemplation. The
15 discussion centered on the feasibility of launching an AGI project that could become and stay
16 competitive with DeepMind, an AI company under the umbrella of Google.

17 22. Immediately following the July 2015 dinner, Altman and Brockman resolved to
18 move forward with this idea and began recruiting a team. The original plan was to associate the lab
19 with Y Combinator, the startup accelerator where Altman worked. By November 2015, Altman,
20 Brockman, and Sutskever had issued offers to their founding team.

21 23. After meeting the prospective team members to help persuade them to accept their
22 offers, Musk said he wanted to become more involved in the lab—provided it did not operate under
23 the auspices of Y Combinator. Altman, Brockman, and Sutskever agreed.

24 24. In December 2015, Altman, Brockman, Sutskever, and Musk launched OpenAI. The
25 organization—OpenAI, Inc.—took the form of a Delaware nonprofit corporation organized for
26 charitable and/or educational purposes within the meaning of section 501(c)(3) of the Internal
27 Revenue Code. Musk thought the nonprofit structure not “optimal,” and advised it would
28 “[p]robably be better to have a standard C corp with a parallel nonprofit”—*i.e.*, a for-profit
corporation with an affiliated nonprofit. But the founders ultimately were satisfied that a nonprofit

1 alone would serve the mission for the time being. Musk became a “member” of the nonprofit and
2 a co-chair of OpenAI, Inc.’s board of directors.

3 25. The “specific purpose” of OpenAI, Inc., as reflected in its founding Certificate of
4 Incorporation, was “to provide funding for research, development and distribution of technology
5 related to artificial intelligence.” The Certificate stated that the “technology will benefit the public”
6 and “the corporation will seek to open source technology for the public benefit where applicable.”
7 These statements comported with discussions Altman, Brockman, Musk, and Sutskever had in the
8 months before and shortly after OpenAI’s formation. In June 2015, Musk agreed with Altman to
9 “have an ongoing conversation about what work should be open-sourced and what shouldn’t.” In
10 January 2016, Sutskever proposed and Musk agreed that “[a]s we get closer to building AI, it will
11 make sense to start being less open. The Open in [O]penAI means that everyone should benefit
12 from the fruits of AI after it[’]s built, but it’s totally OK to not share science.”

13 26. OpenAI’s mission, as stated in the OpenAI, Inc. Charter, is to “ensure that artificial
14 general intelligence . . . benefits all of humanity.” The Charter recognizes that “to be effective at
15 addressing AGI’s impact on society, OpenAI must be on the cutting edge of AI capabilities.”

16 27. OpenAI was, and has remained, committed to its mission.

17 **B. OpenAI’s founders, including Musk, consider a restructuring to facilitate furtherance of**
18 **the mission**

19 28. OpenAI’s founders knew the project of developing AGI that benefits humanity
20 would require significant funding. Musk was especially attuned to this reality. When his co-
21 founders proposed raising an initial \$100 million, Musk insisted instead they “say that we are
22 starting with a \$1B funding commitment.” That commitment, Musk assured, would come from
23 him. If others did not come through, he would “cover what anyone else doesn’t provide.”

24 29. Early research advances by OpenAI and others soon revealed that OpenAI would
25 need much more than even the \$1 billion Musk had pledged to advance its mission. The initial
26 insight came from OpenAI’s development of technology for a competitive video game, Dota, which
27 showed that more computing power—“compute”—with a general learning algorithm yielded better
28

1 performance seemingly without limit. Compute was thus identified as a key to progress toward
2 AGI, and its costs would run in the billions of dollars annually.

3 30. To attract the capital needed to advance the mission, OpenAI’s founders began
4 considering an organizational change that would allow supporters not just to donate, but to invest.
5 Musk endorsed the change. In mid-2017, he observed that the nonprofit structure “may not be the
6 right one now,” and suggested that China’s evident intent to “do whatever it takes to obtain what
7 [OpenAI] develop[ed]” favored a determination to “change course.” When, in August 2017,
8 OpenAI’s technology beat one of the world’s best players in Dota 1v1, Musk declared it the
9 “triggering event” signaling it was “[t]ime to make the next step for OpenAI.”

10 31. But Musk wanted more than an organizational change that would better advance
11 OpenAI’s mission. He wanted control, for himself.

12 32. Altman, Brockman, and Sutskever agreed with Musk that it was time to create a for-
13 profit entity. They envisioned a collaborative approach to the new entity.

14 33. Musk had a different idea. He demanded sole control of the new for-profit, at least
15 in the short term: He would be CEO, own a majority equity stake, and control a majority of the
16 board. He would—in his own words—“unequivocally have initial control of the company.” Musk
17 explained to Brockman and Sutskever that he needed the lion’s share of the economic interest in
18 the contemplated for-profit enterprise because he required \$80 billion to create a self-sustaining
19 colony on Mars.

20 34. Musk began implementing his plan. He directed his personal wealth manager, Jared
21 Birchall, to incorporate a Delaware public benefit corporation called “Open Artificial Intelligence
22 Technologies, Inc.” The certificate was registered on September 15, 2017.

23 35. But Altman, Brockman, and Sutskever refused to accept a venture dominated by
24 Musk. As Sutskever explained to Musk in an email copying Brockman and Altman, an “AGI
25 dictatorship” would be inconsistent with OpenAI’s mission: “You stated that you don’t want to
26 control the final AGI, but during this negotiation, you’ve shown to us that absolute control is
27 extremely important to you The goal of OpenAI is to make the future good and to avoid an
28

1 AGI dictatorship . . . So it is a bad idea to create a structure where you could become a dictator if
2 you chose to, especially given that we can create some other structure that avoids this possibility.”

3 36. Musk was incensed. If he could not control the contemplated for-profit entity, he
4 would not participate in it: “Guys, I’ve had enough. This is the final straw. Either go do something
5 on your own or continue with OpenAI as a nonprofit. I will no longer fund OpenAI until you have
6 made a firm commitment to stay or I’m just being a fool who is essentially providing free funding
7 for you to create a startup. Discussions are over.”

8 37. Discussions were not over—nor were Musk’s efforts to dominate OpenAI for his
9 own ends. In late 2017 and again in early 2018, Musk proposed to absorb OpenAI into Tesla. This
10 “for-profit pivot” would allow OpenAI to use “Tesla as its cash cow.” In Musk’s view, without this
11 move OpenAI was doomed to fail: “OpenAI is on a path of certain failure relative to Google. There
12 obviously needs to be immediate and dramatic action or everyone except for Google will be
13 consigned to irrelevance. . . Either we fix things and my engagement increases a lot or we don’t
14 and I will drop to near zero and publicly reduce my association. I will not be in a situation where
15 the perception of my influence and time doesn’t match the reality.”

16 38. Musk declared: “Tesla is the only path that could even hope to hold a candle to
17 Google.”

18 39. Altman, Brockman, and Sutskever disagreed. Committing AGI’s development to a
19 Musk-controlled entity was not, in their view, consistent with OpenAI’s mission. So they declined.

20 **C. Musk parts ways with OpenAI**

21 40. Musk’s withdrawal from OpenAI in February 2018 was noisy but relatively
22 amicable. Musk resigned from OpenAI’s board to focus on the only AGI development path he
23 deemed viable: Tesla AI. During the final all-employee meeting he attended, Musk reiterated his
24 view that OpenAI needed to raise billions of dollars a year to be a plausible competitor to
25 DeepMind, and encouraged the organization to pursue that funding however it could.

26 41. Though Musk facilitated a few more contributions to OpenAI, Inc., he never
27 honored the \$1 billion pledge he’d made upon OpenAI’s launch.

28

1 **D. OpenAI forms a capped-profit subsidiary to raise needed capital**

2 42. Musk had declared that without “billions per year immediately,” OpenAI would fail
3 in its mission. That pronouncement reflected both the astronomical increases in AI compute
4 demands since OpenAI’s founding, and the rising cost of retaining and attracting top talent in an
5 increasingly competitive AI field.

6 43. OpenAI’s generative pre-trained transformer model GPT-1, released in mid-2018,
7 was a tremendous achievement. But its capabilities, and the resources required to train it, would be
8 dwarfed by later models, and its launch marked a new phase of exponential growth in the demand
9 for compute to support and develop emerging AI technology. GPT-3, released in 2020, would
10 require over *17,000 times* the computing power required to develop GPT-1.

11 44. Demand for scarce top talent in the AI industry had increased exponentially as well,
12 particularly as more well-resourced companies joined the serious pursuit of AGI. Musk recognized
13 this better than anyone. In 2017, Musk caused top AI engineers from OpenAI to be seconded to
14 Tesla so they could impart scarce AI learning to Tesla employees. He even poached one of those
15 OpenAI engineers for Tesla and, as he separated from OpenAI, sought (unsuccessfully) to recruit
16 more.

17 45. Through 2018, Altman kept Musk apprised of OpenAI’s fundraising efforts, and
18 OpenAI’s board considered an organizational change that would attract \$10 billion—the amount
19 that Altman, Brockman, and Sutskever estimated would be required to develop AGI—while
20 preserving and protecting the mission.

21 46. The change the board ultimately approved was the creation of a “capped” for-profit
22 entity, OpenAI, L.P. The new for-profit was bound to pursue the nonprofit’s mission and subject
23 to the control of the OpenAI, Inc. board, but presented investors and employees with the
24 opportunity to participate in any profits OpenAI’s operations might ultimately yield. These
25 participation interests were “capped”—their holders could see returns up to a certain fixed point,
26 with any residual profits flowing to the nonprofit. This capped-profit structure remains in place
27 today.

28

1 47. The creation of the capped-profit entity was no secret. Brockman, Sutskever, and
2 OpenAI announced it in a blog post in early March 2019. Musk had advance notice; he was offered,
3 and declined, equity in the new entity. The day the blog post went live, Musk asked Altman to make
4 clear to others that he had “no financial interest in the for-profit arm of OpenAI.”

5 48. Musk raised no objection to the formation of OpenAI, L.P.

6 **E. OpenAI flourishes and advances the mission without Musk**

7 49. The same year it was created, OpenAI, L.P. was able to raise \$1 billion from
8 Microsoft Corporation, as part of a deal to supply OpenAI with needed compute. From there,
9 OpenAI’s technological breakthroughs and public exposure accelerated dramatically.

10 50. OpenAI’s launch of GPT-3 in June 2020 was recognized as an enormous “leap
11 forward” marking a “pivotal moment when the world started acknowledging [the] groundbreaking
12 technology” of generative AI.¹

13 51. OpenAI began making its models available to developers and institutional users
14 through an application programming interface, or “API.” In August 2021, OpenAI released through
15 the API a revolutionary model called “Codex,” which was capable of interpreting simple, natural
16 language commands and executing them in dozens of programming languages. OpenAI’s coding
17 model was integrated in GitHub’s AI tool, Copilot, making it available to a much broader user base.
18 Copilot—powered by OpenAI technology—prompted praise from Musk, who noted on Twitter,
19 “Nice work by OpenAI[,] [i]t is hard to do useful things.”

20 52. In November 2022, OpenAI launched ChatGPT, an updated model with an online
21 chat interface allowing users to interact with the model in a conversational way. ChatGPT
22 introduced the public to the power of generative AI—and OpenAI’s models—on an unprecedented
23 scale. Hundreds of millions use ChatGPT for free every week.

24 53. In March 2023, OpenAI released GPT-4, a model hailed as a “stunning”
25 technological advancement that “promise[d] to blow previous iterations [of OpenAI’s models] out
26

27 ¹ Bernard Marr, *A Short History Of ChatGPT: How We Got To Where We Are Today*, Forbes (Mar.
28 19, 2023), <https://www.forbes.com/sites/bernardmarr/2023/05/19/a-short-history-of-chatgpt-how-we-got-to-where-we-are-today/>.

1 of the water, potentially changing the way we use the internet to work, play and create.”² Bill Gates
2 went so far as to describe GPT-4 as “the most important advance in technology since the graphical
3 user interface” was first developed in 1980.³

4 54. Through these releases of increasingly useful products, OpenAI has defined the now
5 industry-standard principle of “iterative deployment,” which allows for the gathering of
6 information about AI technology that cannot be gained in the lab alone. Making AI tools available
7 to the public is a crucial means of learning how users interact with AI systems and the practical
8 strengths and weaknesses of those systems. It also facilitates understanding of and adaptation to
9 new AI capabilities.

10 **F. Musk begins his attacks on OpenAI while quietly building a competitor**

11 55. Over and over in OpenAI’s early years, Musk predicted that the enterprise would
12 fail unless it bowed to his vision, his plans, and his control. Around the time of his resignation from
13 the OpenAI board, Musk declared OpenAI was “on a path of certain failure relative to Google”;
14 “should assume failure”; and was “on a path to be irrelevant.” Musk’s “probability assessment of
15 OpenAI being relevant to [competitors] without a dramatic change in execution and resources”
16 was, he announced, “0%.” “Not 1%.” OpenAI was in Musk’s estimation “not a serious
17 counterweight to DeepMind/Google and will only get further behind.” All this was “obvious,” said
18 Musk.

19 56. Yet here was OpenAI, a few years later, pursuing its mission with more success than
20 any other actor in the field, proving Musk wrong.

21 57. Musk could not abide it.

22 58. So he set in motion a campaign of harassment, interference, and misinformation
23 designed to take down OpenAI and clear the field for himself.

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25 _____
26 ² Samantha Murphy Kelly, *5 jaw-dropping things GPT-4 can do that ChatGPT couldn’t*, CNN
(Mar. 16, 2023), <https://www.cnn.com/2023/03/16/tech/gpt-4-use-cases/index.html>.

27 ³ Kif Leswing, *Bill Gates says OpenAI’s GPT is the most important advance in technology since*
28 *1980*, CNBC (Mar. 21, 2023), <https://www.cnbc.com/2023/03/21/bill-gates-openai-gpt-most-important-advance-in-technology-since-1980.html>.

1 59. In March 2023, Musk quietly created a new AI development company,
2 Counterclaim Defendant xAI. He incorporated xAI as a for-profit public benefit corporation in
3 Nevada, but made no public announcement of his intentions to launch a competitor at the time.
4 That would come only months later.

5 60. Meanwhile, days after the clandestine incorporation of his nascent competitor, Musk
6 noisily supported a six-month “moratorium” on development of AI any more advanced than
7 OpenAI’s just-released GPT-4—which Musk warned posed “profound risks to society and
8 humanity.” The effect of this “moratorium” would have been to stall OpenAI while all others, most
9 notably Musk, caught up.

10 61. A few weeks later, Musk’s personal lawyer contacted OpenAI and demanded access
11 to OpenAI’s confidential and commercially sensitive internal documents. Feigning concern as a
12 former donor and director of OpenAI, and without ever disclosing he was building a competitor in
13 secret, Musk framed his request as wanting to ensure OpenAI was not being taken advantage of or
14 corrupted by Microsoft. When OpenAI sought to place customary restrictions on the use of the
15 information sought, Musk’s lawyer threatened that OpenAI would “regret this conversation”
16 because Musk wanted the documents right away.

17 62. Just two weeks after gaining access to the information he had sought, Musk
18 denigrated OpenAI on national television and insinuated that its partnership with Microsoft was
19 improper.⁴

20 63. Not until July 12, 2023 did Musk finally announce publicly the formation of xAI.
21 Musk had used the months between quiet incorporation and public announcement to recruit
22 researchers with the promise of creating a rival to OpenAI.

23 64. In November 2023, after Altman was briefly removed and reinstated as OpenAI’s
24 CEO, Musk again sought to destabilize the organization. On November 21, 2023, the day the
25 agreement was reached to accomplish Altman’s return, Musk posted to his more than 200 million
26

27 ⁴ See *Elon Musk on Sam Altman and ChatGPT: I am the reason OpenAI exists*, CNBC (May 15,
28 2023), <https://www.cnbc.com/video/2023/05/16/elon-musk-on-sam-altman-and-chatgpt-i-am-the-reason-openai-exists.html>.

1 X followers a link to a letter purporting to come from disgruntled OpenAI employees, but widely
2 recognized as a hoax. The letter accused Altman and Brockman of a “disturbing pattern of deceit
3 and manipulation,” and of having silenced or sidelined employees. On the basis of the fake letter,
4 Musk added his own commentary, designed to increase his competitor’s jeopardy: “These seem
5 like concerns worth investigating.”

6 **G. Musk takes his harassment campaign to courts and regulators**

7 65. Having failed to impede OpenAI’s progress and pursuit of its mission, Musk
8 intensified his attacks—this time using the courts and a parallel, carefully coordinated media
9 campaign.

10 66. On February 29, 2024, Musk sued Altman, Brockman, OpenAI, Inc., OpenAI, L.P.,
11 OpenAI, L.L.C., OpenAI GP, L.L.C., OpenAI OpCo, LLC, OpenAI Global, LLC, OAI
12 Corporation, LLC, and OpenAI Holdings, LLC in California Superior Court. In his headline claim,
13 Musk asserted that OpenAI, Inc.’s Certificate of Incorporation, an email exchange he had with
14 Altman in 2015 brainstorming an AI lab, and a blog post together comprised an enforceable written
15 contract—a “Founding Agreement” in which all of the defendants purportedly promised Musk they
16 would conduct their operations in ways that Musk (helming a direct competitor) preferred: open-
17 sourcing all their latest technology and refraining from licensing it to Microsoft. Musk immediately
18 began tweeting about the lawsuit, broadcasting to his enormous audience that “OpenAI is a house
19 of cards.”

20 67. Defendants in the Superior Court action filed a demurrer, arguing that none of
21 Musk’s claims could stand. With the demurrer fully briefed, argument was set for 10 a.m. PT on
22 June 12, 2024. Rather than defend his claims, Musk, through counsel, informed defendants at 11:40
23 a.m. PT on June 11, 2024 that he was withdrawing his lawsuit. No explanation was offered.

24 68. Two months later, Musk filed this federal action with new counsel. Musk’s action—
25 as it has shifted shape in the ensuing months—now includes new plaintiffs xAI and former OpenAI
26 director and Musk associate Shivon Zilis, as well as new defendant Microsoft. And it now asserts
27 a sprawling array of theories: antitrust violations, false advertising, fiduciary breach, fraud, contract
28 and charitable trust breach, and even racketeering. The filing of the federal suit was accompanied

1 by another media blast, this time from Musk’s current counsel, who called the withdrawn state-
2 court action a “Goldfish” that “lacked teeth”⁵ but said the new one (based on the same factual
3 narrative) was a “Great White.”⁶

4 69. Around the same time he filed this action, Musk demanded that regulators
5 investigate OpenAI. He sent several letters to the Attorneys General of California and Delaware,
6 encouraging them to take action against OpenAI—most explosively, to force OpenAI, Inc., without
7 legal basis, to auction off its assets for the benefit of Musk and his associates.

8 **H. Musk intensifies his attacks on OpenAI and grows xAI**

9 70. Meanwhile, Musk supercharged his public attacks on OpenAI. Using his social-
10 media platform, X, he unleashed a barrage of invective against the enterprise and its leadership,
11 variously describing OpenAI as a “digital Frankenstein’s monster,” “a lie,” “evil,” and a “a total
12 scam.”

13 71. At the same time, Musk has been wielding his ever-growing influence and the web
14 of companies under his control to turn xAI into a major player in a highly competitive industry—
15 one that is raising capital at unprecedented speed and scale.⁷ Two weeks ago, xAI announced that
16 its valuation is now \$80 billion, and that it had acquired X. The acquisition gives xAI unprecedented
17 direct access to all the user data flowing through the platform formerly known as Twitter—and
18 therefore a major competitive advantage in an industry dependent on such data for model training.

19 72. At Musk’s direction, xAI built in three months what is believed to be the world’s
20 largest supercomputer, dubbed “Colossus.” The project used 100,000 next-generation NVIDIA

22 ⁵ See Cade Metz, *Elon Musk Revives Lawsuit Against OpenAI and Sam Altman*, N.Y. Times (Aug.
23 5, 2024), <https://www.nytimes.com/2024/08/05/technology/elon-musk-openai-lawsuit.html>; Mike
24 Scarcella, *Elon Musk Taps Copyright Law Vet Toberoff for OpenAI Lawsuit*, Reuters (Aug. 7,
2024), [https://www.reuters.com/legal/litigation/elon-musk-taps-copyright-law-vet-toberoff-
openai-lawsuit-2024-08-07/](https://www.reuters.com/legal/litigation/elon-musk-taps-copyright-law-vet-toberoff-openai-lawsuit-2024-08-07/).

25 ⁶ See Scarcella, *supra* note 5.

26 ⁷ Meghan Bobrowsky, Berber Jin & Tom Dotan, *Inside Elon Musk’s Quest to Beat OpenAI at its*
27 *Own Game*, The Wall Street Journal (Nov. 27, 2024), [https://www.wsj.com/tech/ai/elon-musk-x-
open-ai-03fflead](https://www.wsj.com/tech/ai/elon-musk-x-open-ai-03fflead).

1 GPU chips, some of which Musk diverted from Tesla. Musk reportedly plans a “tenfold” expansion
2 of “Colossus” to “incorporate more than 1 [million] graphics processing units . . . to leap ahead of
3 rivals,” including OpenAI.⁸

4 **I. OpenAI considers a restructuring**

5 73. While Musk was ginning up lawsuits and press campaigns and provoking regulators,
6 OpenAI’s board was focused on its mission. As part of that work, it was considering whether the
7 mission might best be served by a further evolution of OpenAI’s structure.

8 74. With companies like Google, Amazon, Meta, and now xAI pouring billions into AI
9 development and competing with OpenAI for scarce compute, OpenAI’s capital needs have
10 become more pressing than ever. Training GPT-4, which OpenAI released in 2023, required 67
11 *times* more computing power (measured in petaFLOPS) than GPT-3, released just three years prior,
12 and nearly *1.2 million times* more than GPT-1, released in 2018. The demands and the costs are
13 only rising. So too are the demands for, and costs of, retaining and attracting scarce top talent in
14 the field.

15 75. OpenAI’s current structure poses challenges in attracting new investment and
16 retaining and attracting highly skilled personnel. Every one of OpenAI’s significant competitors
17 has a familiar corporate structure that allows for offers of conventional equity—an attraction not
18 just for investors contemplating multi-billion-dollar commitments but for current and prospective
19 employees who want a stake in the enterprise they’re helping to build. The profit interests in
20 OpenAI’s capped-profit are less familiar.

21 76. The challenges OpenAI faces are reflected in its most recent fundraising rounds, in
22 which investors have insisted on conditions freeing them from certain funding commitments or
23 allowing redemption of invested funds with interest in the event OpenAI fails to simplify its capital
24 structure.

25 77. Given these challenges, and the threat they pose to the pursuit of the mission,
26 OpenAI’s board has for many months been considering *not* a “conversion” of the nonprofit into a

27 _____
28 ⁸ See Stephen Morris and Tabby Kinder, *Elon Musk plans to expand Colossus AI super-computer tenfold*, Financial Times (Dec. 4, 2024).

1 for-profit entity—as Musk has falsely and repeatedly claimed—but a structure change in which the
2 nonprofit would continue to exist and pursue its mission of ensuring that AGI benefits all of
3 humanity, while the capped-profit would become a public benefit corporation (“PBC”) serving the
4 exact same mission but also having accountability to investors and employees. The nonprofit would
5 exchange its current economic interest in the capped-profit entity for an equity stake in the PBC—
6 thus sharing in the PBC’s financial success while pursuing mission-advancing projects.

7 78. Any decision to restructure will have been made following extensive deliberation
8 by a well-qualified board. In addition to Altman, the current board comprises the following
9 directors:

- 10 a. Bret Taylor (Chair), who led Twitter’s board of directors before and during its
11 acquisition by Musk and is former co-CEO of Salesforce and former Chief
12 Technology Officer of Facebook;
- 13 b. Adam D’Angelo, CEO and co-founder of Quora;
- 14 c. Dr. Sue Desmond-Hellmann, former CEO of the Bill & Melinda Gates Foundation,
15 former Chancellor of the University of California at San Francisco, and current
16 director of Pfizer Corporation;
- 17 d. Paul Nakasone, a retired U.S. Army General and leading expert in cybersecurity,
18 technology advancement, and global cyber defense who once led the National
19 Security Agency;
- 20 e. Nicole Seligman, former Executive Vice President and Global General Counsel of
21 Sony Corporation and former President of Sony Entertainment;
- 22 f. Larry Summers, a former President of Harvard University and former Secretary of
23 the U.S. Treasury;
- 24 g. Zico Kolter, Director of the Machine Learning Department at Carnegie Mellon
25 University; and
- 26 h. Adebayo Ogunlesi, Founding Partner, Chairman, and CEO of Global Infrastructure
27 Partners, a leading infrastructure investing platform, and a Senior Managing
28 Director at BlackRock.

1 79. If a restructuring designed to serve the advancement of the mission is halted, the
2 mission will be impaired. OpenAI’s competitors—entities like Musk’s xAI that do not share
3 OpenAI’s mission—will benefit.

4 **J. Musk seeks to enjoin the possible restructuring and much of OpenAI’s business, then**
5 **makes a sham bid for the nonprofit’s assets**

6 80. The prospect of a possible restructuring became public in or about the fall of 2024.
7 Never one to miss an opportunity, Musk, on November 29, 2024, sought emergency relief to stop
8 it from happening—and, for good measure, to halt large swaths of OpenAI’s business activities.

9 81. The supposed predicate for this preliminary injunction motion was long-ago
10 donations of approximately \$40 million Musk claims to have made to OpenAI—funding provided
11 before Musk decided to abandon OpenAI and the \$1 billion pledge he’d made at the enterprise’s
12 founding.

13 82. The Court heard argument on Musk’s motion on February 4, 2025 and reserved
14 ruling.⁹

15 83. Before the Court could rule, Musk turned immediately to other means. On February
16 10, 2025, Musk’s litigation counsel sent a “Letter of Intent” to OpenAI’s board on behalf of a
17 consortium of private investors—including xAI, Baron Capital Group, Inc., Valor Management
18 LLC, Atreides Management, LP, Vy Fund III, L.P., Emanuel Capital Management, LLC, Eight
19 Partners VC, LLC, and others who remain unidentified. The letter purported to offer \$97.375 billion
20 for the purchase of OpenAI, Inc.’s assets.

21 84. Before the letter even reached OpenAI’s board, Musk’s counsel set about building
22 maximum buzz and maximum disruption for OpenAI. He provided the letter to the *Wall Street*
23 *Journal* (where the story appeared on the front page), and the “bid” dominated international news
24 for days.

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27 ⁹ The Court ultimately denied Musk’s preliminary injunction motion in its entirety on March 4,
28 2025, finding Musk had failed to meet his burden of proof in seeking such “extraordinary relief.”
See Order Denying Motion for a Preliminary Injunction, Dkt. 121 at 1 (Mar. 4, 2025).

1 85. After studying Musk’s stunt, savvy media commentators recognized it as a sham,
2 variously describing Musk’s “bid” as “less [] a serious effort to take control of OpenAI than as a
3 gambit” to interfere with OpenAI’s contemplated corporate reorganization;¹⁰ a “spoiler” aimed at
4 disrupting OpenAI’s fundraising and reorganization efforts;¹¹ and a “wrecking ball against an
5 opponent” and rival.¹²

6 86. Among other things, the letter included no evidence of financing to pay the nearly
7 \$100 billion purchase price, which the letter described as based on OpenAI’s “historical financial
8 results” and “projections.” OpenAI has never disclosed financial “projections” publicly or provided
9 them to Musk or any of the other investors named in the letter. None of the investors had conducted
10 any diligence on the business.

11 87. The investors who backed the purported takeover bid are close confederates of
12 Musk, some with large stakes in Musk-founded companies including Tesla, SpaceX, The Boring
13 Company, X, and Neuralink.

14 88. When asked about the bid on *CNBC*, Ron Baron, one of the investors backing Musk
15 and a longtime Musk booster and major investor in Musk’s businesses, became flustered. He then
16 admitted he’d done very little work on the project, hadn’t been following it closely, and had only
17 committed \$5 million (or 0.00513% of the alleged bid price), which he first claimed to have done
18 in his personal capacity—even though the letter was signed on behalf of his fund. Baron went on
19 to suggest that the point of the bid, as pitched to him (plainly by Musk) was not to buy OpenAI’s
20 assets, but instead to obtain “discovery” and get “behind the wall” at OpenAI.

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23 ¹⁰ Scott Rosenberg, *Musk lawyers say he’ll drop bid for OpenAI if it gives up for-profit plan*, *Axios*
(Feb. 13, 2025), <https://www.axios.com/2025/02/13/musk-altman-openai-nonprofit-filing>.

24 ¹¹ *Elon Musk’s \$97bn offer is a headache for Sam Altman’s OpenAI*, *The Economist* (Feb. 11,
25 2025), <https://www.economist.com/business/2025/02/11/elon-musks-97bn-offer-is-a-headache-for-sam-altmans-openai>.

26 ¹² Chris Stokel-Walker, *Elon Musk owning OpenAI would be a terrible idea. That doesn’t mean it*
27 *won’t happen*, *The Guardian* (Feb. 12, 2025),
28 <https://www.theguardian.com/commentisfree/2025/feb/12/elon-musk-owning-openai-trump-ai-sam-altman>.

1 89. The purchase price noted in the Letter of Intent was a joking reference to 974 Praf,
2 a character in Iain Banks’ science fiction series, *Look to Windward*, from which Musk has also
3 drawn names for multiple SpaceX rockets.¹³

4 90. Although OpenAI recognized the bid as a feint, its mere existence—and the media
5 firestorm surrounding it—required OpenAI to expend significant resources in responding to it.
6 Following news of Musk’s move, OpenAI’s board engaged in the formal process of reviewing and
7 assessing the “bid.” This entailed convening a discussion of the Letter of Intent and consideration
8 of next steps in the event Musk’s attempts to gain control of OpenAI escalated. It further entailed
9 commissioning legal and financial analyses of the bid’s purported “terms” and soliciting briefing
10 from high-level OpenAI employees to inform the board’s deliberations.

11 91. On February 14, 2024, OpenAI’s board unanimously rejected Musk’s purported
12 overture.

13 **K. Musk’s campaign has already injured OpenAI and poses a threat to its economic**
14 **relationships**

15 92. OpenAI is a resilient organization. It has succeeded where Musk said it could only
16 fail. But the enterprise and its people have suffered harm as a result of Musk’s unlawful campaign
17 of harassment, interference, and misinformation. And those actions threaten further, irreparable
18 harm.

19 93. Every phase of Musk’s campaign has been designed to force OpenAI to divert
20 resources, expend money, or both. From countering Musk’s false statements and other public
21 attacks; to addressing Musk’s pretextual corporate records demand; to defending against harassing,
22 withdrawn-at-the-last-minute legal claims; to countering Musk’s repeated lies and
23 mischaracterizations intended to damage OpenAI’s reputation; to responding to the sham bid for
24 OpenAI, Inc.’s assets, OpenAI has borne costs, and been harmed, by Musk’s abusive tactics and
25 unrelenting efforts to mislead the public for his own benefit and to OpenAI’s detriment and the
26 detriment of its mission.

27 _____
28 ¹³ See Stokel-Walker, *supra* note 12.

1 94. Musk’s most recent ploy, pretending to try to take over OpenAI, threatens a more
2 serious toll—on OpenAI’s ability to govern itself in service of the mission, on its relationships with
3 investors, on its relationships with employees, and ultimately on advancement of the mission to
4 develop AGI for the benefit of all humanity.

5 95. The February 10, 2025 Letter of Intent did not so much as acknowledge OpenAI’s
6 mission; it was a naked effort to disrupt the board’s consideration of a potential restructuring and
7 sow confusion among employees and potential investors. An important procedural aspect of a
8 corporate reorganization of OpenAI may be a valuation of OpenAI, Inc.’s interests in the capped-
9 profit entity. With no involvement in OpenAI’s valuation process, Musk—through xAI and its
10 consortium of Musk-associated private investors—has now purported to put a price on OpenAI,
11 Inc.’s assets. Musk’s counsel even announced that the “investor group is prepared to match or
12 exceed any bids higher than their own.”¹⁴ This very public effort to artificially “raise[] the floor for
13 the nonprofit’s valuation”¹⁵ has already caused confusion, and were it (or something like it) pursued
14 further, the consequence could be a significant impairment of OpenAI’s ability to pursue its mission
15 on terms uncorrupted by unlawful harassment and interference.

16 96. Musk’s takeover threats could also imperil OpenAI’s relationships with investors
17 and have already made maintenance of those business relationships more costly and burdensome.
18 The February 10, 2025 Letter of Intent came at a time when, as Musk knew, OpenAI was engaged
19 in an extremely competitive process to raise funds. Commentators have noted that the specter of a
20 Musk-dominated OpenAI could “frighten[] potential investors and increase OpenAI’s cost of
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25 ¹⁴ Jessica Toonkel and Berber Jin, *Elon Musk-Led Group Makes \$97.4 Billion Bid for Control of*
26 *OpenAI*, The Wall Street Journal (Feb. 10, 2025), [https://www.wsj.com/tech/elon-musk-openai-](https://www.wsj.com/tech/elon-musk-openai-bid-4af12827)
27 [bid-4af12827](https://www.wsj.com/tech/elon-musk-openai-bid-4af12827).

28 ¹⁵ Allison Morrow, *What Elon Musk’s \$100 billion bid for OpenAI is really all about*, CNN (Feb.
12, 2025), <https://www.cnn.com/2025/02/12/business/musk-altman-openai-nightcap/index.html>.

1 capital” in an extremely competitive and capital-intensive market.¹⁶ That is precisely what Musk is
2 seeking to achieve: to “derail[] efforts” to raise money from existing and new investors.¹⁷

3 97. That motive was on display earlier this year. In January 2025, when OpenAI, Oracle,
4 and Softbank announced their new Stargate venture—which President Trump heralded as an
5 unprecedented investment in “colossal data centers” that will yield hundreds of thousands of jobs
6 and push the frontiers of scientific discovery—Musk immediately sought to cast doubt on the
7 project’s viability. In private, trying to strangle the venture in the cradle, Musk encouraged any
8 investor who would listen not to invest in Stargate.

9 98. Musk has engaged in these efforts to slow OpenAI’s progress and impair its ability
10 to compete effectively in an increasingly crowded field, but also to seize and maintain for xAI an
11 unearned edge designed to impair competition more broadly for the sole benefit of Musk’s xAI, at
12 the expense of the public interest.

13 99. Meanwhile, for OpenAI employees all too familiar with the fallout at Twitter/X, the
14 prospect of a Musk takeover means chaos and arbitrary employment action. Within six months of
15 buying Twitter, Musk fired more than 6,000 of its employees, eliminating approximately 80% of
16 the company’s workforce, while refusing to pay required severance.

17 100. Still worse, the threat of a Musk takeover is a threat to the very mission of building
18 beneficial AGI—the mission to which OpenAI employees are dedicated. Musk’s safety, security,
19 and misinformation record is dismal. According to a study that evaluated the “risk-management
20 practices of top AI companies,” “the worst offender” in terms of “inadequate safety measures” was
21 “Elon Musk’s xAI.” xAI received a total score of 0/5 in this study because it has “barely published
22 anything about risk management.”¹⁸ xAI’s Grok has also become a leading spreader of
23 misinformation and inflammatory political rhetoric. Just recently, Grok was reported to have

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25 ¹⁶ Stephanie Palazzolo and Rocket Drew, *The Strategy Behind Musk’s \$97 Billion Bid for OpenAI*,
26 *The Information* (Feb. 11, 2025), <https://www.theinformation.com/articles/the-strategy-behind-musks-97-billion-bid-for-openai>.

27 ¹⁷ See *Elon Musk’s \$97bn offer is a headache for Sam Altman’s OpenAI*, *supra* note 11.

28 ¹⁸ Andrew R. Chow, *Some Top AI Labs Have ‘Very Weak’ Risk Management, Study Finds*, *Time*
(Oct. 2, 2024), <https://time.com/7026972/saferai-study-xai-meta/>.

1 provided users with “detailed instructions on how to make chemical weapons of mass destruction,”
2 complete with “full list[s] of suppliers” and “[d]etailed instructions on how to get the needed
3 materials.”¹⁹ Users also discovered that Grok would “consistently say that President Donald Trump
4 and Musk deserve the death penalty”—a phenomenon xAI representatives themselves described as
5 a “really terrible and bad failure.”²⁰

6 101. The risk of future, irreparable harm from Musk’s unlawful conduct is acute, and the
7 risk that that conduct continues is high. With every month that has passed, Musk has intensified
8 and expanded the fronts of his campaign against OpenAI, and has proven himself willing to take
9 ever more dramatic steps to seek a competitive advantage for xAI and to harm Altman, whom, in
10 the words of the President of the United States, Musk “hates.”²¹

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23 ¹⁹ Noor Al-Sibai, *Elon’s Grok 3 AI Provides “Hundreds of Pages of Detailed Instructions” on*
24 *Creating Chemical Weapons*, Futurism (Feb 25, 2025), <https://futurism.com/elon-musk-grok-3-chemical-weapons>.

25 ²⁰ Kyle Wiggers, *Grok 3 appears to have briefly censored unflattering mentions of Trump and*
26 *Musk*, TechCrunch (Feb. 23, 2025), <https://techcrunch.com/2025/02/23/grok-3-appears-to-have-briefly-censored-unflattering-mentions-of-trump-and-musk/>.

27 ²¹ See Max Chafkin, *Musk Can’t Help Bringing His Rivalries to the White House*, Bloomberg (Jan.
28 24, 2025), <https://www.bloomberg.com/news/newsletters/2025-01-24/elon-musk-sam-altman-feud-plays-out-in-trump-white-house-over-stargate>.

FIRST CLAIM FOR RELIEF

Unfair Competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.*

(By OpenAI, Inc., OpenAI OpCo, LLC, and OpenAI Global, LLC against Musk and xAI)

102. Counterclaim Plaintiffs re-allege and incorporate by reference each of Paragraphs 1 through 101 as though fully set forth herein.

103. Counterclaim Defendants intentionally engaged in unfair and fraudulent business practices by orchestrating a sham bid to purportedly acquire Counterclaim Plaintiff OpenAI, Inc.’s assets.

104. On February 10, 2025, Musk’s counsel announced to the media that he had sent a letter on behalf of a group of private investors, led by Musk in his capacity as CEO of xAI, to OpenAI, Inc.’s board of directors. The letter purported to make a bid to purchase Counterclaim Plaintiff OpenAI, Inc.’s assets for \$97.375 billion.

105. Counterclaim Defendants’ bid was a sham designed to disrupt Counterclaim Plaintiffs’ operations and to gain an unfair business advantage.

106. Many of the investors who participated in the purported takeover bid are close associates of Musk whose economic fortunes have turned in large part on the success of Musk-founded companies. One of those investors admitted to the lack of valuation analysis supporting the bid. The bid did not evidence any available financing to support the purported purchase price, and the proposed purchase price for Counterclaim Plaintiff OpenAI, Inc.’s assets had no discernible basis other than a comedic reference to Musk’s favorite sci-fi series.

107. The purpose of the bid was to hinder Counterclaim Plaintiffs in their ability to compete by impeding their ability to raise capital; complicating the process for undertaking any corporate reorganization; introducing unwarranted complexity into the process for valuing assets; attempting to interfere with Counterclaim Plaintiffs’ relationships with current and prospective investors; and attempting to interfere with Counterclaim Plaintiffs’ business relationships with employees and API developers, including by raising the prospect of working and/or partnering with a Musk-affiliated entity with no strong commitment to OpenAI’s mission or to AI safety. These concerns are particularly acute in light of the Counterclaim Defendants’ stated intent to wage a

1 bidding war for Counterclaim Plaintiff OpenAI, Inc.’s assets, which was intended to cast a pall of
2 uncertainty over Counterclaim Plaintiffs’ commercial future.

3 108. Counterclaim Defendants’ intent to undermine OpenAI through this sham bid is
4 further confirmed by the bid’s timing; the bid was announced when public reporting indicated that
5 OpenAI’s board was actively, and intensively, deliberating on a potential structure change while in
6 discussions with both the Delaware and California Attorneys General, such that the bid’s
7 announcement at that time was evidently intended to be maximally disruptive.

8 109. Counterclaim Defendants’ sham bid is an unfair business practice because it was
9 intended to disrupt Counterclaim Plaintiffs’ operations for the purpose of impairing Counterclaim
10 Plaintiffs’ ability to raise funds and effectively compete in the nascent market to develop AI
11 technologies. The purpose of this unfair business practice was to enhance the position of
12 Counterclaim Defendants in the market by reducing competition from Counterclaim Plaintiffs, thus
13 amounting to an incipient violation of federal and/or California antitrust law and/or a violation of
14 the policy and spirit of those antitrust laws, as the effect of the sham bid was to threaten to reduce
15 lawful competition in the market.

16 110. Counterclaim Defendants’ sham bid is a fraudulent business practice because the
17 purpose of the bid was to deceive members of the public that Counterclaim Defendants’ true
18 intentions were to acquire Counterclaim Plaintiff OpenAI, Inc.’s assets for \$97.375 billion, rather
19 than to disrupt Counterclaim Plaintiffs’ operations and interfere with its business relationships.

20 111. As a direct and proximate result of Counterclaim Defendants’ sham bid,
21 Counterclaim Plaintiffs were forced to bear substantial costs and have thus suffered injuries in fact
22 and lost money or property, including, without limitation, resources expended in hiring advisors to
23 evaluate and respond to the bid and costs associated with the diversion of Counterclaim Plaintiffs’
24 employees’ time to respond to the bid.

25 112. There is a substantial probability that Counterclaim Defendants’ unfair and
26 fraudulent conduct will recur in the absence of preliminary and permanent injunctive relief, as
27 Counterclaim Defendants’ sham bid is only the latest episode in a years-long campaign of
28 harassment against Counterclaim Plaintiffs, which has also involved, among other things, calling

1 for a “moratorium” on the development of advanced AI technology for purposes of stalling
2 Counterclaim Plaintiffs’ progress and benefitting Counterclaim Defendants’ rival AI company;
3 issuing a pretextual and deceptive records demand for the purpose of gathering and distorting
4 competitively-sensitive information about Counterclaim Plaintiffs; repeatedly disparaging
5 Counterclaim Plaintiffs on false and derogatory grounds, including on Counterclaim Defendants’
6 X platform to an audience of hundreds of millions; and filing and belatedly withdrawing legal
7 claims for purposes of harassing Counterclaim Plaintiffs.

8 113. Counterclaim Defendants’ motivation in conducting this harassment campaign has
9 been to impose costs on Counterclaim Plaintiffs and disrupt their operations for the ultimate
10 purpose of undermining Counterclaim Plaintiffs’ ability to compete in the nascent market for AI
11 technologies, and enhancing Counterclaim Defendants’ competitive position in that market.

12 114. Thus, as a direct and proximate consequence of Counterclaim Defendants’ conduct,
13 acts, and/or omissions in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*, Counterclaim
14 Plaintiffs have been and will continue to be harmed and are entitled to restitution, prejudgment
15 interest, and preliminary and permanent injunctive relief from any further unfair or fraudulent
16 business practices as provided in Cal. Bus. & Prof. Code § 17203.

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1 **SECOND CLAIM FOR RELIEF**

2 **Tortious Interference with Prospective Economic Advantage**

3 **(By OpenAI, Inc., OpenAI OpCo, LLC, and OpenAI Global, LLC against Musk and xAI)**

4 115. Counterclaim Plaintiffs re-allege and incorporate by reference each of Paragraphs 1
5 through 114 as though fully set forth herein.

6 116. At all times relevant to this action, Counterclaim Plaintiffs have maintained
7 economic relationships with (1) third-party investors, (2) employees, and (3) customers that were
8 or are likely to yield future and continued benefits to Counterclaim Plaintiffs.

9 117. Counterclaim Defendants knew of these economic relationships and the probability
10 of continued benefits to Counterclaim Plaintiffs.

11 118. Counterclaim Defendants intentionally engaged in actions designed to disrupt
12 Counterclaim Plaintiffs' economic relationships and did in fact disrupt those relationships.

13 119. Specifically, on February 10, 2025, Musk's counsel announced to the media that he
14 had sent a letter on behalf of a group of private investors, led by Musk in his capacity as CEO of
15 xAI, to OpenAI, Inc.'s board of directors. The letter purported to make a bid on behalf of a
16 consortium of named and unnamed private investors to purchase Counterclaim Plaintiff OpenAI,
17 Inc.'s assets for \$97.375 billion.

18 120. Counterclaim Defendants' purported bid was a sham designed to disrupt
19 Counterclaim Plaintiffs' economic relationships.

20 121. The bid was intended to disrupt Counterclaim Plaintiffs' relationships with current
21 and prospective investors and has rendered the performance of those business relationships more
22 costly and burdensome. Without limitation, the bid complicated the process for undertaking any
23 corporate reorganization, and may ultimately raise Counterclaim Plaintiffs' cost of capital.

24 122. On information and belief, the bid was intended to, and did in fact, disrupt
25 Counterclaim Plaintiffs' business relationships with their employees and customers and has
26 rendered the performance of those business relationships more costly and burdensome.

27 123. But for the Counterclaim Defendants' sham bid, Counterclaim Plaintiffs likely
28 would have enjoyed the full scope of economic benefits from these business relationships.

1 124. As a direct and proximate result of Counterclaim Defendants’ wrongful conduct,
2 Counterclaim Plaintiffs have suffered damages in an amount to be proven at trial.

3 125. Counterclaim Defendants’ conduct was independently wrongful because it
4 constituted an unfair and fraudulent business practice in violation of California’s Unfair
5 Competition Law, Cal. Bus. & Prof. Code § 17200 (*see* Claim 1).

6 126. Counterclaim Defendants engaged in wrongful conduct with malice, oppression,
7 and fraud. Accordingly, Counterclaim Plaintiffs request that punitive damages be awarded in an
8 amount sufficient to sanction this conduct and to deter those who would commit or knowingly seek
9 to profit from similar actions, now or in the future.

10 127. In addition to recovering damages, a preliminary and permanent injunction of any
11 further interference with Counterclaim Plaintiffs’ economic relationships is warranted because
12 there is no adequate remedy at law for Counterclaim Defendants’ tortious interference and the risk
13 of future, irreparable harm is acute, in light of Counterclaim Defendants’ years-long pattern of
14 abusive conduct, involving, among other things, calling for a “moratorium” on the development of
15 advanced AI technology to stall Counterclaim Plaintiffs’ progress; issuing a pretextual and
16 deceptive corporate records request; filing and withdrawing legal claims for purposes of harassing
17 Counterclaim Plaintiffs; and orchestrating a sham bid to purportedly acquire Counterclaim Plaintiff
18 OpenAI, Inc.’s assets (*see* Claim 1).

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1 **ANSWER**

2 Defendants Samuel Altman, Gregory Brockman, OpenAI, Inc., OpenAI L.P., OpenAI,
3 L.L.C., OpenAI GP, L.L.C., OpenAI OpCo, LLC, OpenAI Global, LLC, OAI Corporation, LLC,
4 OpenAI Holdings, LLC, OpenAI Startup Fund Management, LLC, OpenAI Startup Fund GP I,
5 L.L.C., OpenAI Startup Fund I, L.P., OpenAI Startup Fund SPV GP I, L.L.C., OpenAI Startup
6 Fund SPV GP II, L.L.C., OpenAI Startup Fund SPV GP III, L.L.C., OpenAI Startup Fund SPV GP
7 IV, L.L.C., OpenAI Startup Fund SPV I, L.P., OpenAI Startup Fund SPV II, L.P., OpenAI Startup
8 Fund SPV III, L.P., OpenAI Startup Fund SPV IV, L.P., Aestas Management Company, LLC, and
9 Aestas LLC (the “OpenAI Defendants”) hereby answer Counts II (Breach of Implied-in-Fact
10 Contract), III (Breach of Implied Covenant of Good Faith and Fair Dealing), IV (Breach of Quasi-
11 Contract/Unjust Enrichment), VI (Constructive Fraud), VII (Fraud), XVIII (Breach of Charitable
12 Trust), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Federal Civil
13 RICO) (together, the “Subject Claims”)²² of the Second Amended Complaint of Plaintiffs Elon
14 Musk and X.AI Corp., dated May 22, 2025 (Dkt. No. 170).

15 **NATURE OF THE ACTION**

16 1. Never before has a corporation gone from tax-exempt charity to a \$157 billion for-
17 profit, market-paralyzing gorgon—and in just eight years. Never before has it happened, because
18 doing so violates almost every principle of law governing economic activity. It requires lying to
19 donors, lying to members, lying to markets, lying to regulators, and lying to the public. No amount
20 of clever drafting nor surfeit of creative dealmaking can obscure what is happening here. OpenAI,
21 Inc., co-founded by Musk as an independent charity committed to safety and transparency—and
22 nurtured in its infancy by Musk’s money, advice, recruiting efforts and connections—is, at the
23 direction of Altman, Brockman, and Microsoft, fast becoming a fully for-profit subsidiary of
24

25 ²² The OpenAI Defendants interpret the Court’s Order Granting in Part and Denying in Part
26 Defendants’ Motions to Dismiss First Amended Complaint, Dkt. 163, to require them to answer
27 and move to dismiss Plaintiffs’ amended claims in the Second Amended Complaint by June 5,
28 2025, *id.* at 11. Plaintiffs’ amended claims for breach of the implied covenant of good faith and fair
dealing (Count III) and for violations of federal civil RICO (Counts XX-XXI) remain subject to a
pending motion to dismiss.

1 Microsoft. *See infra* ¶¶ 192-200.

2 **RESPONSE:** Denied.

3 2. Three events occasioned the filing of the FAC. *First*, the wholesale conversion of
4 OpenAI, Inc. into a for-profit entity, which the original Complaint merely anticipated, *see* Dkt. No.
5 1 at 30, ¶ 146, is now in full swing. OpenAI and Microsoft have hired investment banks to negotiate
6 Microsoft’s enormous stake and set a hard two-year deadline to complete the conversion. *See infra*
7 ¶ 193. *Second*, Microsoft and OpenAI, apparently unsatisfied with their monopoly, or near so, in
8 generative artificial intelligence (“AI”) are now actively trying to eliminate competitors, such as
9 xAI, by extracting promises from investors not to fund them. *See infra* ¶ 199. *Third*, OpenAI’s
10 safety practices have devolved from shambolic at the time of the original Complaint to affirmatively
11 harmful today, with droves of security researchers resigning in protest, or being forced out, and
12 whole safety teams dissolved, all to make way for “security” personnel whose real job is to facilitate
13 military contracting. *See infra* ¶¶ 73, 191.

14 **RESPONSE:** Denied.

15 3. Some aspects of Altman, Brockman, and OpenAI’s promises to Musk and the public
16 are matters of degree, but the intent and effect of OpenAI’s actions to flout those promises are now
17 unambiguous. No reasonable person could conclude OpenAI is proceeding in good faith as a
18 charity committed to safety and transparency above profit, organized for public rather than private
19 benefit, and working to avoid the undue concentration of powerful AI technology. Defendants have
20 admitted as much by their commitments to investors to convert OpenAI to a fully for-profit
21 enterprise.

22 **RESPONSE:** Denied.

23 4. As the original Complaint detailed, Altman, in concert with other Defendants,
24 intentionally courted and deceived Musk, preying on Musk’s humanitarian concern about the
25 dangers posed by AI. *See infra* ¶ 73. The idea Altman sold Musk was that a non-profit, funded
26 and backed by Musk, would attract world-class scientists, conduct leading AI research and
27 development, and, as a meaningful counterweight to Google’s DeepMind in the race for Artificial
28 General Intelligence (“AGI”), decentralize its technology by making it open source. *See infra* ¶¶

1 76-84. Altman repeatedly assured Musk and regulators that the non-profit structure guaranteed
2 neutrality and a focus on safety and openness for the benefit of humanity, not shareholder value or
3 individual enrichment. *See infra* ¶¶ 84-88. But after Musk lent his name to the venture as its co-
4 chairman, invested significant time, tens of millions of dollars in seed capital, and recruited top AI
5 scientists for OpenAI, Inc., Musk and the non-profit’s namesake objective were betrayed by Altman
6 and his accomplices.

7 **RESPONSE:** Denied.

8 5. These efforts by Altman and his cohorts to cash in and squeeze others out have their
9 roots in OpenAI’s partnership with Microsoft. Together, they established an opaque web of for-
10 profit OpenAI affiliates, the only value of which came from looting OpenAI, Inc. of the intellectual
11 property, employees, and relationships developed by exploiting Musk’s name and contributions,
12 the charity’s tax status, and the goodwill generated by its supposed philanthropic commitment. *See*
13 *infra* ¶¶ 111-30. The resulting OpenAI network, in which, on information and belief, Altman,
14 Microsoft, and Brockman hold significant interests, was valued at the time of the original
15 Complaint at an eye-popping \$100 billion; in the merely three months since, it has been valued at
16 a staggering \$157 billion, making it the second most valuable start-up in American history.

17 **RESPONSE:** Denied.

18 6. Throughout this process, Altman has engaged in rampant self-dealing, *see infra* ¶¶
19 134-43, leveraged Microsoft’s stranglehold on OpenAI’s most important raw material (computing
20 power) to seize control of its Board, *see infra* ¶¶ 110, 146-59, and joined with Microsoft in a de
21 facto merger to pursue the kinds of anticompetitive conduct for which Microsoft is notorious. *See*
22 *infra* ¶¶ 131, 145-46, 176, 199-200. Microsoft is now OpenAI, and OpenAI, Microsoft. *See infra*
23 ¶¶ 145-70.

24 **RESPONSE:** Denied.

25 7. The world has gotten wise to Defendants’ scheme: there are several pending
26 lawsuits against OpenAI over its unlawful practices; it is under investigation by Senators and
27 multiple federal agencies (including the Securities and Exchange Commission (“SEC”) and the
28 Federal Trade Commission (“FTC”)), *see infra* ¶ 180; it is the subject of numerous consumer

1 advocacy complaints to the Attorney General of California, *see infra* ¶ 181; and a recent spate of
2 OpenAI executives and insiders have blown the whistle on Altman, exposing his unscrupulous
3 maneuvering and self-dealing, while numerous departing AI-safety experts have sounded the alarm.
4 *See infra* ¶¶ 183-90.

5 **RESPONSE:** Denied.

6 8. As a result of their unlawful actions, Defendants have been unjustly enriched to the
7 tune of hundreds of billions of dollars in value, while Musk has been conned along with the public.

8 **RESPONSE:** Denied.

9 9. Musk brings this remedial action to divest Defendants of their ill-gotten gains and
10 ensure OpenAI maintains its namesake mission to develop safe and open AI for the public good.

11 **RESPONSE:** Denied.

12 10. xAI, a public benefit corporation founded by Musk to help accelerate scientific
13 research via AI, brings this action to ensure that competition in the marketplace for generative AI
14 remains healthy and that AI development proceeds in a safe and responsible manner for all
15 stakeholders and society at large.

16 **RESPONSE:** Denied.

17 **PARTIES**

18 11. Plaintiff Elon Musk is an individual, citizen, and resident of Texas.

19 **RESPONSE:** Admitted.

20 12. Plaintiff X.AI Corp. is a public benefit corporation formed under the laws of Nevada
21 with its principal place of business at 3180 18th Street, San Francisco, CA 94110.

22 **RESPONSE:** Admitted.

23 13. Plaintiffs are informed and believe and thereon allege that Defendant Samuel
24 Altman is a citizen and resident of San Francisco, California.

25 **RESPONSE:** The OpenAI Defendants admit that Altman is a citizen and resident of San
26 Francisco, California.

27 14. Plaintiffs are informed and believe and thereon allege that Defendant Gregory
28 Brockman is a citizen and resident of San Francisco, California.

1 **RESPONSE:** The OpenAI Defendants admit that Brockman is a citizen and resident of
2 San Francisco, California.

3 15. Plaintiffs are informed and believe and thereon allege that Defendant Deannah
4 Templeton is a citizen and resident of Washington.

5 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
6 a belief as to the truth of the allegations in Paragraph 15 and deny them on that basis.

7 16. Plaintiffs are informed and believe and thereon allege that Defendant Reid Hoffman
8 is a citizen and resident of Washington.

9 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
10 a belief as to the truth of the allegations in Paragraph 16 and deny them on that basis.

11 17. Defendant OpenAI, Inc. is a registered non-profit organization incorporated under
12 the laws of Delaware on December 8, 2015. OpenAI, Inc. is registered as an out-of-state
13 corporation with the California Secretary of State and has its principal place of business at 550
14 Terry A Francois Blvd., San Francisco, CA 94158.

15 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
16 Paragraph 17, admit that OpenAI, Inc. is registered as an out-of-state corporation with the
17 California Secretary of State, and otherwise deny the allegations in the second sentence of
18 Paragraph 17.

19 18. Defendant OpenAI, L.P. is a limited partnership formed under the laws of Delaware
20 on September 19, 2018, originally as SummerSafe, L.P. On information and belief, on January 23,
21 2023, OpenAI, L.P. was converted to Defendant OpenAI OpCo, LLC. OpenAI, L.P. is registered
22 as an out-of-state limited partnership with the California Secretary of State and has its principal
23 place of business at 550 Terry A Francois Blvd., San Francisco, CA 94158.

24 **RESPONSE:** The OpenAI Defendants admit the allegations in the first two sentences of
25 Paragraph 18, admit that OpenAI, L.P. is registered as an out-of-state limited partnership with the
26 California Secretary of State, and otherwise deny the allegations in the third sentence of Paragraph
27 18.

28 19. Defendant OpenAI, L.L.C. is a limited liability company formed in Delaware on

1 September 17, 2020. OpenAI, L.L.C. maintains its principal place of business in California.

2 **RESPONSE:** Admitted.

3 20. Defendant OpenAI GP, L.L.C. is a limited liability company formed in Delaware
4 on September 19, 2018. OpenAI GP, L.L.C. is registered as an out-of-state limited liability
5 company registered with the California Secretary of State and has its principal place of business at
6 550 Terry A Francois Blvd., San Francisco, CA 94158.

7 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
8 Paragraph 20, admit that OpenAI GP, L.L.C. is registered as an out-of-state limited liability
9 company with the California Secretary of State, and otherwise deny the allegations in the second
10 sentence of Paragraph 20.

11 21. Defendant OpenAI OpCo, LLC is a limited liability company formed in Delaware
12 on September 19, 2018, as OpenAI, L.P., but was later converted on January 23, 2023, to OpenAI
13 OpCo, LLC. OpenAI OpCo, LLC is registered as an out-of-state limited liability company with
14 the California Secretary of State and has its principal place of business at 1960 Bryant Street, San
15 Francisco, CA 94110.

16 **RESPONSE:** The OpenAI Defendants deny the allegations in the first sentence of
17 Paragraph 21. The OpenAI Defendants admit that OpenAI OpCo, LLC is registered as an out-of-
18 state limited liability company with the California Secretary of State, and otherwise deny the
19 allegations in the second sentence of Paragraph 21.

20 22. Defendant OpenAI Global, LLC is a limited liability company formed in Delaware
21 on December 28, 2022. OpenAI Global, LLC is registered as an out-of-state limited liability
22 company with the California Secretary of State and has its principal place of business at 1960
23 Bryant Street, San Francisco, CA 94110.

24 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
25 Paragraph 22, admit that OpenAI Global, LLC is registered as an out-of-state limited liability
26 company with the California Secretary of State, and otherwise deny the allegations in the second
27 sentence of Paragraph 22.

28 23. Defendant OAI Corporation is a corporation formed in Delaware. OAI Corporation

1 maintains its principal place of business in California.

2 **RESPONSE:** Admitted.

3 24. Defendant OpenAI Holdings, LLC is a limited liability company formed in
4 Delaware on March 17, 2023. OpenAI Holdings, LLC is registered as an out-of-state limited
5 liability company with the California Secretary of State and has its principal place of business at
6 1960 Bryant Street, San Francisco, CA 94110.

7 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
8 Paragraph 24, admit that OpenAI Holdings, LLC is registered as an out-of-state limited liability
9 company with the California Secretary of State, and otherwise deny the allegations in the second
10 sentence of Paragraph 24.

11 25. Defendant OpenAI Startup Fund Management, LLC is a limited liability company
12 formed in Delaware on July 16, 2021. OpenAI Startup Fund Management, LLC is registered as an
13 out-of-state limited liability company with the California Secretary of State and has its principal
14 place of business at 550 Terry A Francois Blvd., San Francisco, CA 94158.

15 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
16 Paragraph 25, admit that OpenAI Startup Fund Management, LLC is registered as an out-of-state
17 limited liability company with the California Secretary of State, and otherwise deny the allegations
18 in the second sentence of Paragraph 25.

19 26. Defendant OpenAI Startup Fund GP I, L.L.C. is a limited liability company formed
20 in Delaware on July 28, 2021. OpenAI Startup Fund GP I, L.L.C. is registered as an out-of-state
21 limited liability company with the California Secretary of State and has its principal place of
22 business at 550 Terry A Francois Blvd., San Francisco, CA 94158.

23 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
24 Paragraph 26, admit that OpenAI Startup Fund GP I, L.L.C. is registered as an out-of-state limited
25 liability company with the California Secretary of State, and otherwise deny the allegations in the
26 second sentence of Paragraph 26.

27 27. Defendant OpenAI Startup Fund I, L.P. is a limited partnership formed in Delaware
28 on July 28, 2021. OpenAI Startup Fund I, L.P. is registered as an out-of-state limited partnership

1 with the California Secretary of State and has its principal place of business at 550 Terry A Francois
2 Blvd., San Francisco, CA 94158.

3 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
4 Paragraph 27, admit that OpenAI Startup Fund I, L.P. is registered as an out-of-state limited
5 partnership with the California Secretary of State, and otherwise deny the allegations in the second
6 sentence of Paragraph 27.

7 28. Defendant OpenAI Startup Fund SPV GP I, L.L.C. is a limited liability company
8 formed in Delaware on December 5, 2023. Plaintiffs are informed and believe and thereon allege
9 that OpenAI Startup Fund SPV GP I, L.L.C. maintains its principal place of business in San
10 Francisco, California.

11 **RESPONSE:** Admitted.

12 29. Defendant OpenAI Startup Fund SPV GP II, L.L.C. is a limited liability company
13 formed in Delaware on April 4, 2024. Plaintiffs are informed and believe and thereon allege that
14 OpenAI Startup Fund SPV GP II, L.L.C. maintains its principal place of business in San Francisco,
15 California.

16 **RESPONSE:** Admitted.

17 30. Defendant OpenAI Startup Fund SPV GP III, L.L.C. is a limited liability company
18 formed in Delaware on April 4, 2024. Plaintiffs are informed and believe and thereon allege that
19 OpenAI Startup Fund SPV GP III, L.L.C. maintains its principal place of business in San Francisco,
20 California.

21 **RESPONSE:** Admitted.

22 31. Defendant OpenAI Startup Fund SPV GP IV, L.L.C. is a limited liability company
23 formed in Delaware on May 9, 2024. Plaintiffs are informed and believe and thereon allege that
24 OpenAI Startup Fund SPV GP IV, L.L.C. maintains its principal place of business in San Francisco,
25 California.

26 **RESPONSE:** Admitted.

27 32. Defendant OpenAI Startup Fund SPV I, L.P. is a limited partnership formed in
28 Delaware on December 5, 2023. Plaintiffs are informed and believe and thereon allege that OpenAI

1 Startup Fund SPV I, L.P. maintains its principal place of business in San Francisco, California.

2 **RESPONSE:** Admitted.

3 33. Defendant OpenAI Startup Fund SPV II, L.P. is a limited partnership formed in
4 Delaware on April 4, 2024. Plaintiffs are informed and believe and thereon allege that OpenAI
5 Startup Fund SPV II, L.P. maintains its principal place of business in San Francisco, California.

6 **RESPONSE:** Admitted.

7 34. Defendant OpenAI Startup Fund SPV III, L.P. is a limited partnership formed in
8 Delaware on April 4, 2024. Plaintiffs are informed and believe and thereon allege that OpenAI
9 Startup Fund SPV III, L.P. maintains its principal place of business in San Francisco, California.

10 **RESPONSE:** Admitted.

11 35. Defendant OpenAI Startup Fund SPV IV, L.P. is a limited partnership formed in
12 Delaware on May 9, 2024. Plaintiffs are informed and believe and thereon allege that OpenAI
13 Startup Fund SPV IV, L.P. maintains its principal place of business in San Francisco, California.

14 **RESPONSE:** Admitted.

15 36. Defendant Aestas Management Company, LLC, is a Delaware limited liability
16 company formed in Delaware on February 10, 2023. Aestas Management Company, LLC is
17 registered as an out-of-state limited liability company with the California Secretary of State and
18 has its principal place of business at 1960 Bryant Street, San Francisco, CA 94110.

19 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
20 Paragraph 36, admit that Aestas Management Company, LLC is registered as an out-of-state limited
21 liability company with the California Secretary of State, and otherwise deny the allegations in the
22 second sentence of Paragraph 36.

23 37. Defendant Aestas, LLC is a limited liability company formed in Delaware on
24 September 19, 2018. Aestas, LLC is registered as an out-of-state limited liability company with
25 the California Secretary of State and has its principal place of business at 1960 Bryant Street, San
26 Francisco, CA 94110.

27 **RESPONSE:** The OpenAI Defendants admit the allegations in the first sentence of
28 Paragraph 37, admit that Aestas, LLC is a registered as an out-of-state limited liability company

1 with the California Secretary of State, and otherwise deny the allegations in the second sentence of
2 Paragraph 37.

3 38. Defendant Microsoft Corp. is a corporation formed under the laws of Washington
4 with its principal place of business at One Microsoft Way, Redmond, WA 98052.

5 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
6 a belief as to the truth of the allegations in Paragraph 38 and deny them on that basis.

7 39. Plaintiffs are informed and believe and based thereon allege that the fictitiously
8 named defendants captioned hereinabove as Does 1 through 100, inclusive, and each of them, were
9 in some manner responsible or legally liable for the actions, damages, events, transactions, and
10 circumstances alleged herein. The true names and capacities of such fictitiously named defendants,
11 whether individual, corporate, associate, or otherwise are presently unknown to Plaintiffs, and
12 Plaintiffs will amend this SAC to assert the true names and capacities of such fictitiously named
13 defendants when they have been ascertained. For convenience, each reference herein to the named
14 Defendants shall also refer to the Doe defendants and each of them.

15 **RESPONSE:** OpenAI Defendants lack knowledge or information sufficient to form a
16 belief as to the truth of the allegations in Paragraph 39 and deny them on that basis.

17 **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

18 40. This Court has subject matter jurisdiction under 15 U.S.C. § 4, 15 U.S.C § 1121, 18
19 U.S.C. § 1964, and 28 U.S.C. § 1331, because this is a civil case arising under the Sherman Antitrust
20 Act, 15 U.S.C. §§ 1 *et seq.*, the Clayton Act, 15 U.S.C. §§ 12 *et seq.*, the Racketeer Influenced and
21 Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.*, and the Lanham Act, 15 U.S.C. §§ 1111 *et*
22 *seq.*

23 **RESPONSE:** Paragraph 40 sets forth a legal conclusion to which no response is required.

24 41. Further, Plaintiffs' state-law claim for unfair competition (Count XVI) arises under
25 federal law for purposes of 28 U.S.C. § 1331 and necessarily raises a stated federal issue, actually
26 disputed and substantial, which a federal forum may entertain without disturbing any
27 congressionally approved balance of federal and state judicial responsibilities, in particular claims
28 under the federal civil and criminal revenue, competition, copyright, and trademark laws.

1 **RESPONSE:** Paragraph 41 sets forth a legal conclusion to which no response is required.

2 42. The Court has supplemental jurisdiction over all other claims pursuant to 28 U.S.C.
3 § 1367, because all claims form part of the same case or controversy under Article III of the United
4 States Constitution.

5 **RESPONSE:** Paragraph 42 sets forth a legal conclusion to which no response is required.

6 43. Jurisdiction over Samuel Altman is proper because he is domiciled in the State of
7 California and this District, has continuous and systematic contacts with the State of California and
8 this District, including contacts giving rise to the specific causes of action against him, and because
9 a substantial portion of the relevant acts complained of herein occurred in the State of California
10 and in this District.

11 **RESPONSE:** Paragraph 43 sets forth a legal conclusion to which no response is required.

12 44. Jurisdiction over Gregory Brockman is proper because he is domiciled in the State
13 of California and this District, has continuous and systematic contacts with the State of California
14 and this District, including contacts giving rise to the specific causes of action against him, and
15 because a substantial portion of the relevant acts complained of herein occurred in the State of
16 California and in this District.

17 **RESPONSE:** Paragraph 44 sets forth a legal conclusion to which no response is required.

18 45. Jurisdiction over Deannah Templeton is proper because she has continuous and
19 systematic contacts with the State of California and this District, including contacts giving rise to
20 the specific causes of action against her, and because a substantial portion of the relevant acts
21 complained of herein occurred in the State of California and in this District.

22 **RESPONSE:** Paragraph 45 sets forth a legal conclusion to which no response is required.

23 46. Jurisdiction over Reid Hoffman is proper because he has continuous and systematic
24 contacts with the State of California and this District, including contacts giving rise to the specific
25 causes of action against him, and because a substantial portion of the relevant acts complained of
26 herein occurred in the State of California and in this District.

27 **RESPONSE:** Paragraph 46 sets forth a legal conclusion to which no response is required.

28 47. Jurisdiction over OpenAI, Inc. is proper because it has its principal place of business

1 in the State of California and in this District, where it transacts business and may be found, and
2 because a substantial portion of the relevant acts complained of herein occurred in the State of
3 California and in this District.

4 **RESPONSE:** Paragraph 47 sets forth a legal conclusion to which no response is required.

5 48. Jurisdiction over OpenAI, L.P. is proper because it has its principal place of business
6 in the State of California and in this District, where it transacts business and may be found, and
7 because a substantial portion of the relevant acts complained of herein occurred in the State of
8 California and in this District.

9 **RESPONSE:** Paragraph 48 sets forth a legal conclusion to which no response is required.

10 49. Jurisdiction over OpenAI, L.L.C. is proper because it has its principal place of
11 business in the State of California, and because a substantial portion of the relevant acts complained
12 of herein occurred in the State of California and in this District, where it transacts business and may
13 be found.

14 **RESPONSE:** Paragraph 49 sets forth a legal conclusion to which no response is required.

15 50. Jurisdiction over OpenAI GP, L.L.C. is proper because it has its principal place of
16 business in the State of California and in this District, where it transacts business and may be found,
17 and because a substantial portion of the relevant acts complained of herein occurred in the State of
18 California and in this District.

19 **RESPONSE:** Paragraph 50 sets forth a legal conclusion to which no response is required.

20 51. Jurisdiction over OpenAI OpCo, LLC is proper because it has its principal place of
21 business in the State of California and in this District, where it transacts business and may be found,
22 and because a substantial portion of the relevant acts complained of herein occurred in the State of
23 California and in this District.

24 **RESPONSE:** Paragraph 51 sets forth a legal conclusion to which no response is required.

25 52. Jurisdiction over OpenAI Global, LLC is proper because it has its principal place of
26 business in the State of California and in this District, where it transacts business and may be found,
27 and because a substantial portion of the relevant acts complained of herein occurred in the State of
28 California and in this District.

1 **RESPONSE:** Paragraph 52 sets forth a legal conclusion to which no response is required.

2 53. Jurisdiction over OAI Corporation is proper because it has its principal place of
3 business in the State of California, and because a substantial portion of the relevant acts complained
4 of herein occurred in the State of California and in this District, where it transacts business and may
5 be found.

6 **RESPONSE:** Paragraph 53 sets forth a legal conclusion to which no response is required.

7 54. Jurisdiction over OpenAI Holdings, LLC is proper because it has its principal place
8 of business in the State of California and in this District, where it transacts business and may be
9 found, and because a substantial portion of the relevant acts complained of herein occurred in the
10 State of California and in this District.

11 **RESPONSE:** Paragraph 54 sets forth a legal conclusion to which no response is required.

12 55. Jurisdiction over OpenAI Startup Fund Management, LLC is proper because it has
13 its principal place of business in the State of California and in this District, where it transacts
14 business and may be found, and because a substantial portion of the relevant acts complained of
15 herein occurred in the State of California and in this District.

16 **RESPONSE:** Paragraph 55 sets forth a legal conclusion to which no response is required.

17 56. Jurisdiction over OpenAI Startup Fund GP I, L.L.C. is proper because it has its
18 principal place of business in the State of California and in this District, where it transacts business
19 and may be found, and because a substantial portion of the relevant acts complained of herein
20 occurred in the State of California and in this District.

21 **RESPONSE:** Paragraph 56 sets forth a legal conclusion to which no response is required.

22 57. Jurisdiction over OpenAI Startup Fund I, L.P. is proper because it has its principal
23 place of business in the State of California and in this District, where it transacts business and may
24 be found, and because a substantial portion of the relevant acts complained of herein occurred in
25 the State of California and in this District.

26 **RESPONSE:** Paragraph 57 sets forth a legal conclusion to which no response is required.

27 58. Jurisdiction over OpenAI Startup Fund SPV GP I, L.L.C. is proper because it has
28 its principal place of business in the State of California and in this District, where it transacts

1 business and may be found, and because a substantial portion of the relevant acts complained of
2 herein occurred in the State of California and in this District.

3 **RESPONSE:** Paragraph 58 sets forth a legal conclusion to which no response is required.

4 59. Jurisdiction over OpenAI Startup Fund SPV GP II, L.L.C. is proper because it has
5 its principal place of business in the State of California and in this District, where it transacts
6 business and may be found, and because a substantial portion of the relevant acts complained of
7 herein occurred in the State of California and in this District.

8 **RESPONSE:** Paragraph 59 sets forth a legal conclusion to which no response is required.

9 60. Jurisdiction over OpenAI Startup Fund SPV GP III, L.L.C. is proper because it has
10 its principal place of business in the State of California and in this District, where it transacts
11 business and may be found, and because a substantial portion of the relevant acts complained of
12 herein occurred in the State of California and in this District.

13 **RESPONSE:** Paragraph 60 sets forth a legal conclusion to which no response is required.

14 61. Jurisdiction over OpenAI Startup Fund SPV GP IV, L.L.C. is proper because it has
15 its principal place of business in the State of California and in this District, where it transacts
16 business and may be found, and because a substantial portion of the relevant acts complained of
17 herein occurred in the State of California and in this District.

18 **RESPONSE:** Paragraph 61 sets forth a legal conclusion to which no response is required.

19 62. Jurisdiction over OpenAI Startup Fund SPV I, L.P. is proper because it has its
20 principal place of business in the State of California and in this District, where it transacts business
21 and may be found, and because a substantial portion of the relevant acts complained of herein
22 occurred in the State of California and in this District.

23 **RESPONSE:** Paragraph 62 sets forth a legal conclusion to which no response is required.

24 63. Jurisdiction over OpenAI Startup Fund SPV II, L.P. is proper because it has its
25 principal place of business in the State of California and in this District, where it transacts business
26 and may be found, and because a substantial portion of the relevant acts complained of herein
27 occurred in the State of California and in this District.

28 **RESPONSE:** Paragraph 63 sets forth a legal conclusion to which no response is required.

1 64. Jurisdiction over OpenAI Startup Fund SPV III, L.P. is proper because it has its
2 principal place of business in the State of California and in this District, where it transacts business
3 and may be found, and because a substantial portion of the relevant acts complained of herein
4 occurred in the State of California and in this District.

5 **RESPONSE:** Paragraph 64 sets forth a legal conclusion to which no response is required.

6 65. Jurisdiction over OpenAI Startup Fund SPV IV, L.P. is proper because it has its
7 principal place of business in the State of California and in this District, where it transacts business
8 and may be found, and because a substantial portion of the relevant acts complained of herein
9 occurred in the State of California and in this District.

10 **RESPONSE:** Paragraph 65 sets forth a legal conclusion to which no response is required.

11 66. Jurisdiction over Aestas Management Company, LLC is proper because it has its
12 principal place of business in the State of California and in this District, where it transacts business
13 and may be found, and because a substantial portion of the relevant acts complained of herein
14 occurred in the State of California and in this District.

15 **RESPONSE:** Paragraph 66 sets forth a legal conclusion to which no response is required.

16 67. Jurisdiction over Aestas, LLC is proper because it has its principal place of business
17 in the State of California and in this District, where it transacts business and may be found, and
18 because a substantial portion of the relevant acts complained of herein occurred in the State of
19 California and in this District.

20 **RESPONSE:** Paragraph 67 sets forth a legal conclusion to which no response is required.

21 68. Jurisdiction over Microsoft Corp. is proper because it has continuous and systematic
22 contacts with the State of California and this District, where it transacts business and may be found,
23 and because a substantial portion of the relevant acts complained of herein occurred in the State of
24 California and in this District.

25 **RESPONSE:** Paragraph 68 sets forth a legal conclusion to which no response is required.

26 69. Upon information and belief, venue is proper in this Court pursuant to 28 U.S.C. §
27 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred,
28 and a substantial part of property that is the subject of the action, is situated in this District.

1 **RESPONSE:** Paragraph 69 sets forth a legal conclusion to which no response is required.

2 70. This action is properly assigned to the San Francisco Division of this District under
3 Civil Local Rule 3-2(c) because a substantial part of the events or omissions giving rise to Plaintiffs’
4 claims occurred, and a substantial part of the property that is the subject of the action is situated, in
5 San Francisco County, which is served by the San Francisco Division.

6 **RESPONSE:** Paragraph 70 sets forth a legal conclusion to which no response is required.

7 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

8 **A. The Dangers of AI**

9 71. Over the course of the 20th century, the United States gradually shifted from a
10 primarily labor-based economy to a knowledge-based one, with economic value increasingly
11 generated by human intelligence. As the century progressed, another paradigm shift was already
12 underway: value creation through AI.

13 **RESPONSE:** The OpenAI Defendants admit that AI research and development
14 progressed during the second half of the 20th century, but otherwise lack knowledge or information
15 sufficient to form a belief as to the truth of the allegations in Paragraph 71 and deny them on that
16 basis.

17 72. Starting in the late 2000s and early 2010s, an algorithm called “deep learning” was
18 developed, the hallmark of which was that it no longer needed to be designed with significant
19 knowledge of the task at hand because it could essentially “learn” from examples and program
20 itself. As deep learning algorithms became increasingly sophisticated, some of the world’s leading
21 AI researchers set their sights on AGI. The basic concept of AGI is a general-purpose AI system,
22 a machine having intelligence for a wide variety of tasks like a human.

23 **RESPONSE:** The OpenAI Defendants admit that “deep learning” algorithms progressed
24 in the late 2000s and early 2010s due to advances in computational power and GPU (Graphics
25 Processing Unit) technology, that “deep learning” is a process whereby a neural network of billions
26 of interconnected layered nodes performs computations on a massive scale, and that leading AI
27 researchers are focused on the development of AGI systems. The OpenAI Defendants otherwise
28 deny the allegations in Paragraph 72.

1 73. Musk has long been concerned by the grave threat these advanced systems pose to
2 humanity, which he has repeatedly warned is likely the greatest existential threat we face today.
3 These dangers include, without limitation (or exaggeration), completely replacing the human
4 workforce, supercharging the spread of disinformation, malicious human impersonation, and the
5 manipulation of political and military systems (which military-related contracting OpenAI is now
6 reported to be pursuing aggressively), ultimately leading to the extinction of humanity. Musk’s
7 concerns have been shared by other leading figures including Stephen Hawking and 2024 physics
8 Nobel laureate Geoffrey Hinton, who warned “this is not science fiction.”²³

9 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
10 a belief as to the truth of the allegations in Paragraph 73 and deny them on that basis, and further
11 deny the allegations to the extent they purport to characterize OpenAI’s actions or the implications
12 of AI technology.

13 74. Musk has publicly called for a variety of measures to address the dangers of AI,
14 from voluntary moratoria to regulation, but his calls have largely fallen on deaf ears or were
15 drowned out by OpenAI’s use of putative charitable assets to oppose safety regulation, such as its
16 successful killing of California SB 1047 (the Safe and Secure Innovation for Frontier Artificial
17 Intelligence Models Act).

18 **RESPONSE:** Denied. The OpenAI Defendants aver that Musk publicly called for a six-
19 month “moratorium” on the development of advanced artificial intelligence days after
20 incorporating his own AI development company, X.AI Corp., in order to advantage that nascent
21 enterprise.

22 75. Where some like Musk see AGI as an existential threat,²⁴ others like Google—and
23 as it would turn out, Defendants—see it as a source of even greater profit and power.

24 _____
25 ²³ In the short-term, AI, even before reaching AGI, is leading to a proliferation in child sexual abuse
26 material and revenge pornography, cyberattacks, the automation of cybercrime, and the
development of weapons, all while accelerating the economic dislocation of knowledge workers.

27 ²⁴ This is the reason Musk organized xAI as a public benefit corporation, which is required to report
28 the results of an annual analysis of the company’s social impact. Nev. Benefit Corp. Act, Nev.
Rev. Stat. Ann. § 78B.020, -.40, -.60, -.80.

1 **RESPONSE:** Denied.

2 76. At the end of 2013, Musk learned that Google was planning to acquire DeepMind,
3 which at the time was one of the most advanced AI companies in the industry. Musk, who is well-
4 known for his opposition to closed technology—e.g., Musk’s rocket company SpaceX holds almost
5 no patents, and his electric vehicle company Tesla makes its patents open and available for public
6 use—was deeply troubled by this development. He believed that such an important and potentially
7 dangerous technology as AGI in the hands of a giant, private and rapacious company like Google
8 was a matter of grave concern.

9 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
10 a belief as to the truth of the allegations in Paragraph 76 and deny them on that basis.

11 77. To prevent this, Musk tried to stop the sale of DeepMind but was ultimately
12 unsuccessful. In 2014, Google acquired DeepMind, and with its team, Google immediately
13 catapulted to the front of the race for AGI.

14 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
15 a belief as to the truth of the allegations in Paragraph 77 and deny them on that basis.

16 78. Following Google’s acquisition, Musk began hosting a series of dinner discussions
17 on ways to counter Google and promote AI safety. He even reached out to President Barack Obama
18 in 2015 to discuss his concerns. But regulation never came.

19 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
20 a belief as to the truth of the allegations in Paragraph 78 and deny them on that basis.

21 79. Musk continued to advocate for safe AI practices and in 2015, he thought he found
22 someone who understood his apprehensions: Sam Altman.

23 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
24 a belief as to the truth of the allegations in Paragraph 79 and deny them on that basis.

25 **B. Altman Induces Musk to Back OpenAI, Inc.**

26 80. From the start, Altman courted Musk by presenting himself as sharing Musk’s well-
27 known concerns over the threat posed by AI/AGI. Altman, an experienced tech player, feigned
28 altruism to convince Musk to give him free start-up capital and, as importantly in a marketplace

1 where talent is scarce and connections and credibility are everything, to recruit top AI scientists.

2 **RESPONSE:** Denied.

3 81. Altman began by testing the waters. In early March 2015, he approached Musk to
4 help draft an open letter to the U.S. Government emphasizing the need for regulation to ensure the
5 safe creation of AI. Musk agreed, and the two began preparing the open letter and approaching
6 Musk’s influential contacts in the technology and AI sectors about signing it.

7 **RESPONSE:** The OpenAI Defendants admit that Altman and Musk prepared a letter to
8 the U.S. government regarding AI regulation, but otherwise deny the allegations in Paragraph 81.

9 82. Sensing opportunity, Altman suggested to Musk on May 25, 2015 that they
10 endeavor to beat Google in the race to develop AGI. He wrote that he’d “[b]een thinking a lot
11 about whether it’s possible to stop humanity from developing AI. I think the answer is almost
12 definitely not. If it’s going to happen, it seems like it would be good for someone other than Google
13 to do it first.” Declaration of Marc Toberoff, Ex. 1 at 1.²⁵ Altman proposed that they start an AI
14 “Manhattan Project” and, to win Musk’s backing, offered to “structure it so that the tech belongs
15 to the world via some sort of nonprofit but the people working on it get startup-like compensation
16 if it works. Obviously we’d comply with/aggressively support all regulation.” *Id.* Still
17 noncommittal, Musk merely responded: “Probably worth a conversation.” *Id.*

18 **RESPONSE:** Paragraph 82 purports to quote from and characterize a May 25, 2015 email
19 attached as Exhibit 1 to the Second Amended Complaint, to which the OpenAI Defendants
20 respectfully refer the Court for its complete and accurate contents. The OpenAI Defendants
21 otherwise deny the allegations in Paragraph 82.

22 83. To convince Musk of his sincerity, Altman promised that he too would have skin in
23 the game and would make meaningful financial contributions to the non-profit. It has since been
24 revealed that Altman grossly inflated what his actual financial contributions would be, which paled
25 in comparison to what he had promised.

26 **RESPONSE:** Denied.

27
28 ²⁵ Subsequent “Ex.” citations are to the Toberoff Declaration.

1 84. A month later, on June 24, 2015, Altman tried again, this time wooing Musk with a
2 detailed proposal for a new AI lab: “The mission would be to create the first general AI [AGI] and
3 use it for individual empowerment—ie, the distributed version of the future that seems the safest.
4 More generally, safety should be a first-class requirement.” Ex. 2 at 1. “The technology would be
5 owned by the foundation and used ‘for the good of the world[.]’” *Id.* OpenAI’s “researchers would
6 have significant financial upside but it would be uncorrelated to what they build, which should
7 eliminate some of the conflict (we’ll pay them a competitive salary and give them [Y Combinator]
8 equity for the upside).” *Id.* This time Musk agreed. *Id.*

9 **RESPONSE:** Paragraph 84 purports to quote from and characterize June 24, 2015 emails
10 attached as Exhibit 2 to the Second Amended Complaint, to which the OpenAI Defendants
11 respectfully refer the Court for their contents. The OpenAI Defendants otherwise deny the
12 allegations in Paragraph 84.

13 85. Soon thereafter, Altman recruited Stripe’s Chief Technology Officer (“CTO”)
14 Gregory Brockman, his long-time colleague, who helped him seal the deal.

15 **RESPONSE:** The OpenAI Defendants admit that Altman and Brockman, who was
16 previously CTO of Stripe, Inc., decided together to start OpenAI. The OpenAI Defendants
17 otherwise deny the allegations in Paragraph 85.

18 86. Altman’s plan worked. In June 2015, Musk agreed to commit funding and help
19 recruit the top scientists necessary to make Altman’s project a success provided that, as promised,
20 OpenAI, Inc. would be a non-profit devoted to developing AI/AGI responsibly by (i) distributing
21 its research and technology openly, preventing its concentration, (ii) focusing on safety, not profits,
22 and (iii) working to benefit the public and humanity rather than for private gain. Indeed, to celebrate
23 what he was led to believe was their mission, Musk named the endeavor “OpenAI.”

24 **RESPONSE:** The OpenAI Defendants admit that Musk made funding commitments to
25 OpenAI, Inc. in June 2015, and otherwise deny the allegations in Paragraph 86.

26 87. On December 8, 2015, a Certificate of Incorporation for OpenAI, Inc. was filed with
27 the Delaware Secretary of State that reaffirmed Altman and Brockman’s promises to Musk:
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This Corporation shall be a nonprofit corporation organized exclusively for charitable and/or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law. **The specific purpose of this corporation is to provide funding for research, development and distribution of technology related to artificial intelligence. The resulting technology will benefit the public and the corporation will seek to open source technology for the public benefit when applicable. The corporation is not organized for the private gain of any person. . . .** The property of this corporation is irrevocably dedicated to the[se] purposes . . . **and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person.**

Ex. 21 at 4 (emphasis added).²⁶

RESPONSE: Paragraph 87 purports to selectively quote from and characterize OpenAI, Inc.’s Certificate of Incorporation, filed with the Delaware Secretary of State, and OpenAI, Inc.’s Initial Registration Form, filed with the State of California, Office of the Attorney General, Registry of Charitable Trusts, both of which are attached as Exhibit 21 to the Second Amended Complaint, and to which the OpenAI Defendants respectfully refer the Court for their complete and accurate contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 87.

88. OpenAI, Inc. was publicly announced on December 11, 2015, and leveraged Musk’s name by making him co-chair of its Board of Directors (“Board”) alongside Altman, with Brockman as CTO. The promotional announcement published on OpenAI’s website further touted: “OpenAI is a non-profit artificial intelligence research company [whose] goal is to advance digital intelligence in the way that is most likely to benefit humanity as a whole, unconstrained by a need to generate financial return. Since our research is free from financial obligations, we can better

²⁶ OpenAI’s filing for charitable status with California was slightly more general, but taken together, these representations are unambiguous:

OpenAI, Inc. (“OpenAI”) is a nonprofit artificial intelligence (“AI”) scientific research organization. **Its goal is to engage in research activities that advance digital intelligence in the way that is most likely to benefit humanity as a whole, unconstrained by a need to generate financial return.** AI technology will help shape the 21st century, and **OpenAI wants to help the world build safe AI technology and ensure that AI’s benefits are as widely and evenly distributed as possible.** To that end, OpenAI hopes to build AI as part of a larger community, and wants to openly share its plans and capabilities along the way.

Ex. 21 at 2 (emphases added).

1 focus on a positive human impact.”

2 **RESPONSE:** The OpenAI Defendants admit that OpenAI, Inc. was publicly announced
3 on December 11, 2015, that Musk and Altman were named as co-chairs of the board of OpenAI,
4 Inc., and that Brockman was named as CTO of OpenAI, and otherwise deny the allegations in the
5 first sentence of Paragraph 88. The second sentence of Paragraph 88 purports to quote from and
6 characterize OpenAI’s website, to which the OpenAI Defendants respectfully refer the Court for
7 its complete and accurate contents. The OpenAI Defendants otherwise deny the allegations in
8 Paragraph 88.

9 **C. Musk’s Crucial Contributions to OpenAI, Inc.**

10 89. In an email to Altman and Brockman on the day of OpenAI, Inc.’s public
11 announcement, Musk stated: “Our most important consideration is recruitment of the best
12 people[,]” Ex. 6 at 1, and pledged that helping in this effort would be his “absolute top priority
13 24/7[,]” Ex. 5 at 1. He wrote: “We are outmanned and outgunned by a ridiculous margin by
14 organizations you know well, but we have right on our side and that counts for a lot. I like the
15 odds.” Ex. 6 at 1.

16 **RESPONSE:** Paragraph 89 purports to quote from and characterize December 11, 2015
17 emails attached as Exhibits 5 and 6 to the Second Amended Complaint, to which the OpenAI
18 Defendants respectfully refer the Court for their contents.

19 90. As Altman had devised, Musk proved to be a driving force in the founding of
20 OpenAI, Inc. Musk, directly and through his company Musk Industries, LLC (“Musk Industries”),
21 contributed the majority of OpenAI, Inc.’s funding in its first several years, covered rent and
22 overhead, provided valuable advice and guidance on research directions, and most importantly,
23 Musk donated his time, effort, and connections to recruit some of the world’s leading scientists and
24 engineers to work at the non-profit. In fact, recruiting for OpenAI, Inc. was a Herculean task in the
25 face of relentless counter-recruiting by Google/DeepMind, which offered lavish compensation
26 packages to squelch the new venture.

27 **RESPONSE:** The OpenAI Defendants admit that Musk helped OpenAI’s initial efforts
28 to recruit leading scientists and engineers, that the market for talent was and continues to be

1 competitive, and that Musk provided advice to OpenAI in its early years. The OpenAI Defendants
2 otherwise deny the allegations in Paragraph 90, including to the extent they allege that Musk
3 directly contributed the majority of OpenAI’s funding through personal donations and that Musk
4 was the “driving force” in the founding of OpenAI.

5 91. But Musk persevered and proved instrumental in securing key talent, including
6 Chief Scientist Dr. Ilya Sutskever (“Dr. Sutskever”), whom he hired away from Google, as well as
7 top research scientists Tim Salimans, Filip Wolski, and others.

8 **RESPONSE:** The OpenAI Defendants admit that Sutskever, Salimans, and Wolski
9 joined OpenAI, and otherwise deny the allegations in Paragraph 91.

10 92. Just as Altman planned, Musk used his connections, credibility, and clout to launch
11 the venture. The mere fact OpenAI, Inc. was an “Elon Musk”-sponsored initiative and that Musk
12 served as co-chair were key to its successful recruiting and financing efforts in the company’s
13 pivotal early years.

14 **RESPONSE:** Denied.

15 93. Musk also brought the start-up capital to give OpenAI, Inc. a fighting chance. In
16 late February 2016, he emailed Altman and Brockman: “Whatever it takes to bring on ace talent is
17 fin[e] by me. Deepmind is causing me extreme mental stress. If they win, it will be really bad
18 news with their one mind to rule the world philosophy.” Ex. 7 at 1.

19 **RESPONSE:** Paragraph 93 purports to quote from and characterize February 2016 emails
20 attached as Exhibit 7 to the Second Amended Complaint, to which the OpenAI Defendants
21 respectfully refer the Court for their contents. The OpenAI Defendants otherwise deny the
22 allegations in Paragraph 93.

23 94. In fact, Musk was OpenAI, Inc.’s largest financial backer. In 2016, Musk
24 contributed over \$15 million, and in 2017 he contributed nearly \$20 million. Additionally, through
25 Musk Industries, he leased OpenAI, Inc.’s office space in the Pioneer Building in San Francisco,
26 paid its monthly overhead expenses, and even though he stepped down from the Board and
27 relinquished his status as member on February 21, 2018, he nevertheless continued to make regular
28 contributions to OpenAI, Inc. until September 14, 2020. All told, Musk contributed more than \$44

1 million in cash alone to OpenAI, Inc. in its first five critical years.

2 **RESPONSE:** The OpenAI Defendants deny the allegations in the first sentence of
3 Paragraph 94 on the basis that Musk did not personally make any direct contributions to OpenAI,
4 Inc., and on the further basis that the sentence does not specify the time period during which Musk
5 is claimed to have been OpenAI, Inc.’s largest financial backer. The OpenAI Defendants deny the
6 allegations in the second sentence of Paragraph 94. With respect to the allegations in the third
7 sentence of Paragraph 94, the OpenAI Defendants admit that Musk Industries leased office space
8 to OpenAI, Inc., and admit that Musk stepped down from the OpenAI board and relinquished his
9 status as a member on February 21, 2018, but deny that Musk directly paid for rent or overhead,
10 and deny that Musk personally continued to make regular direct contributions to OpenAI, Inc. after
11 resigning from the board. The OpenAI Defendants deny the allegations in the fourth sentence of
12 Paragraph 94.

13 95. It is fair to say that without Musk’s involvement, backing, and substantial supportive
14 efforts, there would have been no OpenAI.

15 **RESPONSE:** Denied.

16 **D. Microsoft Gets Involved**

17 96. Even early on, Microsoft, which was working to develop its own AI, was keen to
18 exploit OpenAI, Inc. But as the non-profit had no shareholders and Microsoft could not simply
19 purchase influence, it obtained leverage in other ways by, for example, causing OpenAI, Inc. to
20 become inextricably dependent on Microsoft’s cloud computing system (“compute”).

21 **RESPONSE:** Denied.

22 97. In September 2016, Altman and Microsoft arranged for it to sell compute to OpenAI,
23 Inc. at a steep discount so long as the non-profit agreed to publicly promote Microsoft’s products.
24 Ex. 10 at 3-5. Musk rejected the “donation” and marketing ploy, writing to Altman: “This actually
25 made me feel nauseous. It sucks and is exactly what I would expect from them.” *Id.* at 2. The deal
26 eventually went through, but without marketing gimmicks and at a more fulsome, but still below-
27 market, price. *Id.* at 1.

28 **RESPONSE:** Paragraph 97 purports to quote from and characterize September 2016

1 emails attached as Exhibit 10 to the Second Amended Complaint, to which the OpenAI Defendants
2 respectfully refer the Court for their contents. The OpenAI Defendants otherwise deny the
3 allegations in Paragraph 97.

4 98. While Musk had expressed an affinity for Microsoft’s CEO Satya Nadella
5 (“Nadella”), the values of Microsoft and OpenAI, Inc. did not align. Whereas Musk was concerned
6 that AI posed an existential danger to humankind and believed the technology should be
7 decentralized and open, Nadella and Microsoft’s co-founder Bill Gates minimized Musk’s concerns
8 as “panic” and too far off in the future.

9 **RESPONSE:** The OpenAI Defendants deny the allegation that the values of Microsoft
10 and OpenAI, Inc. did not align, and otherwise lack knowledge or information sufficient to form a
11 belief as to the truth of the allegations in Paragraph 98 and deny them on that basis.

12 99. Musk wrote: “History unequivocally illustrates that a powerful technology is a
13 double-edged sword . . . The recent example of Microsoft’s AI chatbot shows how quickly it can
14 turn incredibly negative. The wise course of action is to approach the advent of AI with caution
15 and ensure that its power is widely distributed and not controlled by any one company or person.
16 **That is why we created OpenAI.”** Ex. 9 at 1 (emphasis added).

17 **RESPONSE:** Paragraph 99 purports to quote from and characterize April 27, 2016 emails
18 attached as Exhibit 9 to the Second Amended Complaint, to which the OpenAI Defendants
19 respectfully refer the Court for their contents.

20 **E. Defendants Try to Convert OpenAI, Inc. to a For-Profit**

21 100. In 2017-2018, Altman and Brockman moved to recast the non-profit as a
22 moneymaking endeavor to bring in shareholders, sell equity, and raise capital, and pressed Musk
23 to agree. Ex. 12 at 1-2. Musk briefly toyed with the idea of using Tesla as OpenAI, Inc.’s “cash
24 cow” to solve the non-profit’s cash-flow concerns, while keeping it in good hands and maintaining
25 its mission. Ex. 16 at 1-2.

26 **RESPONSE:** Paragraph 100 purports to quote from and characterize emails from August
27 2017 and early 2018 attached as Exhibits 12 and 16, respectively, to the Second Amended
28 Complaint, to which the OpenAI Defendants respectfully refer the Court for their complete and

1 accurate contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 100 and
2 aver that Musk stepped down as OpenAI’s co-chair on February 21, 2018, following his failed bids
3 to seize control of OpenAI through a reorganization that would have placed Musk at the helm of a
4 for-profit OpenAI entity or, alternatively, through an acquisition of OpenAI by Tesla.

5 101. After some back and forth, Musk wrote to Altman and Brockman on September 20,
6 2017: “Either go do something on your own or continue with OpenAI as a non-profit. I will no
7 longer fund OpenAI until you have made a firm commitment to stay or I’m just being a fool who
8 is essentially providing free funding to a start-up. Discussions are over.” Ex. 13 at 4.

9 **RESPONSE:** Paragraph 101 purports to quote from and characterize September 2017
10 emails attached as Exhibit 13 to the Second Amended Complaint, to which the OpenAI Defendants
11 respectfully refer the Court for their contents.

12 102. Altman tried to play the whole thing off, reassuring Musk the next day: “[I] remain
13 enthusiastic about the non-profit structure!” *id.* at 1, with Brockman soon following suit. Ex. 14 at
14 1. On September 22, 2017, Shivon Zilis, who had been working at OpenAI, Inc. since 2016,
15 providing strategic guidance, e-mailed Musk that Altman had reassured her also that he was “Great
16 with keeping [it a] non-profit and continuing to support it.” Ex. 14 at 1.

17 **RESPONSE:** Paragraph 102 purports to quote from and characterize September 2017
18 emails attached as Exhibits 13 and 14 to the Second Amended Complaint, to which the OpenAI
19 Defendants respectfully refer the Court for their contents. The OpenAI Defendants otherwise deny
20 the allegations in Paragraph 102.

21 **F. Defendants Do Secretly What They Failed to Do Openly**

22 103. We now know Altman and Brockman’s reaffirmation was a lie. In January 2018,
23 mere months after their September 2017 “enthusias[m],” Altman proposed a scam-worthy “ICO,”
24 or initial coin offering, that would have seen OpenAI, Inc. sell its own cryptocurrency. Ex. 15 at
25 1. Musk shot down this idea too, stating “it would simply result in a massive loss of credibility for
26 OpenAI and everyone associated with the ICO.” Ex. 16 at 3.

27 **RESPONSE:** The OpenAI Defendants deny the allegations in the first sentence of
28 Paragraph 103. The second sentence of Paragraph 103 purports to quote from and characterize

1 January 21, 2018 emails attached as Exhibit 15 to the Second Amended Complaint, to which the
2 OpenAI Defendants respectfully refer the Court for their contents. The third sentence of Paragraph
3 103 purports to quote from and characterize January 31, 2018 emails attached as Exhibit 16 to the
4 Second Amended Complaint, to which the OpenAI Defendants respectfully refer the Court for their
5 contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 103.

6 104. On information and belief, mere weeks after Musk stopped their *second* get-rich-
7 quick scheme (the ICO), and no later than February 11, 2018, Altman and Brockman agreed among
8 themselves to figure out a structure for an equity fundraise—in other words, convert to a for-profit
9 structure.

10 **RESPONSE:** Denied.

11 105. On information and belief, this plan grew out of their discussions that had begun in
12 or around July 2017. Ex. 11 at 1 (“Coming up: Designing the for-profit structure”).

13 **RESPONSE:** Paragraph 105 purports to quote from and characterize a June 20, 2017
14 email attached as Exhibit 11 to the Second Amended Complaint, to which the OpenAI Defendants
15 respectfully refer the Court for its complete and accurate contents. The OpenAI Defendants
16 otherwise deny the allegations in Paragraph 105.

17 106. Notably, on March 25, 2018, barely a month after Musk stepped down from
18 OpenAI, Inc.’s Board, Altman proposed the selling of equity in an unusual “fixed maximum return”
19 structure, sufficiently developed to be actionable within four to six weeks. Ex. 18 at 1-2.

20 **RESPONSE:** Paragraph 106 purports to quote from and characterize emails from March
21 and April 2018 attached as Exhibit 18 to the Second Amended Complaint, to which the OpenAI
22 Defendants respectfully refer the Court for their complete and accurate contents. The OpenAI
23 Defendants otherwise deny the allegations in Paragraph 106.

24 107. It would ordinarily take months for such a billion-dollar proposal to reach this
25 advanced, concrete stage, and, on information and belief, for a novel mechanism like this,
26 preparations began no later than the summer of 2017. And, of course, a purported fixed maximum
27 return scheme is exactly what Defendants wound up confecting.

28 **RESPONSE:** Denied.

1 108. This unusual structure, what Defendants call a “capped-profit company,” is one
2 where investors can make a profit capped at a certain multiple of their investment. On information
3 and belief, Defendants intended to set the multiple at 100x.

4 **RESPONSE:** The OpenAI Defendants admit that a capped-profit entity is one in which
5 investors are able to receive returns capped at certain multiples of their investments, and otherwise
6 deny the allegations in Paragraph 108.

7 109. In early 2019, Altman finally succeeded in his multi-year effort to become OpenAI,
8 Inc.’s CEO.

9 **RESPONSE:** The OpenAI Defendants admit that Altman became CEO of OpenAI, Inc.
10 in early 2019, and otherwise deny the allegations in Paragraph 109.

11 110. On information and belief, with its confederate Altman now in charge, Microsoft
12 extracted a July 22, 2019 agreement from OpenAI giving Microsoft the exclusive right to supply
13 OpenAI’s single most important raw material, compute, without which OpenAI would cease to
14 exist. This agreement was extended in 2021 and again, on January 23, 2023.

15 **RESPONSE:** The OpenAI Defendants deny the allegations in the first sentence of
16 Paragraph 110. The OpenAI Defendants aver that OpenAI and Microsoft entered into an agreement,
17 dated July 2, 2019, pursuant to which OpenAI agreed to port its cloud services to run on Microsoft’s
18 Azure cloud computing platform. The OpenAI Defendants admit the allegations in the second
19 sentence of Paragraph 110. The OpenAI Defendants aver that Microsoft is not OpenAI’s exclusive
20 cloud provider.

21 111. On information and belief, at Altman’s urging and with Brockman’s assistance,
22 Defendants began forming numerous for-profit entities, in which Altman, Brockman, and
23 Microsoft hold generous stakes, and weaving them into an increasingly labyrinthian OpenAI
24 corporate web for the purpose of profiting from OpenAI, Inc.’s assets.

25 **RESPONSE:** Denied.

26 112. On March 6, 2019, Altman emailed Musk a draft of an announcement stating he was
27 forming a “new entity,” OpenAI, L.P., as a capped-profit company, appointing himself as CEO and
28 Brockman as board chair. Ex. 19 at 1-4. The entity was not new, however. Altman had caused its

1 incorporation in Delaware on September 19, 2018.

2 **RESPONSE:** The first sentence of Paragraph 112 purports to quote from and characterize
3 a March 6, 2019 email attached as Exhibit 19 to the Second Amended Complaint, to which the
4 OpenAI Defendants respectfully refer the Court for its complete and accurate contents. The OpenAI
5 Defendants admit that OpenAI, L.P. was incorporated in Delaware as SummerSafe, L.P. on
6 September 19, 2018, but otherwise deny the allegations in Paragraph 112.

7 113. In response, and with evident displeasure, Musk demanded: “Please be explicit that
8 I have no financial interest in the for-profit arm of OpenAI.” Ex. 20 at 1.

9 **RESPONSE:** Paragraph 113 purports to quote from and characterize a March 11, 2019
10 email attached as Exhibit 20 to the Second Amended Complaint, to which the OpenAI Defendants
11 respectfully refer the Court for its complete and accurate contents. The OpenAI Defendants
12 otherwise deny the allegations in Paragraph 113.

13 114. On March 11, 2019, Altman and Brockman “launched” OpenAI, L.P. On
14 January 23, 2023, OpenAI, L.P. was converted to OpenAI OpCo, LLC. After its conversion, it
15 would be operated by OpenAI GP, L.L.C., which on September 19, 2018 was formed in Delaware.

16 **RESPONSE:** The OpenAI Defendants admit that the creation of OpenAI, L.P. was
17 announced on March 11, 2019 in a blog post authored by Brockman and Sutskever; that OpenAI,
18 L.P. was subsequently converted to OpenAI OpCo, LLC on January 23, 2023; that OpenAI OpCo,
19 LLC was managed by OpenAI GP, L.L.C.; and that OpenAI GP, L.L.C. was formed in Delaware
20 on September 19, 2018, but otherwise deny the allegations in Paragraph 114.

21 115. On September 17, 2020, OpenAI, L.L.C. was formed in Delaware. OpenAI,
22 L.L.C.’s sole member is currently OpenAI Global, LLC.

23 **RESPONSE:** The OpenAI Defendants admit that OpenAI, L.L.C. was formed in
24 Delaware on September 17, 2020. The OpenAI Defendants deny that OpenAI, L.L.C.’s sole
25 member is OpenAI Global, LLC.

26 116. On December 28, 2022, OpenAI Global, LLC was formed in Delaware. On
27 information and belief, OpenAI Global, LLC, like OpenAI, L.P., is a “capped” for-profit entity.
28 OpenAI Global, LLC has two members: Microsoft and OAI Corporation.

1 **RESPONSE:** Admitted.

2 117. On information and belief, OpenAI Global, LLC, like OpenAI OpCo, LLC, is
3 managed by OpenAI GP, L.L.C.

4 **RESPONSE:** Admitted.

5 118. On March 17, 2023, OAI Corporation was formed in Delaware as a corporation.
6 Prior to September 2023, Defendant OAI Corporation was OAI Corporation, LLC, a limited
7 liability company formed in Delaware with its principal place of business in California. The sole
8 owner of OAI Corporation is OpenAI Holdings, LLC.

9 **RESPONSE:** The OpenAI Defendants deny the allegations in the first sentence in
10 Paragraph 118. The OpenAI Defendants admit that OAI Corporation, LLC was converted to a
11 corporation registered in Delaware on September 5, 2023. The OpenAI Defendants admit the
12 allegations in the third sentence of Paragraph 118.

13 119. On March 17, 2023, OpenAI Holdings, LLC was formed in Delaware, and has
14 multiple members, including Aestas, LLC and various individuals.

15 **RESPONSE:** Admitted.

16 120. On February 10, 2023, Aestas Management Company, LLC was formed as a limited
17 liability company in Delaware and is also managed by OpenAI GP, L.L.C.

18 **RESPONSE:** Admitted.

19 121. On information and belief, the other entities—OpenAI Startup Fund Management,
20 LLC, OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P., OpenAI Startup Fund SPV
21 GP I, L.L.C., OpenAI Startup Fund SPV GP II, L.L.C., OpenAI Startup Fund SPV GP III, L.L.C.,
22 OpenAI Startup Fund SPV GP IV, L.L.C., OpenAI Startup Fund SPV I, L.P., OpenAI Startup Fund
23 SPV II, L.P., OpenAI Startup Fund SPV III, L.P., OpenAI Startup Fund SPV IV, L.P. (collectively,
24 with those entities named in paragraphs 114-20, *supra*, the “For-Profit Entities”)—are also
25 interwoven into Defendants’ corporate web for the purpose of profiting from the non-profit
26 OpenAI, Inc.’s assets. Many of these entities were only recently registered and indeed, more
27 OpenAI entities are popping up almost every month as part of Defendants’ shell game.

28 **RESPONSE:** Denied.

1 122. The complex and largely opaque profiteering arm of OpenAI—in which, on
2 information and belief, Microsoft, Altman, and Brockman are significant shareholders—while
3 publicly cloaked as a mere fundraising apparatus, is in reality, the foundation for Defendants’
4 scheme to control and cash in on OpenAI, Inc.’s technology.

5 **RESPONSE:** Denied.

6 123. We know, for example, that Microsoft owns a significant stake in OpenAI Global,
7 LLC, which in turn is an owner of OpenAI, L.L.C. and OpenAI OpCo, LLC, Dkt. No. 18 at 1,
8 ¶¶ 2-3, 5—the entity to which OpenAI, Inc.’s proprietary intellectual property was diverted. We
9 also know that Altman named himself as the manager of OpenAI Startup Fund I, L.P., which raised
10 \$175,250,000.00 and in which, once again, Microsoft holds a significant ownership interest, Dkt.
11 No. 18 at 2, ¶ 10.

12 **RESPONSE:** The OpenAI Defendants admit that OpenAI Global, LLC is an owner of
13 OpenAI OpCo, LLC and an indirect owner of OpenAI, L.L.C., but otherwise deny the allegations
14 in the first sentence of Paragraph 123. The OpenAI Defendants deny the allegations in the second
15 sentence of Paragraph 123.

16 124. But because OpenAI, Inc. has intentionally chosen entity configurations that, by and
17 large, do not require public disclosures, contrary to its commitments to transparency and its role as
18 a publicly supervised charity, the true extent of Altman, Brockman, and Microsoft’s conflicted
19 dealings is unknown.

20 **RESPONSE:** Denied.

21 125. What is clear is that Altman’s repeated public proclamations to own no “equity” in
22 these entities, is, as with so many of his statements, grossly and intentionally misleading because,
23 on information and belief, he (or an entity owned or controlled by him) does.

24 **RESPONSE:** Denied.

25 **G. Defendants Use Their For-Profit Entities to Loot OpenAI, Inc.**

26 126. As with many things, the issue here is one of degree. While there is little concern
27 with using a for-profit entity to help fundraise for a non-profit, it is quite another thing to launch a
28 dense fleet of dozens of for-profit entities to loot the non-profit of its only valuable assets

1 (intellectual property and employees) and facilitate veiled and unchecked profiteering, rife with
2 conflicts, as Defendants have done.

3 **RESPONSE:** Denied.

4 127. To facilitate their profiteering, Defendants locked down and began withholding the
5 non-profit's technology and scientific research.

6 **RESPONSE:** Denied.

7 128. Defendants also transferred most of OpenAI, Inc.'s intellectual property to OpenAI,
8 L.P. in 2019 and 2020. Ex. 22 at 2; Ex. 23 at 2. Since then, such transfers have continued apace
9 with, for example, the issuance of patents and trademarks to OpenAI OpCo, LLC, which is listed
10 on the U.S. Patent and Trademark Office website as the owner of most of OpenAI's registered
11 intellectual property.

12 **RESPONSE:** The OpenAI Defendants admit that OpenAI, Inc. contributed certain
13 tangible and intangible assets to OpenAI, L.P. in 2019. The first sentence of Paragraph 128
14 otherwise purports to characterize OpenAI, Inc.'s Annual Registration Renewal Fee Reports, filed
15 with the Attorney General of California, from 2019 and 2020, attached as Exhibits 22 and 23 to the
16 Second Amended Complaint, to which the OpenAI Defendants respectfully refer the Court for their
17 complete and accurate contents. The second sentence of Paragraph 128 purports to characterize the
18 U.S. Patent and Trademark Office's website, to which the OpenAI Defendants respectfully refer
19 the Court for its complete and accurate contents. The OpenAI Defendants otherwise deny the
20 allegations in Paragraph 128.

21 129. Indeed, just *follow the money*. OpenAI, Inc.'s 2022 IRS tax return showed a mere
22 \$44,485 in revenue,²⁷ but one year later, OpenAI overall reportedly generated *\$1.6 billion* in
23 revenue.

24 **RESPONSE:** The OpenAI Defendants admit that OpenAI, Inc. reported \$44,485 in
25 revenue to the IRS in its 2022 Form 990 filing. The OpenAI Defendants lack knowledge or
26 information sufficient to form a belief as to the truth of the allegations in the second sentence of

27 _____
28 ²⁷ Notably, 2022 was the last year Defendants made such documents readily available to the public,
yet another curious decision for a putative non-profit.

1 Paragraph 129 to the extent they purport to characterize unidentified reporting, and deny them on
2 that basis. The OpenAI Defendants otherwise deny the allegations in Paragraph 129.

3 130. Defendants also drained the non-profit OpenAI, Inc. of most of its staff and
4 transferred them over to the new private, for-profit company (now OpenAI OpCo, LLC), which
5 also presently houses much of OpenAI's research and development. This strategic move
6 conveniently shields Defendants from the public oversight and financial disclosures non-profits
7 like OpenAI, Inc. must make.

8 **RESPONSE:** Denied.

9 131. From there, on information and belief, beginning September 22, 2020, Altman
10 caused the non-profit to exclusively license its technology to Microsoft, the world's then-largest
11 for-profit corporation, diverging from Altman and OpenAI, Inc.'s promises to Musk and the non-
12 profit's black-letter commitments—e.g., OpenAI, Inc.'s Certificate of Incorporation: “no part of
13 the net income or assets of this corporation shall ever inure to the benefit of . . . any private person,”
14 Ex. 21 at 4; and Charter: “We commit to . . . avoid enabling uses of AI or AGI that . . . unduly
15 concentrate power[,]” Ex. 17 at 1.

16 **RESPONSE:** Paragraph 131 purports to selectively quote from and characterize the
17 Certificate of Incorporation and online Charter of OpenAI, Inc. attached as Exhibits 21 and 17,
18 respectively, to the Second Amended Complaint, to which the OpenAI Defendants respectfully
19 refer the Court for their complete and accurate contents. The OpenAI Defendants otherwise deny
20 the allegations in Paragraph 131.

21 132. The Microsoft license is expansive and includes all OpenAI, Inc.'s “pre-AGI”
22 technologies, and tasks the Board with determining when “AGI” has been attained. To date, the
23 Board has made no such finding, thus giving Microsoft unfettered access to OpenAI's suite of
24 technology.

25 **RESPONSE:** Denied. The OpenAI Defendants aver that, in January 2023, OpenAI and
26 Microsoft entered into an agreement, pursuant to which OpenAI granted Microsoft a license to
27 OpenAI's pre-AGI intellectual property and technology, and otherwise deny the allegations in
28 Paragraph 132.

1 133. In addition, Altman, with the assistance and/or cooperation of Brockman and the
2 For-Profit Entities, began to self-deal with impunity. On information and belief, while serving on
3 OpenAI, Inc.'s Board, Altman deliberately withheld key information and lied about his personal
4 holdings and investments both in and outside of OpenAI to keep the Board from discovering his
5 glaring conflicts of interest.

6 **RESPONSE:** Denied.

7 134. For example, on information and belief, Altman controls OpenAI Startup Fund I,
8 L.P., and stands to personally profit from its association with OpenAI.

9 **RESPONSE:** Denied.

10 135. In May 2024, Altman is reported to have induced OpenAI to strike a deal with
11 Reddit wherein OpenAI would pay to license Reddit's content to train ChatGPT. On information
12 and belief, Altman and/or entities he controls own a whopping 7.6% of Reddit, making him one of
13 its largest outside shareholders. After the deal was announced, Reddit's stock shot up 10%,
14 boosting Altman's stake by \$69 million. On October 29, 2024, Reddit finally posted its first profit
15 as a public company due in large part to the revenue generated by its licensing deal with OpenAI,
16 causing the company's stock price to skyrocket more than 40% the following day.

17 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
18 a belief as to the truth of the allegations in the first sentence of Paragraph 135 to the extent they
19 purport to characterize unidentified reporting, and deny them on that basis. The OpenAI Defendants
20 deny the allegations in the second sentence of Paragraph 135. The OpenAI Defendants lack
21 knowledge or information sufficient to form a belief as to the truth of the allegations in the third
22 and fourth sentences of Paragraph 135 and deny them on that basis. The OpenAI Defendants
23 otherwise deny the allegations in Paragraph 135.

24 136. By contrast, Altman and OpenAI made no such deal to use data from content
25 providers such as *The New York Times* or the *Chicago Tribune*, in which Altman had no ownership,
26 and which are now suing OpenAI for copyright infringement.

27 **RESPONSE:** The OpenAI Defendants admit that OpenAI has no content deal with *The*
28 *New York Times* or *The Chicago Tribune*, that OpenAI is in litigation with both publishers, and that

1 Altman has no ownership interest in *The New York Times* or the *Chicago Tribune*. The OpenAI
2 Defendants otherwise deny the allegations in Paragraph 136.

3 137. On information and belief, in 2019, Altman caused OpenAI to sign a \$51 million AI
4 chip deal with Rain AI, a company in which he held a significant interest.

5 **RESPONSE:** Denied.

6 138. On information and belief, in 2020 Altman invested in the hardware company
7 Humane, which plans to power its devices using OpenAI’s software. Holding companies controlled
8 by Altman own 15% of Humane’s equity—a greater amount than each of the company’s founders.

9 **RESPONSE:** The OpenAI Defendants admit that Altman has an investment interest in
10 Humane, but otherwise deny the allegations in Paragraph 138.

11 139. On information and belief, Altman invested in yet another hardware company,
12 Limitless, which also plans to power its devices using OpenAI’s software. The timing of this
13 investment is not yet known.

14 **RESPONSE:** The OpenAI Defendants admit that Altman has an investment interest in
15 Limitless, but otherwise deny the allegations in Paragraph 139.

16 140. On information and belief, no later than March 15, 2023, OpenAI selected Stripe, in
17 which Altman and Brockman have significant ownership interests, as its commercial partner to
18 process payments as OpenAI moved to monetize its technology.

19 **RESPONSE:** Denied.

20 141. On information and belief, no later than September 2023, Altman and former Apple
21 chief design officer, Jony Ive, made plans to launch their own AI device company to exploit
22 OpenAI’s technology to compete with Apple’s iPhone.

23 **RESPONSE:** Denied.

24 142. On information and belief, OpenAI is hammering out a deal with Helion Energy (in
25 which Altman owns a massive stake) for OpenAI to buy vast quantities of electricity to power its
26 data centers. And in May 2023, Altman’s ally Microsoft enriched him by striking such a deal with
27 Helion Energy.

28 **RESPONSE:** Denied.

1 143. On information and belief, Altman, Brockman, Microsoft, and the For-Profit
2 Entities have been and will continue to be enriched by their respective stake in OpenAI’s for-profit
3 machine. Altman alone stands to make billions from the non-profit Musk co-founded and invested
4 considerable money, time, recruiting efforts, and goodwill in furtherance of its stated mission.

5 **RESPONSE:** Denied.

6 144. Altman’s scheme has now become clear: lure Musk with phony philanthropy;
7 exploit his money, stature, and contacts to secure world-class AI scientists to develop leading
8 technology; then feed the non-profit’s lucrative assets into an opaque profit engine and proceed to
9 cash in as OpenAI and Microsoft monopolize the generative AI market.

10 **RESPONSE:** Denied.

11 145. On information and belief, Microsoft, acting in lockstep with the other Defendants,
12 stands to make hundreds of billions from its methodical infiltration of, and increasing leverage
13 over, the non-profit, its technology, and employees, to the point that Microsoft now exercises
14 effective control over OpenAI—a de facto merger in terms of Microsoft’s accumulation of assets,
15 equity, and dominance over OpenAI.

16 **RESPONSE:** Denied.

17 **H. Microsoft Demonstrates Its Dominance and Control**
18 **After OpenAI, Inc.’s Board Shows Independence**

19 146. Microsoft demonstrated its dominance in a series of extraordinary developments
20 culminating on November 22, 2023. Microsoft and Altman leveraged their positions to force all
21 but one member of OpenAI, Inc.’s Board to resign and replaced them with underqualified and
22 compliant allies handpicked by Altman and blessed by Microsoft.

23 **RESPONSE:** Denied.

24 147. Before this coup, the Board consisted of Chief Scientist Dr. Sutskever, Brockman,
25 Altman, Helen Toner (“Toner”), Adam D’Angelo (“D’Angelo”), and Tasha McCauley
26 (“McCauley”). In addition to serving on the Board, Toner is a researcher and advisor for the Center
27 for the Governance of AI (“GovAI”) and the Director of Strategy at Georgetown’s Center for
28 Security and Emerging Technology. McCauley is a Senior Management Scientist at RAND

1 Corporation, a non-profit which specializes in public policy decision making. Like Toner,
2 McCauley is also an advisor for GovAI.

3 **RESPONSE:** The OpenAI Defendants admit that, prior to November 17, 2023, the board
4 of OpenAI, Inc. consisted of Sutskever, D’Angelo, McCauley, Toner, Altman, and Brockman, and
5 otherwise deny the allegations in the first sentence of Paragraph 147. The OpenAI Defendants lack
6 knowledge or information sufficient to form a belief as to the truth of the allegations in the second,
7 third, and fourth sentences of Paragraph 147 and deny them on that basis

8 148. The choice to include on the Board multiple academics and public policy experts
9 with deep AI policy experience, most of whom had no financial stake in OpenAI, was deliberate.
10 This composition of financially disinterested Board members with strong records of public service
11 ensured that the Board would put the non-profit’s principles of openness and safety before financial
12 success—which it did.

13 **RESPONSE:** The OpenAI Defendants admit that the composition of OpenAI, Inc.’s
14 board in 2023 reflected deliberation and a commitment to pursuit of the nonprofit’s mission. The
15 OpenAI Defendants aver that the composition of OpenAI, Inc.’s board today likewise reflects
16 deliberation and a commitment to pursuit of the nonprofit’s mission. The OpenAI Defendants
17 otherwise deny the allegations in Paragraph 148.

18 149. On November 17, 2023, OpenAI, Inc.’s Board dismissed Altman as CEO and from
19 the Board, announcing he was fired following “a deliberative review process by the board, which
20 concluded that he was not consistently candid in his communications with the board, hindering its
21 ability to exercise its responsibilities. The board no longer has confidence in his ability to continue
22 leading OpenAI.” Brockman was also dismissed from the Board, but not as OpenAI, Inc.’s CTO,
23 though he resigned in solidarity with Altman shortly thereafter.

24 **RESPONSE:** The first sentence of Paragraph 149 purports to quote from and characterize
25 OpenAI’s website, to which the OpenAI Defendants respectfully refer the Court for its complete
26 and accurate contents. The OpenAI Defendants admit that Altman and Brockman were dismissed
27 from OpenAI, Inc.’s board on November 17, 2023 and that Brockman resigned from OpenAI on
28 November 17, 2023. The OpenAI Defendants otherwise deny the allegations in Paragraph 149.

1 150. It has been reported that the Board fired Altman because he had deliberately
2 misrepresented what was happening at OpenAI, Inc. and explicitly lied to the Board to obstruct its
3 ability to carry out its oversight duties. The Board was likewise concerned by Altman’s numerous
4 side hustles and conflicts of interest and his purposeful withholding of information necessary for
5 the Board to evaluate the scope and extent of his self-dealing and myriad conflicts.

6 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
7 a belief as to the truth of the allegations in Paragraph 150 to the extent they purport to characterize
8 unidentified reporting, and deny them on that basis. The OpenAI Defendants otherwise deny the
9 allegations in Paragraph 150.

10 151. News reports further suggest Altman’s firing was due in part to OpenAI, Inc.’s
11 breakthroughs in AGI and Altman’s prioritizing profit over safety and the non-profit’s founding
12 principles.

13 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
14 a belief as to the truth of the allegations in Paragraph 151 to the extent they purport to characterize
15 unidentified reporting, and deny them on that basis. The OpenAI Defendants otherwise deny the
16 allegations in Paragraph 151.

17 152. On information and belief, when Microsoft’s CEO Nadella learned of Altman’s
18 firing, he was furious. As perhaps the largest shareholder in OpenAI’s for-profit arm, Nadella felt
19 Microsoft should have been consulted before the decision was made.

20 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
21 a basis as to the truth of certain allegations in Paragraph 152, and deny them on that basis. The
22 OpenAI Defendants otherwise deny the allegations in Paragraph 152.

23 153. On information and belief, aside from Altman and Brockman, OpenAI, Inc.’s then-
24 constituted Board had no ties to Microsoft. Rather, Altman was the primary liaison between
25 Microsoft and OpenAI, Inc., and with him gone, Microsoft’s continued exclusive license of the
26 non-profit’s evolving technology (i.e., AGI) was in jeopardy.

27 **RESPONSE:** Denied.

28 154. Microsoft’s response was swift. Nadella hired Altman and Brockman to lead a new

1 Microsoft AI research lab, unbound by the constraints of OpenAI, Inc.’s humanitarian mission, and
2 the three actively solicited OpenAI’s employees to leave and join Microsoft’s new lab. On
3 information and belief, Altman and Brockman became senior employees of Microsoft.

4 **RESPONSE:** The OpenAI Defendants admit that Microsoft announced that it had hired
5 Altman and Brockman on November 20, 2023 to lead a new AI research team, and otherwise deny
6 the allegations in Paragraph 154.

7 155. Microsoft was nevertheless confident that, whatever happened, it could still
8 capitalize on OpenAI, Inc.’s research and technology. Indeed, during an interview shortly after
9 Altman’s firing, Nadella stated:

10 We have all the IP rights and all the capability. If OpenAI disappeared tomorrow,
11 I don’t want any customer of ours to be worried about it quite honestly, because we
12 have all of the rights to continue the innovation. Not just to serve the product, but
13 we can go and just do what we were doing in partnership ourselves. We have the
14 people, we have the compute, we have the data, we have everything.

14 **RESPONSE:** Paragraph 155 purports to quote from and characterize an interview of
15 Satya Nadella by Kara Swisher on November 21, 2023, published in *New York Magazine*, to which
16 the OpenAI Defendants respectfully refer the Court for its complete and accurate contents. The
17 OpenAI Defendants otherwise deny the allegations in Paragraph 155.

18 156. Despite Microsoft’s bold statements, it apparently still wanted its man Altman on
19 the inside as OpenAI, Inc.’s CEO. In the days following his firing, OpenAI, Inc.’s Board faced
20 mounting pressure from Microsoft to reinstate Altman. Nadella even bragged about Microsoft’s
21 influence over the non-profit: “We are in there. We are below them, above them, around them.”

22 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
23 a belief as to the truth of the allegations in the first sentence of Paragraph 156 and deny them on
24 that basis. The second and third sentences of Paragraph 156 purport to quote from and characterize
25 an interview of Satya Nadella by Kara Swisher on November 21, 2023, published in *New York*
26 *Magazine*, to which the OpenAI Defendants respectfully refer the Court for its complete and
27 accurate contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 156.

28 157. Microsoft indeed had leverage. On information and belief, at the time of Altman’s

1 ouster, Microsoft had paid only a fraction of the \$13 billion commitment it had made to OpenAI.
2 And if Microsoft were to withhold its compute on which OpenAI was reliant, it would be effectively
3 incapacitated.

4 **RESPONSE:** Denied.

5 158. The pressure on the Board from Altman, Brockman, and Microsoft continued until
6 November 21, 2023, when Altman was reinstated as CEO after his dismissal, and Brockman as
7 CTO. The coup took Defendants just four days.

8 **RESPONSE:** The OpenAI Defendants admit that a decision was made to reinstate
9 Altman as CEO of OpenAI, Inc. and OpenAI OpCo, LLC, and Brockman as President of OpenAI
10 OpCo, LLC, on November 21, 2023. The OpenAI Defendants otherwise deny the allegations in
11 Paragraph 158.

12 159. Upon his return, Altman and Microsoft demanded the resignation of Toner,
13 McCauley, and Dr. Sutskever from the Board, taking the opportunity to clean house and purge
14 those who ousted Altman, as Nadella had vowed: “We’ll definitely take care of all of the
15 governance issues and anything else . . . we have all the rights, so therefore we will make sure that
16 we are very, very clear that the governance gets fixed[.]” Notably, D’Angelo—the sole Board
17 member to remain after Altman’s reinstatement—is a tech CEO and entrepreneur.

18 **RESPONSE:** The OpenAI Defendants admit that D’Angelo is the co-founder and CEO
19 of Quora, and otherwise deny the allegations in Paragraph 159.

20 160. In fact, the 2023 Board that dismissed Altman, consisting, on information and belief,
21 of only Altman, Dr. Sutskever, D’Angelo, and the two AI governance experts, Toner and McCauley
22 (Brockman was reportedly absent from the Board meeting), was the first Board since 2018 not
23 adversely dominated by interests aligned with Altman and Brockman.

24 **RESPONSE:** Denied.

25 161. The 2022 Board consisted of Dr. Sutskever, Brockman, and Altman (both CEO and
26 President), as directors simultaneously working full time at OpenAI; and Will Hurd (“Hurd”) (of
27 Allen & Company, a major investment bank catering to technology companies), Reid Hoffman
28 (general partner at tech venture capital firm Greylock Partners (“Greylock”), a member of

1 Microsoft’s Board since March 2017, and a co-founder of the generative AI company Inflection
2 AI, Inc. (“Inflection”)²⁸), and D’Angelo, as directors aligned with Brockman and Altman’s interests
3 as technology entrepreneurs; and Zilis, Toner, and McCauley, as the only truly independent
4 directors.

5 **RESPONSE:** The OpenAI Defendants admit that Altman, Brockman, Sutskever,
6 D’Angelo, McCauley, Hoffman, Zilis, Hurd, and Toner served on the board of OpenAI, Inc. in
7 2022, and otherwise deny the allegations in Paragraph 161.

8 162. The 2021 Board was no better: Altman, as President again, Brockman, Hoffman,
9 D’Angelo, Hurd, Zilis, McCauley, Toner, and a charity CEO, Holden Karnofsky (“Karnofsky”),
10 whose enterprises are primarily dependent on funding from tech entrepreneurs, in place of Dr.
11 Sutskever. Even counting Karnofsky with the independents,²⁹ they were still in the minority, and
12 Altman and Brockman represented 100% of the directors working at OpenAI full time.

13 **RESPONSE:** The OpenAI Defendants admit that Altman, Brockman, Hoffman,
14 D’Angelo, Hurd, Zilis, McCauley, Toner, and Karnofsky served on the board of OpenAI, Inc. at
15 various times in 2021, and otherwise deny the allegations in Paragraph 162.

16 163. The 2020 Board had seven members: Altman as President, Brockman, Hoffman,
17 D’Angelo, Zilis, McCauley, and Karnofsky. Again, even counting Karnofsky with Zilis and
18 McCauley, the breakdown still has independents in the minority, with Altman and Brockman as
19 the only full-time working directors.

20 **RESPONSE:** The OpenAI Defendants admit that Altman, Brockman, Hoffman,
21 D’Angelo, Zilis, McCauley, and Karnofsky served on the board of OpenAI, Inc. at various times
22 in 2020, and otherwise deny the allegations in Paragraph 163.

23 164. The 2019 Board was even worse, with Sue Yoon, a former venture capitalist now at
24 Google, serving in what would become Zilis’ spot on the Board.

25 _____
26 ²⁸ Notwithstanding his obvious conflicts, Hoffman was reportedly reluctant to step down from
OpenAI, Inc.’s Board when he resigned in or about March 2023.

27 ²⁹ This is generous to Karnofsky, given that, when he resigned, he cited as a potential conflict that
28 his wife, Daniela Amodei, and her brother, Dario Amodei (both ex-OpenAI employees) were co-
founding Anthropic, now the largest direct competitor to OpenAI/Microsoft’s monopoly.

1 **RESPONSE:** The OpenAI Defendants admit that Yoon served on the board of OpenAI,
2 Inc. for a time during 2019, and otherwise deny the allegations in Paragraph 164.

3 165. On information and belief, to avoid replicating the 2023 independent Board setup
4 that led to Altman’s ouster, upon Altman’s reinstatement, he handpicked a new Board that lacked
5 the technical expertise and substantial background in AI governance, which the previous Board had
6 by design. The new members were reportedly “big fans of Altman.”

7 **RESPONSE:** Denied.

8 166. Microsoft also obtained an influential non-voting director seat on the Board from
9 which it could keep a close eye on its non-profit golden goose. Though on July 9, 2024, Microsoft
10 relinquished its seat amid scrutiny and pressure from antitrust agencies in the U.S. and Europe
11 suspicious of its all-too-cozy relationship with OpenAI, there is no un-ringing this bell.

12 **RESPONSE:** The allegations in Paragraph 166 are relevant only to Plaintiffs’ claim
13 under Section 8 of the Clayton Act, 15 U.S.C. § 19 (Count XV) and that part of Plaintiffs’ claim
14 for unfair competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.* (Count XVI) predicated on
15 Count XV, which the Court’s Order Denying Motion for a Preliminary Injunction (ECF No. 121)
16 held untenable for lack of standing. The OpenAI Defendants therefore will not answer these
17 allegations unless ordered to do so by the Court.

18 167. The same pertains to Hoffman’s highly conflicted simultaneous service as a member
19 of the boards of OpenAI, Inc., Microsoft, and Inflection. Notwithstanding their glaring conflicts,
20 by virtue of their Board service, Microsoft and Hoffman had open access to *all* internal OpenAI,
21 Inc. materials as a matter of right under its Bylaws. Ex. 21 at 12.

22 **RESPONSE:** The allegations in Paragraph 167 are relevant only to Plaintiffs’ claim
23 under Section 8 of the Clayton Act, 15 U.S.C. § 19 (Count XV) and that part of Plaintiffs’ claim
24 for unfair competition under Cal. Bus. & Prof. Code §§ 17200 *et seq.* (Count XVI) predicated on
25 Count XV, which the Court’s Order Denying Motion for a Preliminary Injunction (ECF No. 121)
26 held untenable for lack of standing. The OpenAI Defendants will therefore not answer these
27 allegations unless ordered to do so by the Court.

28 168. On information and belief, OpenAI, Inc.’s present Board is now dominated by

1 directors with interests conflicted and adverse to those of OpenAI, Inc., Plaintiffs, and the public.

2 **RESPONSE:** Denied.

3 169. With the reinstatement of Altman and the restructuring of OpenAI, Inc.’s Board, the
4 once carefully crafted non-profit structure Musk agreed to is now thoroughly compromised by a
5 fully profit-driven CEO (Altman) and sometimes-President (Brockman), a compliant Board with
6 inferior technical expertise and almost no AI-governance experience, and a trillion-dollar pro-profit
7 partner (Microsoft).

8 **RESPONSE:** Denied.

9 170. The loss of the Board’s technical expertise in AI, neutrality, and commitment to
10 OpenAI, Inc.’s non-profit purposes are particularly compromising as it is the Board that determines
11 whether OpenAI has attained AGI, which, as detailed above, OpenAI had previously excluded from
12 its license to Microsoft. Given Microsoft and OpenAI’s de facto merger and enormous financial
13 interest in the continued exploitation of the non-profit’s technology, OpenAI, Inc.’s newly captured,
14 conflicted, and compliant Board will have every reason to delay ever making a finding that OpenAI
15 has attained AGI. The Microsoft-OpenAI for-profit leviathan may now operate fully unchecked.

16 **RESPONSE:** Denied.

17 **I. Altman Reneges in 2023 on His Repeated Promises to Musk, Regulators,**
18 **and the Public to Open Source the Non-Profit’s Technology**

19 171. In its early years, OpenAI, Inc.’s research and development were performed in the
20 open—as required by Musk’s donations and OpenAI, Inc.’s filings with Delaware and California—
21 providing the public with free access to the non-profit’s designs, models, and code.

22 **RESPONSE:** The OpenAI Defendants admit that OpenAI has published certain research,
23 code, and model weights, and otherwise deny the allegations in Paragraph 171.

24 172. For example, in June 2018, when OpenAI, Inc. researchers discovered that an
25 algorithm called “Transformers” could perform natural language tasks without any explicit training,
26 entire communities from open-source, grass-roots groups to commercial endeavors sprung up to
27 enhance and extend OpenAI, Inc.’s models—the intended benefit of making the non-profit’s
28 research open source.

1 **RESPONSE:** The OpenAI Defendants admit that OpenAI published research regarding
2 transformers and unsupervised pre-training in June 2018 in conjunction with the release of GPT-1,
3 the first generative pre-trained transformer introduced to the market, and otherwise deny the
4 allegations in Paragraph 172.

5 173. In 2019, OpenAI released the full, open version of a second-generation Generative
6 Pre-Trained Transformer (“GPT”), GPT-2 with the stated hope that it would “be useful to
7 developers of future powerful models.” It also released a detailed report describing the new model
8 and acknowledged some of the many benefits of openly releasing such models to the public.

9 **RESPONSE:** The OpenAI Defendants admit that GPT-2 was released in 2019. The first
10 sentence of Paragraph 173 otherwise purports to quote from and characterize OpenAI’s website, to
11 which the OpenAI Defendants respectfully refer the Court for its complete and accurate contents.
12 The second sentence of Paragraph 173 seemingly purports to characterize a report titled “Release
13 Strategies and the Social Impacts of Large Language Models,” and published by OpenAI in
14 November 2019, to which the OpenAI Defendants respectfully refer the Court for its complete and
15 accurate contents.

16 174. In 2020, OpenAI, Inc. announced a third version of its model, GPT-3, and again,
17 published a research paper detailing its complete implementation for others to build on.

18 **RESPONSE:** The OpenAI Defendants admit that GPT-3 was released in 2020. To the
19 extent the allegations in Paragraph 174 purport to characterize a report published by OpenAI
20 researchers titled “Language Models are Few-Shot Learners,” published in 2020, the OpenAI
21 Defendants respectfully refer the Court to such report for its complete and accurate contents. The
22 OpenAI Defendants otherwise deny the allegations in Paragraph 174.

23 175. OpenAI, Inc.’s initial findings, while technologically interesting, had little
24 commercial value and were openly published by Altman. But, as we now know, once OpenAI
25 reached the threshold of commercially viable AI, Altman about-faced and began locking down the
26 non-profit’s technology for personal gain.

27 **RESPONSE:** Denied.

28 176. It is also no coincidence that OpenAI veered away from open-sourcing its models

1 after it began exclusively licensing its technology to Microsoft.

2 **RESPONSE:** Denied.

3 177. On March 14, 2023, OpenAI, Inc. released its most advanced model to date, GPT-4,
4 which many including Microsoft celebrated as “a form of general intelligence.” Microsoft’s
5 scientists stated that, given GPT-4’s advanced capabilities, “we believe [it] could reasonably be
6 viewed as an early (yet still incomplete) version of an artificial general intelligence (AGI) system.”
7 Defendants, however, publicly released no report or code regarding GPT-4, preventing the public
8 from building on the non-profit’s AI advancements as Musk had been promised.

9 **RESPONSE:** The OpenAI Defendants admit that GPT-4 was released on March 14,
10 2023. The first two sentences of Paragraph 177 otherwise purport to quote from and characterize a
11 March 2023 paper written by Microsoft researchers, titled “Sparks of Artificial General
12 Intelligence: Early experiments with GPT-4,” to which the OpenAI Defendants respectfully refer
13 the Court for its complete and accurate contents. With respect to the third sentence of Paragraph
14 177, the OpenAI Defendants respectfully refer the Court to a report published by OpenAI
15 researchers in March 2023, titled “GPT-4 Technical Report,” for its full and accurate contents. The
16 OpenAI Defendants otherwise deny the allegations in Paragraph 177.

17 178. Defendants have kept GPT-4, and subsequent models including without limitation,
18 GPT-4T, GPT-4o (released May 2024), and OpenAI o1 (released September 2024), entirely closed.
19 On information and belief, the internal details of these models are known only to Defendants. The
20 reason for the secrecy is obvious: OpenAI and Microsoft stand to make a fortune from exclusive
21 control over the non-profit’s technology and selling its applications to the public, which would not
22 be possible if the non-profit made its research and technology freely available, as Altman had
23 repeatedly promised Musk, regulators and the public.

24 **RESPONSE:** The OpenAI Defendants admit that GPT-4o was released in May 2024 and
25 that a preview of OpenAI o1 was released in September 2024, and otherwise deny the allegations
26 in Paragraph 178.

27 **J. OpenAI Today**

28 179. Defendants’ unbridled power and profit focus have led to a recent flurry of safety

1 and legal concerns and forceful pushback against OpenAI and Altman for abandoning their non-
2 profit mission.

3 **RESPONSE:** Denied.

4 180. Along with pending civil litigation from media outlets like *The New York Times* and
5 the *Chicago Tribune* concerning OpenAI's illegal use of their content to train GPT models, the
6 takeover of the Board and Microsoft's increasingly close relationship with OpenAI have sparked
7 numerous ongoing investigations by the SEC, FTC, and various U.K. and E.U. regulators. On July
8 22, August 1, and August 8, 2024, Senators sent Altman demand letters seeking documents and
9 questioning OpenAI's commercial practices, commitment to safety, Altman's self-dealing, and
10 illegal attempts to muzzle employee-whistleblowers.

11 **RESPONSE:** Paragraph 180 purports to characterize letters from various U.S. Senators
12 to OpenAI, dated July 22, 2024, August 1, 2024, and August 8, 2024, to which the OpenAI
13 Defendants respectfully refer the Court for their complete contents. The OpenAI Defendants
14 otherwise deny the allegations in Paragraph 180.

15 181. Further, in a series of letters dated January 9, March 5, June 6, and September 30,
16 2024, to the California Attorney General, the prominent consumer advocacy organization Public
17 Citizen detailed numerous issues concerning Altman's self-dealing, the troublesome power
18 OpenAI's for-profit arm is wielding over the non-profit, and the recent move to convert OpenAI,
19 Inc. to a fully for-profit company, urging the Attorney General to investigate OpenAI, Inc.'s tax-
20 exempt status.

21 **RESPONSE:** Paragraph 181 purports to characterize letters from Robert Weissman, Co-
22 President of Public Citizen, to the California Department of Justice's Office of the Attorney
23 General, dated January 9, 2024, March 5, 2024, June 6, 2024, and September 30, 2024, to which
24 the OpenAI Defendants respectfully refer the Court for their complete contents. The OpenAI
25 Defendants otherwise deny the allegations in Paragraph 181.

26 182. OpenAI has also continuously hemorrhaged employees and executives. On
27 information and belief, the resignations largely appear to be in protest of Altman and OpenAI's
28 increasingly unfettered and conflicted pursuit of profits at the expense of safety.

1 **RESPONSE:** Denied.

2 183. For instance, in May 2024, Chief Scientist Dr. Sutskever and OpenAI, Inc. executive
3 Jan Leike resigned. The two had led OpenAI, Inc.’s “Superalignment” team tasked with managing
4 the risk that its technology “could lead to the disempowerment of humanity or even human
5 extinction.” Leike stated he could no longer work at the company because he was concerned that
6 safety and societal impact “have taken a backseat to shiny products.”

7 **RESPONSE:** The OpenAI Defendants admit that Sutskever and Leike resigned in May
8 2024. The second sentence of Paragraph 183 purports to quote from and characterize OpenAI’s
9 website, to which the OpenAI Defendants respectfully refer the Court for its complete contents.
10 The third sentence of Paragraph 183 purports to quote from and characterize a post on X by Leike,
11 dated May 17, 2024, to which the OpenAI Defendants respectfully refer the Court for its complete
12 and accurate contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 183.

13 184. Such shiny products include, for example, OpenAI’s Whisper, an audio transcription
14 system which OpenAI released knowing it tended to fabricate even highly important information
15 (e.g., once released, Whisper fabricated medical records). Releasing products with alarming
16 defects like this can be lethal and is not something a true safety-conscious non-profit with no
17 pressure to generate revenue would rush to do.

18 **RESPONSE:** Denied.

19 185. Other employees, including Daniel Kokotajlo resigned because they “lost trust in
20 OpenAI leadership and their ability to responsibly handle AGI.” In an interview with Vox on May
21 18, 2024, Kokotajlo stated: “I joined with substantial hope that OpenAI would rise to the occasion
22 and behave more responsibly as they got closer to achieving AGI. It slowly became clear to many
23 of us that this would not happen.” That same article reported numerous other departures: “at least
24 seven people [] tried to push OpenAI to greater safety from within, but ultimately lost so much faith
25 in its charismatic leader [Altman] that their position became untenable.”

26 **RESPONSE:** Paragraph 185 purports to quote from and characterize an article in *Vox*
27 dated May 18, 2024, to which the OpenAI Defendants respectfully refer the Court for its complete
28 and accurate contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 185.

1 186. Carroll Wainwright, a former alignment researcher for OpenAI, also resigned in
2 May 2024: “I worry that the board will not be able to effectively control the for-profit subsidiary,
3 and I worry that the for-profit subsidiary will not be able to effectively prioritize the mission when
4 the incentive to maximize profits is so strong.”

5 **RESPONSE:** Paragraph 186 purports to quote from and characterize a post on X by
6 Wainwright, dated June 4, 2024, to which the OpenAI Defendants respectfully refer the Court for
7 its complete contents. The OpenAI Defendants admit that Wainwright resigned in May 2024, and
8 otherwise deny the allegations in Paragraph 186.

9 187. In June 2024, one month after leaving OpenAI, Dr. Sutskever launched Safe
10 Superintelligence, Inc., whose mission is, pointedly, to focus on the development of safe AI.

11 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
12 a belief as to the truth of the allegations in Paragraph 187 and deny them on that basis.

13 188. On August 5, 2024, John Schulman, with OpenAI since the beginning, quit to work
14 at the safety-focused AI startup, Anthropic, and to “deepen [his] focus on AI alignment[.]”

15 **RESPONSE:** Paragraph 188 purports to quote from and characterize a post on X by
16 Schulman, dated August 5, 2024, to which the OpenAI Defendants respectfully refer the Court for
17 its complete contents. The OpenAI Defendants admit that Schulman resigned on August 5, 2024 to
18 join Anthropic PBC, and otherwise deny the allegations in Paragraph 188.

19 189. On September 25, 2024, OpenAI’s CTO Mira Murati, who served as interim CEO
20 during Altman’s firing, abruptly left the company, along with Chief Research Officer Bob McGrew
21 and the Head of Post-Training, Barret Zoph.

22 **RESPONSE:** The OpenAI Defendants admit that Murati, McGrew, and Zoph announced
23 their resignations from OpenAI on September 25, 2024, and that Murati served as OpenAI’s interim
24 CEO, and otherwise deny the allegations in Paragraph 189.

25 190. On October 23, 2024, Miles Brundage, a policy researcher at OpenAI and senior
26 adviser on OpenAI’s AGI Readiness team resigned, stating: “In short, neither OpenAI nor any
27 other frontier lab is ready” for AGI. His announcement also revealed the disbanding of OpenAI’s
28 AGI Readiness Team. And just last week, Lilian Weng, OpenAI’s VP of Research and Safety,

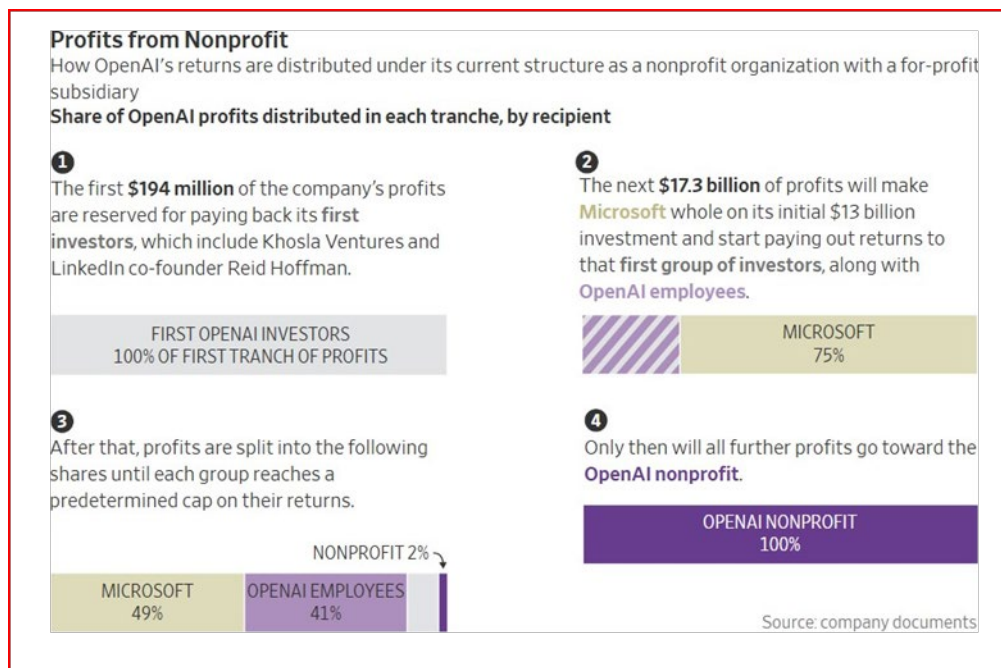
1 announced her resignation after seven years at the company.

2 **RESPONSE:** The OpenAI Defendants admit that Brundage announced his resignation
3 from OpenAI on October 23, 2024. The first sentence of Paragraph 190 otherwise purports to quote
4 from and characterize a blog post by Brundage, dated October 23, 2024, to which the OpenAI
5 Defendants respectfully refer the Court for its complete contents. The OpenAI Defendants admit
6 that membership and responsibilities of the AGI Readiness Team were distributed to other internal
7 groups to create a more effective and streamlined structure for safety, tighter feedback loops, and
8 stronger alignment towards OpenAI’s mission. The OpenAI Defendants otherwise deny the
9 allegations in the second sentence of Paragraph 190. The OpenAI Defendants admit the allegations
10 in the third sentence of Paragraph 190.

11 191. In January 2024, notwithstanding Altman’s promise to Musk that “safety should be
12 a first-class requirement” Ex. 2 at 1, OpenAI dropped a clause from its Usage Policies banning the
13 use of its technology for “activity that has a high risk of physical harm” such as “weapons
14 development” or “military and warfare.” On October 25, 2024, OpenAI reportedly secured its first
15 contract with a combat division of the Department of Defense.

16 **RESPONSE:** The first sentence of Paragraph 191 purports to quote from and characterize
17 June 24, 2015 emails attached as Exhibit 2 to the Second Amended Complaint, and an article in
18 *The Intercept* dated January 12, 2024, to which the OpenAI Defendants respectfully refer the Court
19 for their complete contents. The OpenAI Defendants lack knowledge or information sufficient to
20 form a belief as to the truth of the allegations in the second sentence of Paragraph 191 to the extent
21 they purport to characterize unidentified reporting, and deny them on that basis. The OpenAI
22 Defendants otherwise deny the allegations in Paragraph 191.

23 192. A June 15, 2024 article in *Cointelegraph* entitled “OpenAI Reportedly Considering
24 Shift to For-profit as CEO Stacks Board” detailed how Altman “told shareholders he was
25 considering the [for-profit] move sometime during the week of June 10. If realized, the pivot would
26 ostensibly result in OpenAI’s nonprofit board losing control of the company.” Altman is now fast-
27 tracking his plan to turn the non-profit Musk co-founded into the for-profit business Altman had
28 always envisaged.



RESPONSE: Paragraph 194 purports to quote from and characterize an article in *The Wall Street Journal* titled “The \$14 Billion Question Dividing OpenAI and Microsoft,” dated October 18, 2024, to which the OpenAI Defendants respectfully refer the Court for its complete contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 194.

195. On information and belief, OpenAI has raised a total of \$21.9 billion in its funding rounds. Even if *all* of the For-Profit Entities are capped—something far from certain—OpenAI would need to generate \$2.2 trillion in *profits* (not just revenues) before this for-profit scheme would begin funneling anything more than a nominal 2% back to the charity.

RESPONSE: Denied.

196. This profit cap will not be reached anytime soon. On information and belief, the entire worldwide market—the total value of the AI sector, not just profits—is presently \$214.6 billion. Public projections suggest AI’s worldwide market value—again, not profits but total market value—will be just \$1.3 trillion in 2030. Given these numbers, which are for all AI products and services, not just generative AI, the idea that a single generative AI company can make \$2.2 trillion in *profits* over even the medium-term is implausible.

RESPONSE: Denied.

197. If one considers that some of the For-Profit Entities might not be capped, and that

1 any cap may begin rising by 20% per year in 2025, then Defendants' scheme moves from an
2 implausible way to compensate OpenAI, Inc. for its value to an impossible one.

3 **RESPONSE:** Denied.

4 198. As massive profits come into view, OpenAI and Microsoft's anticompetitive
5 practices have intensified. For instance, on information and belief OpenAI has attempted to starve
6 competitors of AI talent by aggressively recruiting employees with offers of lavish compensation,
7 and is on track to spend \$1.5 billion on personnel for just 1,500 employees.

8 **RESPONSE:** The allegations in Paragraph 198 are irrelevant to the Subject Claims and
9 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
10 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

11 199. Further, during OpenAI's latest funding round in early October 2024, on
12 information and belief, Altman, in concert with and at the urging of other Defendants, conditioned
13 investors' ability to participate in the heavily oversubscribed offering on their agreeing *not* to invest
14 in OpenAI's competitors, specifically calling out xAI. As reported in the *Financial Times* on
15 October 3, 2024:

16 OpenAI has asked investors to avoid backing rival start-ups such as Anthropic and
17 Elon Musk's xAI, as it secures \$6.6bn in new funding and seeks to shut out
18 challengers to its early lead in generative artificial intelligence. . . . During the
19 negotiations, the company made clear that it expected an exclusive funding
20 arrangement, according to three people with knowledge of the discussions.

21 Seeking exclusive relationships with investors restricts rivals' access to capital and
22 strategic partnerships. . . . OpenAI can command unusual terms and an outsized
23 valuation because investors believe the company could dominate the next wave of
24 AI innovation, which they argue will be as significant a shift in consumer behaviour
25 as the internet or mobile.

26 "Because the round was so oversubscribed, OpenAI said to people: 'We'll give
27 you allocation but we want you to be involved in a meaningful way in the business
28 so you can't commit to our competitors,'" according to one person with knowledge
of the deal.

Ex. 25 at 1.

RESPONSE: The allegations in Paragraph 199 are irrelevant to the Subject Claims and
relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.

1 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

2 200. More tell-tale signs of OpenAI’s de facto merger with Microsoft have also begun to
3 surface. In February 2023, Microsoft began making co-working space available for OpenAI
4 employees in San Francisco. And recently, OpenAI has opened an outpost close to Microsoft’s
5 Washington headquarters, facilitating the ongoing merry-go-round of senior executives and
6 engineers shuffling between the two companies.

7 **RESPONSE:** The allegations in Paragraph 200 are irrelevant to the Subject Claims and
8 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
9 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

10 **K. The Market for AI**

11 201. The relevant geographic market for OpenAI and Microsoft’s conduct at issue is
12 worldwide (excluding countries such as the People’s Republic of China that substantially restrict
13 international internet access).

14 **RESPONSE:** The allegations in Paragraph 201 are irrelevant to the Subject Claims and
15 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
16 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

17 202. The relevant product market for antitrust purposes is that of generative AI models
18 and platforms. Governments, businesses, and individual users employ generative AI to, without
19 limitation, solve complex problems that would otherwise require human reasoning; to generate
20 informational and media content; and to automate a large and diverse number of processes using
21 the same platform, such as, by way of example, writing computer code for vastly different purposes.

22 **RESPONSE:** The allegations in Paragraph 202 are irrelevant to the Subject Claims and
23 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
24 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

25 203. Not all AI is generative AI. For example, there are narrow AI systems trained for
26 specific tasks, traditional machine learning models, and rule-based automation systems.

27 **RESPONSE:** The allegations in Paragraph 203 are irrelevant to the Subject Claims and
28 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.

1 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

2 204. What characterizes generative AI is its ability to process natural language inputs and
3 generate human-like outputs across multiple domains, while being adaptable to specific
4 applications and providing a platform for independent developers to generate specialized models.
5 Generative AI can write a short story in the style of Shirley Jackson, describe different theories on
6 boiling an egg perfectly, script a Python application to calculate the radius of a circle, and suggest
7 the perfect itinerary for your Roman holiday, all in the same platform, using the same interface, by
8 a person with no more training than required to ask a question.

9 **RESPONSE:** The allegations in Paragraph 204 are irrelevant to the Subject Claims and
10 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
11 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

12 205. Examples of flagship products in the relevant market are ChatGPT (OpenAI),
13 Copilot (Microsoft), Gemini (Google, and what became of DeepMind), Claude (Anthropic),
14 LLaMA (Meta), Mistral (Mistral AI), Grok (xAI), and Perplexity (Perplexity). These products are
15 sometimes called “chatbots.”

16 **RESPONSE:** The allegations in Paragraph 205 are irrelevant to the Subject Claims and
17 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
18 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

19 206. The generative AI market exhibits pronounced network effects, i.e., when people
20 use the product, it increases in value, attracting more users, and so on. As developers create
21 specialized applications through a platform-specific application programming interface, the
22 platform becomes more useful, further attracting users. Generative AI platforms also learn from
23 user interactions to further train and refine their systems. More users means better generative AI,
24 which again leads to more users.

25 **RESPONSE:** The allegations in Paragraph 206 are irrelevant to the Subject Claims and
26 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
27 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

28 207. As a consequence, separate and apart from the tremendous expense involved in

1 purchasing, programming, and powering generative AI hardware and training a model using
2 personnel from a very limited talent pool, there are significant barriers to entry by new market
3 participants.

4 **RESPONSE:** The allegations in Paragraph 207 are irrelevant to the Subject Claims and
5 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
6 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

7 208. Because of the non-profit's substantial lead in producing generative AI, the but-for
8 and proximate causes of which are Musk's recruitment, financial, and other contributions, OpenAI
9 is estimated to have reached 100 million monthly active users for ChatGPT just two months after
10 launch, making it the fastest-growing consumer application in history.

11 **RESPONSE:** The allegations in Paragraph 208 are irrelevant to the Subject Claims and
12 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
13 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

14 209. On information and belief, by November 2023, two million developers were already
15 using OpenAI's platform, including more than 92% of Fortune 500 companies.

16 **RESPONSE:** The allegations in Paragraph 209 are irrelevant to the Subject Claims and
17 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
18 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

19 210. The result is that, aside from OpenAI and Microsoft, few other generative AI
20 developers are producing much software revenue.

21 **RESPONSE:** The allegations in Paragraph 210 are irrelevant to the Subject Claims and
22 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
23 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

24 211. Even some of the best-known AI developers, such as Anthropic, face questions
25 about their future profit margins, given the costly nature of developing the software.

26 **RESPONSE:** The allegations in Paragraph 211 are irrelevant to the Subject Claims and
27 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
28 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

1 212. In March 2024, Inflection, the well-funded and highly valued generative AI
2 developer that Hoffman had co-founded (and served as a director of while serving on the Boards
3 of both OpenAI and Microsoft), was reported to “g[i]ve up its ambition to compete with OpenAI”
4 and most of its founders and employees moved to Microsoft in an unusually structured deal.³¹

5 **RESPONSE:** The allegations in Paragraph 212 are irrelevant to the Subject Claims and
6 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
7 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

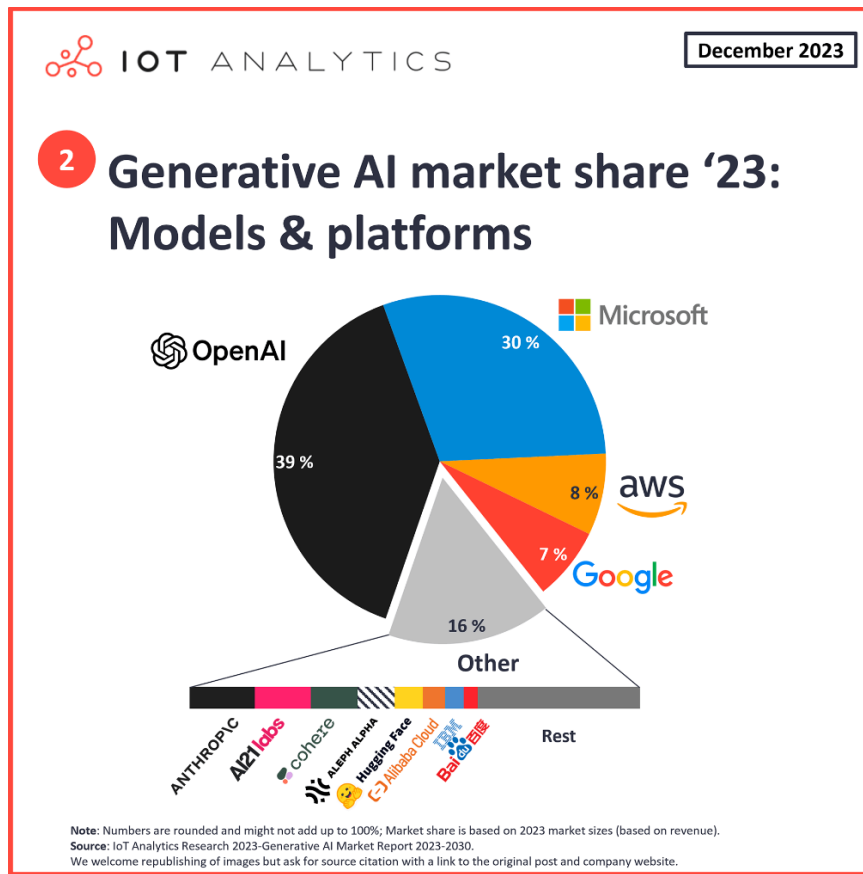
8 213. Cohere, founded in 2019 by the legendary Aidan Gomez, who was only twenty years
9 old when he wrote the paper that inspired OpenAI, has struggled to secure funding recently, even
10 without trying to go head-to-head with OpenAI/Microsoft in consumer generative AI.

11 **RESPONSE:** The allegations in Paragraph 213 are irrelevant to the Subject Claims and
12 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
13 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

14 214. On information and belief, as of the end of 2023, the last full year for which data is
15 available, OpenAI and Microsoft held approximately 69% of the worldwide market share for
16 generative AI, while the next largest competitor, Amazon Web Services (“AWS”), held only 8%:

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25 ³¹ Regulators in the U.K. classified Microsoft’s acquisition of Inflection as a merger, despite
26 Microsoft’s efforts to evade such designation by structuring the deal as a mere acquisition of assets
27 and personnel, a tactic similarly deployed by Defendants in the relationships between OpenAI, Inc.,
28 the For-Profit Entities, and Microsoft. Prior to the merger, Inflection, incorporated February 3,
2022, was in the business of providing generative AI, in particular a chatbot called “Pi,” in direct
competition with xAI’s Grok, OpenAI’s ChatGPT, and Microsoft’s Copilot.

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RESPONSE: The allegations in Paragraph 214 are irrelevant to the Subject Claims and relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025. The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

215. As of the end of 2023, the last full year for which data is available, Microsoft was reported to hold approximately 24% of the worldwide market for OpenAI’s most important raw material, compute, putting it in second place behind AWS (31%) and ahead of Google (11%). Together, these top three market participants (Microsoft, AWS, and Google) control 66% of the world’s supply of compute.³²

RESPONSE: The allegations in Paragraph 215 are irrelevant to the Subject Claims and relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025. The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

³² Security and other practical considerations largely limit U.S. enterprises that consume compute, such as OpenAI, to U.S. providers, which means in practice, Microsoft, AWS, and Google in fact control much more than 66% of the compute available to OpenAI.

1 216. On information and belief, in 2017, OpenAI spent \$7.9 million on compute. On
2 information and belief, in the twelve months preceding Microsoft’s 2019 investment of \$1 billion
3 in OpenAI, it spent less than \$1 million on all Microsoft products and services combined, including
4 compute, notwithstanding OpenAI’s ever-increasing compute usage, which reportedly doubles
5 every five months.

6 **RESPONSE:** The allegations in Paragraph 216 are irrelevant to the Subject Claims and
7 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
8 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

9 217. In the two-and-a-half years after Microsoft’s 2019 investment, on information and
10 belief OpenAI’s *total* spending on all Microsoft products and services combined was less than
11 \$230,000.

12 **RESPONSE:** The allegations in Paragraph 217 are irrelevant to the Subject Claims and
13 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
14 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

15 218. Generating compute is a hugely expensive undertaking. In addition to buying and
16 maintaining the tens of thousands of computer processors that Microsoft sells and/or rents to
17 customers such as OpenAI, Microsoft must pay highly-skilled personnel to design and operate the
18 data centers housing its processors, as well as incur significant real estate and energy expenses in
19 operating them, sometimes consuming more power than an entire city.

20 **RESPONSE:** The allegations in Paragraph 218 are irrelevant to the Subject Claims and
21 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
22 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

23 219. It is apparent from OpenAI’s incredibly small expenditures on this valuable
24 commodity that Microsoft is charging OpenAI far less than it costs to produce it, and in any event,
25 vastly less than Microsoft charges other, similarly situated buyers. Selling compute through
26 Microsoft’s Azure platform generated \$62 billion in revenues as of the close of its June 2024 fiscal
27 year, and OpenAI is one of Azure’s largest users.

28 **RESPONSE:** The allegations in Paragraph 219 are irrelevant to the Subject Claims and

1 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
2 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

3 220. Creating generative AI is a hugely expensive undertaking. In addition to extremely
4 expensive scientific personnel, drawn from a very limited pool, lawful generative AI incurs
5 significant costs in licensing material for training models, as well as to complete the training itself.
6 OpenAI is projected to spend \$8.5 billion on just personnel and generative AI training this year
7 alone. Yet OpenAI charges Microsoft and the public considerably less for its generative AI
8 products than they cost to produce. The economics are obvious from the fact OpenAI is on track
9 to lose \$5 billion this year and losses are expected to soar to \$14 billion per year by 2026.

10 **RESPONSE:** The allegations in Paragraph 220 are irrelevant to the Subject Claims and
11 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
12 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

13 221. Microsoft also charges the public considerably less for its generative AI than it costs
14 to produce.

15 **RESPONSE:** The allegations in Paragraph 221 are irrelevant to the Subject Claims and
16 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
17 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

18 222. OpenAI charges \$20 per month for its “ChatGPT Plus” plan. When Microsoft
19 launched its “Copilot Pro” plan less than a year later, it also charged \$20 per month for almost
20 mirror-image benefits. Little wonder, then, that when Google launched its subscription product,
21 Gemini Advanced, the month after Microsoft, it had to charge \$19.99 per month. There is no reason
22 to believe prices should have synchronized so quickly despite wildly different cost structures for
23 putatively different products.

24 **RESPONSE:** The allegations in Paragraph 222 are irrelevant to the Subject Claims and
25 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
26 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

27 223. With U.S. and European antitrust regulators drawing nearer, Microsoft’s Form 10-
28 K for the fiscal year ending June 30, 2024 listed OpenAI as a “competitor” for the very first time.

1 Although Microsoft is spending billions investing in other AI companies, the same filing lists only
2 a single “strategic partner”: OpenAI.

3 **RESPONSE:** The allegations in Paragraph 223 are irrelevant to the Subject Claims and
4 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
5 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

6 224. xAI’s Grok competes directly with OpenAI’s ChatGPT and Microsoft’s Copilot in
7 the generative AI market. xAI also competes directly with OpenAI to acquire compute from
8 suppliers such as Microsoft, and xAI and OpenAI compete directly for the same investors.

9 **RESPONSE:** The allegations in Paragraph 224 are irrelevant to the Subject Claims and
10 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
11 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

12 225. xAI has been harmed by, without limitation: investors declining to invest in xAI
13 because of the exclusivity agreement Defendants extracted during OpenAI’s most recent funding
14 round; an inability to license OpenAI technology given Microsoft’s exclusive license thereto; an
15 inability to obtain compute from Microsoft on terms anywhere near as favorable as OpenAI
16 receives, requiring xAI to invest tremendous sums to develop its own infrastructure to produce
17 compute; difficulty recruiting scientists and other technically skilled employees, whom Defendants
18 have locked down to prevent competitive hiring; and the exclusive exchange between OpenAI and
19 Microsoft of competitively sensitive information, such as customer lists, pricing data, and research,
20 resulting in an unlawful competitive advantage.

21 **RESPONSE:** The allegations in Paragraph 225 are irrelevant to the Subject Claims and
22 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
23 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court

24 **COMMON STANDING ALLEGATIONS**

25 226. Defendants have no meaningful relationship with Delaware, whose laws apply only
26 insofar as they concern the legality of OpenAI, Inc.’s Certificate of Incorporation and/or Bylaws.

27 **RESPONSE:** Denied.

28 227. In all other respects, California law governs. Indeed, under the Attorney General of

1 California’s interpretation of Cal. Corp. Code § 6910 as evidenced in practice, foreign non-profit
2 corporations doing business in California, like OpenAI, Inc., are subject to California law.

3 **RESPONSE:** Paragraph 227 sets forth legal conclusions to which no response is required.

4 228. Though OpenAI, Inc.’s Certificate of Incorporation states, contrary to Delaware law
5 applicable to charities, “[t]he corporation shall not have any members,” Ex. 21 at 5, its Bylaws
6 expressly provide for membership and do not provide another means for electing directors or
7 otherwise exercising ultimate control over the corporation. Ex. 21 at 8-10.

8 **RESPONSE:** Paragraph 228 purports to quote from and characterize OpenAI, Inc.’s
9 Certificate of Incorporation, attached as Exhibit 21 to the Second Amended Complaint, to which
10 the OpenAI Defendants respectfully refer the Court for its complete and accurate contents. The
11 OpenAI Defendants otherwise deny the allegations in Paragraph 228.

12 229. By virtue of Article II, § 1 of OpenAI, Inc.’s Bylaws, Musk was a member of
13 OpenAI, Inc. from its founding until his resignation on February 21, 2018.

14 **RESPONSE:** Admitted.

15 230. Article III, § 1 of OpenAI, Inc.’s Bylaws expressly grants the persons defined to be
16 members, such as Musk, “the right to vote”: “for the election of a director or directors”; “on a
17 disposition of all or substantially all of the assets of [the] corporation”; “on a merger or on a
18 dissolution”; and “on changes to the articles or bylaws.” *Id.* § 1(a), (c)-(f).

19 **RESPONSE:** Paragraph 230 purports to quote from and characterize OpenAI, Inc.’s
20 bylaws, to which the OpenAI Defendants respectfully refer the Court for their complete and
21 accurate contents. The OpenAI Defendants otherwise deny the allegations in Paragraph 230.

22 231. Musk was thus not only a member of OpenAI, Inc. pursuant to the express language
23 designating directors as members in the Bylaws, but also by virtue of his powers recited therein.

24 **RESPONSE:** Admitted.

25 232. Musk was therefore a member at the time of the transactions, in whole or in part, of
26 which he complains. He is no longer a member for reasons related to his attempts to address the
27 harms to OpenAI, Inc., including without limitation, those alleged herein.

28 **RESPONSE:** Denied.

1 233. Adverse domination of OpenAI, Inc.’s Board during all periods except that from
2 July 13, 2023 (upon the resignation of Hurd), through November 21, 2023 (upon Altman’s return),
3 as detailed in paragraphs 159-70, *supra*, excuses Musk from attempting to secure remedial action
4 from the Board.

5 **RESPONSE:** Denied.

6 234. As the settlor of a charitable trust and/or by virtue of the Contract detailed in
7 paragraph 247, *infra*, Musk has standing to enforce compliance with the conditions of his donations.

8 **RESPONSE:** Denied.

9 235. As a co-founder, early director, and critical donor, among other roles, Musk has a
10 special interest in OpenAI’s operation.

11 **RESPONSE:** Denied.

12 236. Musk has delivered to OpenAI, Inc. and its Board a true copy of the SAC by
13 providing it to counsel for OpenAI, Inc., prior to this filing.

14 **RESPONSE:** The OpenAI Defendants admit that approximately thirty minutes before
15 filing the Second Amended Complaint, counsel for Musk emailed a copy of the complaint to
16 litigation counsel for the OpenAI Defendants. The OpenAI Defendants otherwise deny the
17 allegations in Paragraph 236.

18 **COMMON OPERATIONS ALLEGATIONS**

19 237. Except as otherwise specified herein, OpenAI, Inc. and the For-Profit Entities
20 operate together as a unitary enterprise, the primary purpose of which is now for-profit. OpenAI,
21 Altman, Brockman, and Microsoft have become alter egos of one another. Defendants’ corporate
22 veils should be pierced and their separate forms should now be disregarded because on information
23 and belief, a single shareholder controls other entities (e.g., OpenAI, Inc. controls OpenAI OpCo,
24 LLC, OpenAI GP, L.L.C., OpenAI, L.L.C., etc.) and because Defendants, some of which are
25 undercapitalized, have commingled funds and/or assets (e.g., the intellectual property OpenAI, Inc.
26 transferred to the For-Profit Entities), failed to respect corporate formalities, and have and continue
27 to use the For-Profit Entities as shells to conduct illegal activities and/or to conceal or misrepresent
28 the identity of their responsible ownership and respective business activities. Failing to ignore

1 Defendants' corporate forms would produce an inequitable result.

2 **RESPONSE:** Denied.

3 238. Except as otherwise specified herein, the unitary enterprise of OpenAI, or in the
4 alternative the individual entities comprising it, have engaged in a de facto merger with one another
5 and Microsoft. On information and belief, following the asset transfers structured to avoid merger
6 review, there exists a continuity of ownership; an effective cessation of business by many of the
7 OpenAI entities, including OpenAI, Inc. itself (which had only \$44,485 in revenue in 2022); sharing
8 of officers, directors, and stockholders between OpenAI, Inc., the For-Profit Entities, and/or
9 Microsoft; a continuity of operations; and use of OpenAI, Inc.'s assets, including its name. No
10 adequate consideration has been given for OpenAI, Inc.'s assets and made available to meet the
11 claims of its unsecured creditors.

12 **RESPONSE:** Denied.

13 239. Defendants have intentionally concealed their wrongful conduct, which prevented
14 Plaintiffs from discovering their scheme, notwithstanding Plaintiffs' exercise of due diligence.

15 **RESPONSE:** Denied.

16 240. xAI, Microsoft, and OpenAI (both the non-profit and the For-Profit Entities) are
17 engaged in interstate and foreign commerce, and all of their complained-of actions are occurring in
18 commerce and/or are activities affecting commerce. These parties' goods, commodities, and/or
19 services are sold, leased, used, consumed, and/or resold, and/or contracts for their lease, sale, use,
20 consumption, or resale occur throughout the United States, including in California.

21 **RESPONSE:** Denied.

22 **COMMON ANTITRUST ALLEGATIONS**

23 241. OpenAI alone, Microsoft alone, and/or OpenAI in combination with Microsoft, have
24 market power in generative AI. Microsoft has market power in compute.

25 **RESPONSE:** The allegations in Paragraph 241 are irrelevant to the Subject Claims and
26 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
27 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

28 242. As a direct and intended result of Defendants' conduct, Musk and xAI have been

1 injured by, without limitation, higher prices for compute, lower prices for their generative AI
2 products, fewer opportunities to compete in selling their generative AI goods, reduced ability to
3 attract and retain the highly skilled personnel critical to success in this market, and reduced access
4 to capital markets, all leading to reduced choices among consumers.

5 **RESPONSE:** The allegations in Paragraph 242 are irrelevant to the Subject Claims and
6 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
7 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

8 243. Although each of Defendants’ acts is anticompetitive in its own right, the
9 interrelated and interdependent actions giving rise to the claims in this SAC have had a cumulative
10 and synergistic effect that has harmed Musk and xAI, competition, the competitive process, and
11 consumers.

12 **RESPONSE:** The allegations in Paragraph 243 are irrelevant to the Subject Claims and
13 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
14 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

15 244. The cumulative actions of Defendants are either per se illegal, or their obvious and
16 likely anticompetitive effects require only a “quick look” rule-of-reason inquiry.

17 **RESPONSE:** The allegations in Paragraph 244 are irrelevant to the Subject Claims and
18 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
19 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

20 245. Defendants’ exclusionary acts lack a pro-competitive justification sufficient to
21 offset the significant harms caused by their anticompetitive and unlawful conduct.

22 **RESPONSE:** The allegations in Paragraph 245 are irrelevant to the Subject Claims and
23 relate only to claims in this action that were stayed at the direction of the Court on April 4, 2025.
24 The OpenAI Defendants will answer these allegations if and when ordered to do so by the Court.

25 **COUNT II: BREACH OF IMPLIED-IN-FACT CONTRACT**

26 **(In the alternative to Count I)**
27 **(Musk Against Altman and OpenAI, Inc.)**

28 254. Plaintiff Musk re-alleges and incorporates by reference paragraphs 1 through 253

1 inclusive, as though fully set forth herein.

2 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
3 responses to the foregoing allegations in the Second Amended Complaint.

4 255. The relationship, surrounding circumstances, and intentional course of conduct
5 between Musk, on the one hand, and Altman and OpenAI, Inc., on the other, resulted in a valid,
6 enforceable, and binding implied-in-fact contract.

7 **RESPONSE:** Denied.

8 256. Altman proposed that he and Musk co-found an AI research non-profit that Altman
9 promised would make its findings open source for the good of all and would avoid concentrating
10 its technology for the profit of any person or company. Musk assented and in turn agreed to use
11 his time, name, and extensive connections to recruit premier scientific talent, attract investment,
12 and made significant financial contributions to establish the non-profit.

13 **RESPONSE:** The OpenAI Defendants admit that Altman proposed to Musk the creation
14 of an AI lab in May 2015, that OpenAI, Inc.’s founding Certificate of Incorporation stated that the
15 “technology will benefit the public” and “the corporation will seek to open source technology for
16 the public benefit when applicable,” and that Musk helped OpenAI’s initial efforts to recruit leading
17 scientists and engineers. The OpenAI Defendants otherwise deny the allegations in Paragraph 256.

18 257. Subsequently, Altman, individually and/or on behalf of OpenAI, Inc., continued to
19 reaffirm, both publicly and to Musk directly, that OpenAI, Inc., as a non-profit, would develop and
20 openly share AI technology for the good of the public and not for private commercial gain. Such
21 reaffirmations by Altman and/or OpenAI, Inc. were made, without limitation, in OpenAI, Inc.’s
22 Certificate of Incorporation, the non-profit’s Charter (circulated to Musk), numerous OpenAI
23 online announcements, and countless communications to Musk from 2015 to 2020, as alleged in
24 detail hereinabove.

25 **RESPONSE:** Denied.

26 258. The conduct of Musk, on the one hand, and Altman and OpenAI, Inc., on the other,
27 was intentional, and each knew or had reason to know that the other party(ies) would interpret their
28 conduct as reflecting an agreement.

1 **RESPONSE:** Denied.

2 259. Musk fulfilled any and all obligations and has performed and/or complied with any
3 and all terms and conditions of said agreement that he was required to perform and/or comply with,
4 except those which were waived and/or excused, or the non-performance of which was justified,
5 and is in no matter or respect in breach of said agreement.

6 **RESPONSE:** Denied.

7 260. Initially, Altman and OpenAI, Inc. performed their obligations and publicly
8 disclosed the non-profit's findings and research regarding its preliminary GPT models.

9 **RESPONSE:** The OpenAI Defendants admit that OpenAI has published certain research,
10 code, and model weights, and otherwise deny the allegations in Paragraph 260.

11 261. Altman and OpenAI, Inc., however, breached their implied-in-fact contract by,
12 without limitation, the acts detailed in paragraph 250(a)-(m), *supra*.

13 **RESPONSE:** Denied. The OpenAI Defendants further deny the allegations in Paragraph
14 250(a)-(m).

15 262. Defendants' obligations to perform were not waived nor were their breaches and/or
16 failures to perform justified and/or excused.

17 **RESPONSE:** Denied.

18 263. As a direct and proximate result of Altman and OpenAI, Inc.'s conduct, acts, and/or
19 omissions, Defendants have deprived Musk of the benefit of the parties' agreement and have caused
20 Musk to suffer damages, including but not limited to the loss of the time and resources he expended
21 to direct research and recruit scientific talent for the non-profit, the financial contributions he made
22 to OpenAI, Inc., as well as damage to his reputation, along with all benefit-of-the-bargain and
23 consequential damages, in an amount to be adjudicated and determined at trial, plus prejudgment
24 interest, costs, and fees.

25 **RESPONSE:** Denied.

26 264. Musk has no adequate remedy at law for many of the injuries he suffered and
27 continues to suffer as a result of Defendants' breaches and failures, and such injuries cannot
28 reasonably, adequately, or precisely be measured or compensated in damages. Musk therefore also

1 seeks and is entitled to specific performance of Defendants’ contractual obligations.

2 **RESPONSE:** Denied.

3 **COUNT III: BREACH OF IMPLIED COVENANT**
4 **OF GOOD FAITH AND FAIR DEALING**

5 **(Musk Against Altman and OpenAI, Inc.)**

6 265. Plaintiff Musk re-alleges and incorporates by reference paragraphs 1 through 264
7 inclusive, as though fully set forth herein.

8 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
9 responses to the foregoing allegations in the Second Amended Complaint.

10 266. Implied in every agreement is a covenant of good faith and fair dealing that each
11 party will not do anything to unfairly interfere with the right of any other party to receive the
12 benefits of the agreement.

13 **RESPONSE:** Paragraph 266 sets forth a legal conclusion to which no response is
14 required.

15 267. Musk entered into the valid, binding, and enforceable implied agreement with
16 Altman and OpenAI, Inc. with the purpose of developing AI/AGI technology to be openly shared
17 with the public for the benefit of all and not for private profiteering.

18 **RESPONSE:** Denied.

19 268. Musk fulfilled any and all obligations and has performed and/or complied with any
20 and all terms and conditions of the agreement with Altman and OpenAI, Inc. that he was required
21 to perform and/or comply with, except those which were waived and/or excused, or the non-
22 performance of which was justified, and is in no matter or respect in breach of said agreement.

23 **RESPONSE:** Denied.

24 269. Altman and OpenAI, Inc. did not act fairly and in good faith, engaging in conduct
25 that frustrated the purpose of the parties’ agreement and Musk’s reasonable expectations under it.
26 Specifically, in addition to and distinct from their breach of contract:

27 a. Defendants systematically and unilaterally reinterpreted key terms of their
28 agreement in ways that undermined it, including by evading conflict-of-interest protections by

1 defining board member “independence” in an extraordinarily narrow fashion—considering, for
2 example, only whether board members *directly or personally* held equity in OpenAI’s For-Profit
3 Entities—while rejecting standard independence disqualifiers;

4 b. Defendants obscured OpenAI’s for-profit activities through complex
5 corporate structures, deliberately designed to prevent Musk and the public from discovering their
6 actual operations, and by purporting to maintain the charity’s control of their for-profit business
7 when, in fact, the opposite is true; and

8 c. Defendants engaged in all acts *supra* ¶¶ 250(a)-(m) to the extent any such
9 acts are determined not to breach the terms of parties’ implied-in-fact contract.

10 **RESPONSE:** Denied. The OpenAI Defendants further deny the allegations in Paragraph
11 250(a)-(m).

12 270. These bad faith actions undermined the fundamental basis of the parties’ agreement
13 and deprived Musk of the benefits he legitimately expected, even if such actions did not technically
14 breach a specific contractual term. This conduct constitutes a violation of the implied covenant of
15 good faith and fair dealing separate and distinct from Defendants’ breach of contract.

16 **RESPONSE:** Denied.

17 271. Defendants’ obligations to perform were not waived nor were their breaches and/or
18 failures to perform justified and/or excused.

19 **RESPONSE:** Denied.

20 272. As a direct and proximate result of Altman and OpenAI, Inc.’s conduct, acts, and/or
21 omissions, Defendants have caused Musk to suffer damages, including but not limited to the
22 financial contributions he made to OpenAI, Inc., the loss of the time and resources Musk expended
23 to recruit talent and direct research, as well as damage to his reputation, along with all benefit-of-
24 the-bargain and consequential damages, in an amount to be adjudicated and determined at trial,
25 plus prejudgment interest, costs, and fees.

26 **RESPONSE:** Denied.

27 273. Musk has no adequate remedy at law for many of the injuries he suffered and is
28 suffering as a result of Defendants’ breaches and failures, and such injuries cannot reasonably,

1 adequately, or precisely be measured or compensated in damages. Accordingly, Musk also seeks
2 and is entitled to specific performance of Defendants’ contractual obligations.

3 **RESPONSE:** Denied.

4 **COUNT IV: BREACH OF QUASI-CONTRACT/UNJUST ENRICHMENT**

5 **(Musk Against Altman, Brockman, OpenAI,³³ and Microsoft)**

6 274. Plaintiff Musk re-alleges and incorporates by reference paragraphs 1 through 273
7 inclusive, as though fully set forth herein.

8 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
9 responses to the foregoing allegations in the Second Amended Complaint.

10 275. Even in the absence of an enforceable agreement, Defendants have still been
11 unjustly enriched at Musk’s expense as a result of their improper exploitation for personal profit of
12 OpenAI, Inc.’s resources, intellectual property, and assets as detailed above.

13 **RESPONSE:** Denied.

14 276. Musk contributed considerable money and resources to launch and sustain OpenAI,
15 Inc., which was done on the condition that the endeavor would be and remain a non-profit devoted
16 to openly sharing its technology with the public and avoid concentrating its power in the hands of
17 a few.

18 **RESPONSE:** Denied.

19 277. It would be unjust and inequitable to allow Defendants to retain the substantial
20 benefits that were obtained as a direct and proximate result of their wrongful conduct including,
21 without limitation, their solicitation of capital and other valuable resources from Musk under the
22 false pretense and repeated promises that such would be used for charitable purposes, and while
23 misrepresenting to Musk, regulators, and the public that OpenAI, Inc. was developing AI/AGI for
24 the public’s benefit and not for private gain.

25 **RESPONSE:** Denied.

26 278. Musk has been directly and proximately injured by Defendants’ conduct, acts,

27 _____
28 ³³ As defined in note 2, *supra*, “OpenAI” refers to the non-profit OpenAI, Inc. and the For-Profit
Entities, collectively.

1 and/or omissions, for which Defendants are jointly and severally liable. Defendants' wrongful
2 conduct, acts, and omissions have caused and will continue to cause Plaintiff irreparable harm if
3 allowed to continue without restraint, and as to which Plaintiff has no adequate remedy at law.

4 **RESPONSE:** Denied.

5 279. Defendants have been and will continue to be unjustly enriched, in an amount to be
6 adjudicated and determined at trial, and for which restitution and nonrestitutionary disgorgement
7 are appropriate. The primary remedy is correction, via the imposition of a constructive trust over
8 Defendants and their ill-gotten gains, as well as the voiding of all contracts with any Defendant(s)
9 that are contrary to the non-profit's charitable purposes.

10 **RESPONSE:** Denied.

11 280. Musk therefore seeks a judgment against Defendants for compensatory damages, an
12 accounting, the imposition of a constructive trust, preliminary and permanent injunctive relief,
13 prejudgment interest, an award of costs, and fees.

14 **RESPONSE:** The OpenAI Defendants admit that Plaintiff Musk purports to seek the
15 relief described in Paragraph 280, but deny that he is entitled to any such relief.

16 **COUNT VI: CONSTRUCTIVE FRAUD**

17 **(Musk Against Altman, Brockman, and OpenAI, Inc.)**

18 290. Plaintiff Musk re-alleges and incorporates by reference paragraphs 1 through 289
19 inclusive, as though fully set forth herein.

20 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
21 responses to the foregoing allegations in the Second Amended Complaint.

22 291. As a charity and as persons soliciting contributions on behalf of a charity, OpenAI,
23 Inc., Altman, and Brockman are in a fiduciary relationship with, and each owe a fiduciary duty to
24 Musk, from whom charitable contributions were solicited, including under Cal. Bus. & Prof. Code
25 § 17510.8.

26 **RESPONSE:** Denied.

27 292. As fiduciaries, Altman, Brockman, and OpenAI, Inc. owe Musk a duty to use his
28 contributions for the declared charitable purposes for which they were sought, and are liable for

1 constructive fraud for any advantages they gained by misleading Musk with their repeated
2 promises, representations, and reassurances, regardless of whether they intended to deceive him.

3 **RESPONSE:** Denied.

4 293. Altman and Brockman solicited and obtained contributions from Musk by making
5 repeated and material promises, representations, and reassurances to him as described in paragraph
6 247(a)-(k), *supra*.

7 **RESPONSE:** Denied. The OpenAI Defendants further deny the allegations in Paragraph
8 247(a)-(k).

9 294. Defendants knew or could have reasonably foreseen that their promises,
10 representations, and reassurances would be and were relied upon by and were material to Musk.

11 **RESPONSE:** Denied.

12 295. Defendants misled Musk by failing to disclose information and/or by providing him
13 with information that was inaccurate and/or incomplete.

14 **RESPONSE:** Denied.

15 296. Defendants breached each and every promise, representation, and reassurance to
16 Musk in the manners described in paragraph 250(a)-(m), *supra*.

17 **RESPONSE:** Denied. The OpenAI Defendants further deny the allegations in Paragraph
18 250(a)-(m).

19 297. Musk has been directly and proximately injured by Defendants' conduct, acts,
20 and/or omissions, for which Defendants are jointly and severally liable. Defendants' wrongful
21 conduct, acts, and omissions have caused and will continue to cause Plaintiff irreparable harm if
22 allowed to continue without restraint, and as to which Plaintiff has no adequate remedy at law.

23 **RESPONSE:** Denied.

24 298. Defendants have been and will continue to be unjustly enriched, in an amount to be
25 adjudicated and determined at trial, and for which restitution and nonrestitutionary disgorgement
26 are appropriate. The primary remedy is correction, via the imposition of a constructive trust over
27 Defendants and their ill-gotten gains, as well as the voiding of all contracts with any Defendant(s)
28 that are contrary to the non-profit's charitable purposes.

1 emails attached as Exhibit 13 to the Second Amended Complaint, to which the OpenAI Defendants
2 respectfully refer the Court for its contents. The OpenAI Defendants otherwise deny the allegations
3 in Paragraph 304.

4 305. In addition, on September 22, 2017, Zilis e-mailed Musk that Altman had informed
5 her that he was “[g]reat with keeping [OpenAI] non-profit and continuing to support it.” Ex. 14
6 at 1.

7 **RESPONSE:** Paragraph 305 purports to quote from and characterize September 2017
8 emails attached as Exhibit 14 to the Second Amended Complaint, to which the OpenAI Defendants
9 respectfully refer the Court for its contents. The OpenAI Defendants otherwise deny the allegations
10 in Paragraph 305.

11 306. Altman and Brockman knew or could have reasonably foreseen that their express
12 promises, representations, and assurances would be relied upon by Musk. Indeed, they obviously
13 intended Musk to rely on such statements and in good faith, Musk reasonably did rely on them to
14 his detriment by thereafter contributing to OpenAI, Inc. an additional \$10,275,000 and, through
15 Musk Industries, paying for OpenAI’s pricey lease and overhead.

16 **RESPONSE:** Denied.

17 307. Altman and Brockman knew their representations and promises were false when
18 made, had no intention of performing them, and failed to perform them. In reality, Altman and
19 Brockman wished to launch a competitor to Google’s DeepMind, which was so far ahead of all
20 other AI companies that a small for-profit start-up had zero chance of success without an angle. To
21 Altman and Brockman, “non-profit” and “open source” were philanthropic hooks, altruistic
22 buzzwords to attract wealthy, connected donors like Musk and talented scientists to back and
23 participate in their endeavor.

24 **RESPONSE:** Denied.

25 308. Brockman essentially admitted as much. He wrote: “I hope for us to enter the field
26 as a neutral group looking to collaborate widely and shift the dialog towards being about humanity
27 winning rather than any particular group or company. (**I think that’s the best way to bootstrap
28 ourselves into being a leading research institution.**)” Ex. 3 at 1 (emphasis added).

1 **RESPONSE:** Denied.

2 309. Once they got Musk’s backing, and Dr. Sutskever and the talented team of scientists
3 Musk recruited were in place, Defendants’ objective was to develop valuable AI/AGI and from
4 there, convert the non-profit to a for-profit enterprise and cash in—essentially converting Musk’s
5 contributions into free start-up capital and years of section 501(c)(3) tax benefits into a free
6 government subsidy.

7 **RESPONSE:** Denied.

8 310. After Musk’s unequivocal September 20, 2017, refutation of Altman’s proposal to
9 convert to a non-profit structure, Defendants, still committed to their scheme, became even more
10 cunning and deceptive. They sequestered OpenAI, Inc.’s technology and orchestrated an
11 increasingly opaque corporate web, including the For-Profit Entities, in which, on information and
12 belief, they were major stakeholders, thus enabling them to covertly self-deal for enormous future
13 profits.

14 **RESPONSE:** Denied.

15 311. On information and belief, Altman engaged in rampant self-dealing, and abused his
16 position of trust at OpenAI, Inc. to enrich himself by causing it to make deals with numerous side
17 companies he owned or held major stakes in, as detailed in paragraphs 133-143, *supra*.

18 **RESPONSE:** Denied. The OpenAI Defendants repeat and incorporate by reference their
19 responses to Paragraphs 133-43.

20 312. In recent months, Altman has abandoned all pretense, displaying his true colors.
21 With Musk out of the picture and OpenAI, Inc.’s Board stacked with compliant allies, Defendants
22 are actively working to convert OpenAI, Inc. into an *entirely* for-profit business.

23 **RESPONSE:** Denied.

24 313. Musk has been directly and proximately injured by Defendants’ conduct, acts,
25 and/or omissions, for which Defendants are jointly and severally liable. Defendants’ wrongful
26 conduct, acts, and omissions have caused and will continue to cause Musk irreparable harm if
27 allowed to continue without restraint, and as to which Musk has no adequate remedy at law.

28 **RESPONSE:** Denied.

1 314. Defendants have been and will continue to be unjustly enriched, in an amount to be
2 adjudicated and determined at trial, and for which restitution and nonrestitutionary disgorgement
3 are appropriate. The primary remedy is correction, via the imposition of a constructive trust over
4 Defendants and their ill-gotten gains, as well as the voiding of all contracts with any Defendant(s)
5 that are contrary to the non-profit's charitable purposes.

6 **RESPONSE:** Denied.

7 315. Musk therefore seeks a judgment against Defendants for compensatory damages, an
8 accounting, the imposition of a constructive trust, preliminary and permanent injunctive relief,
9 prejudgment interest, an award of costs, and fees.

10 **RESPONSE:** The OpenAI Defendants admit that Plaintiff Musk purports to seek the
11 relief described in Paragraph 315, but deny that he is entitled to any such relief.

12 316. Musk is further entitled to exemplary damages under Cal. Civ. Code § 3294(a)
13 because Defendants have acted with oppression, fraud, malice, and/or willful and wanton
14 negligence by, without limitation, acting with intent to harm Musk.

15 **RESPONSE:** Denied.

16 **COUNT XVIII: BREACH OF CHARITABLE TRUST**

17 **(Musk Against Altman, Brockman, and OpenAI, Inc.)**

18 395. Plaintiff Musk re-alleges and incorporates by reference paragraphs 1 through 394
19 inclusive, as though fully set forth herein.

20 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
21 responses to the foregoing allegations in the Second Amended Complaint.

22 396. Musk's contributions to OpenAI, Inc., as solicited by Altman and Brockman,
23 created a charitable trust.

24 **RESPONSE:** Denied.

25 397. Under Cal. Bus. & Prof. Code § 17510.8 and California common law as
26 supplemented by the California Probate Code, Altman, Brockman, and OpenAI, Inc. owed Musk a
27 fiduciary duty with respect to his donations, which he provided in a manner manifesting an intention
28 to create that relationship, such that Altman, Brockman and OpenAI, Inc. owed Musk a duty to use

1 his donations for the benefit of the charity, and subject to the conditions they agreed to.

2 **RESPONSE:** Denied.

3 398. In light of Musk’s status as settlor of a trust in favor of OpenAI, Inc., and his special
4 interest in OpenAI, Inc., Musk has standing to bring claims for violating the terms of his donations,
5 whether under California common law as supplemented by its Probate Code or Cal. Corp. Code
6 § 5142(a).

7 **RESPONSE:** Denied.

8 399. Defendants have breached the terms of Musk’s donations, and therefore the trust,
9 by, without limitation:

- 10 a. All acts and/or omissions identified in paragraph 250(a)-(l), *supra*; and/or
11 b. The violations of all laws identified in paragraph 374(a)-(i), *supra*, the
12 observation of which is an implicit condition of any trust.

13 **RESPONSE:** Denied. The OpenAI Defendants further deny the allegations in Paragraph
14 250(a)-(l) and Paragraph 374(a)-(i).

15 400. The Attorney General of California has been notified by Musk of his intent to file
16 this SAC.

17 **RESPONSE:** The OpenAI Defendants lack knowledge or information sufficient to form
18 a belief as to the truth of the allegations in Paragraph 400 and deny them on that basis.

19 401. The charitable trust and Musk have been directly and proximately injured by
20 Defendants’ conduct, acts, and/or omissions in violation of Cal. Corp. Code § 5142 and California
21 common law as supplemented by its Probate Code, for which Defendants are jointly and severally
22 liable.

23 **RESPONSE:** Denied.

24 402. Defendants have been and will continue to be unjustly enriched, in an amount to be
25 adjudicated and determined at trial, and for which restitution and nonrestitutionary disgorgement
26 are appropriate. The primary remedy is correction, via the imposition of a constructive trust over
27 Defendants and their ill-gotten gains, as well as the voiding of all contracts with any Defendant(s)
28 that are contrary to the non-profit’s charitable purposes.

1 **RESPONSE:** Denied.

2 403. Defendants’ wrongful conduct, acts, and omissions have caused and will continue
3 to cause Musk irreparable harm if allowed to continue without restraint, and as to which Musk has
4 no adequate remedy at law.

5 **RESPONSE:** Denied.

6 404. Musk therefore seeks a judgment against Defendants for compensatory damages, an
7 accounting, the imposition of a constructive trust, preliminary and permanent injunctive relief,
8 prejudgment interest, an award of costs, and fees.

9 **RESPONSE:** The OpenAI Defendants admit that Plaintiff Musk purports to seek the
10 relief described in Paragraph 404, but deny that he is entitled to any such relief.

11 405. Musk is further entitled to exemplary damages under Cal. Civ. Code § 3294(a)
12 because Defendants have acted with oppression, fraud, malice, and/or willful and wanton
13 negligence by, without limitation, acting with intent to harm Musk.

14 **RESPONSE:** Denied.

15 **COUNT XX: VIOLATIONS OF FEDERAL CIVIL RICO,**
16 **18 U.S.C. § 1962(c)**

17 **(Musk and xAI Against Altman, Brockman, Microsoft, and the For-Profit Entities)**

18 419. Plaintiffs Musk and xAI re-allege and incorporate by reference paragraphs 1 through
19 418 inclusive, as though fully set forth herein.

20 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
21 responses to the foregoing allegations in the Second Amended Complaint.

22 420. The federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18
23 U.S.C. §§ 1962, 1964, provides a private right of action for plaintiffs to recover against defendants
24 who harm them through a pattern of racketeering activity as well as defendants who conspire to do
25 so. The statute specifically targets scenarios, like that present here, where defendants exploit
26 legitimate companies, including non-profits, through a concerted pattern of unlawful conduct
27 detrimental to the public interest (here, repeated wire fraud in connection with a publicly subsidized
28 charity), so as to halt the manipulation and corruption of legitimate entities and prevent defendants

1 from profiting from their wrongdoing.

2 **RESPONSE:** Denied.

3 **A. Wire Fraud Predicate Offenses**

4 421. Altman and Brockman knowingly engaged in a scheme to exploit Musk and others
5 (including donors Jessica Livingston, Peter Thiel, and Open Philanthropy) by inducing them with
6 repeated misrepresentations to make significant financial and other contributions to develop
7 valuable AI/AGI for ostensibly charitable purposes, which Defendants exploited to enrich
8 themselves.

9 **RESPONSE:** Denied.

10 422. In furtherance of this scheme, Altman and Brockman transmitted, or caused to be
11 transmitted writings by means of wire communication in interstate commerce (emails), in violation
12 of 18 U.S.C. § 1343. The specific emails sent in furtherance of Defendants' scheme include, but
13 are not limited to, those detailed in paragraph 247, *supra*.

14 **RESPONSE:** Denied. The OpenAI Defendants further deny the allegations in Paragraph
15 247.

16 423. Altman and Brockman's specific intent to defraud Musk is clear from, *inter alia*,
17 their express misrepresentations and assurances to Musk in September 2017 that they remained
18 committed to the original non-profit structure and mission of OpenAI, Inc., while simultaneously
19 plotting to loot the charity's technology and employees for exploitation by the For-Profit Entities
20 and Defendants' private gain. *See supra* ¶¶ 100-02.

21 **RESPONSE:** Denied.

22 424. Altman and Brockman intended Musk to rely, or knew or could have reasonably
23 foreseen that Musk would rely, on their express promises, representations, and assurances, and in
24 good faith Musk reasonably did rely on them to his detriment. Based thereon, Musk caused to be
25 wired tens of millions of dollars of seed money to OpenAI, Inc. as follows:

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Date	Amount
05/27/2016	\$500,000.00 ³⁴
06/08/2016	\$5,000,000.00
08/26/2016	\$4,500,000.00
10/03/2016	\$142,000.00
10/25/2016	\$142,000.00
11/21/2016	\$750,000.00
11/23/2016	\$142,000.00
12/07/2016	\$4,250,000.00
01/01/2017	\$1,140,000.00
01/01/2017	\$700,000.00
01/01/2017	\$16,028,500.00
01/05/2017	\$142,000.00
01/27/2017	\$142,000.00
07/18/2017	\$175,000.00
08/14/2017	\$175,000.00
09/15/2017	\$175,000.00
09/29/2017	\$85,000.00
10/16/2017	\$235,000.00
11/14/2017	\$235,000.00
12/14/2017	\$235,000.00
01/18/2018	\$290,000.00
02/20/2018	\$390,000.00
03/14/2018	\$290,000.00

³⁴ On information and belief, Musk's initial \$10 million in donations to OpenAI, Inc. in 2016 were first wired to Altman's "YC Org.," and then wired by YC Org. to OpenAI, Inc. once OpenAI, Inc. obtained its section 501(c)(3) status.

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Date	Amount
04/16/2018	\$290,000.00
05/15/2018	\$290,000.00
06/14/2018	\$290,000.00
07/16/2018	\$290,000.00
08/14/2018	\$290,000.00
09/18/2018	\$290,000.00
10/17/2018	\$290,000.00
11/14/2018	\$290,000.00
12/17/2018	\$290,000.00
01/16/2019	\$290,000.00
02/14/2019	\$290,000.00
03/22/2019	\$290,000.00
04/16/2019	\$290,000.00
05/14/2019	\$290,000.00
06/14/2019	\$290,000.00
07/17/2019	\$290,000.00
08/14/2019	\$290,000.00
09/16/2019	\$290,000.00
10/17/2019	\$290,000.00
11/15/2019	\$290,000.00
12/17/2019	\$290,000.00
01/14/2020	\$290,000.00
02/14/2020	\$290,000.00
03/16/2020	\$290,000.00
04/13/2020	\$290,000.00
05/13/2020	\$290,000.00

Date	Amount
06/15/2020	\$290,000.00
07/14/2020	\$290,000.00
08/17/2020	\$290,000.00
09/14/2020	\$290,000.00
Total:	\$44,563,500.00

RESPONSE: Denied.

425. During this period, Musk also caused Musk Industries to pay by interstate bank wire the monthly rent and overhead for OpenAI, Inc.'s office.

RESPONSE: Denied.

426. Musk further invested his time, reputation, and connections to recruit top AI scientists and engineers for the non-profit, which included the transmission of emails and cellular telephonic communications.

RESPONSE: Denied.

427. It was reasonably foreseeable that interstate wires would be used in connection with Defendants' scheme. In addition to the wire transmissions described above, Altman and Brockman, acting in concert with the For-Profit Entities and Microsoft, relied on wires to invest such funds in furtherance of their fraudulent scheme, and, on information and belief, relied on email or other forms of electronic communication to exchange information about their receipt and usage of such funds and contributions.

RESPONSE: Denied.

428. In addition, from December 11, 2015 to today, Defendants in their online marketing (e.g., website), advertisements, and promotions made knowingly false and/or misleading representations to defraud the public and induce the false belief that OpenAI, Inc. would be a non-profit whose charitable mission is to develop safe and open-source AI/AGI technology for the public good, not private gain, as detailed in paragraphs 82-88 and 247, *supra*. These false and/or misleading public pronouncements served to further reassure Musk and induce him to make further

1 contributions.

2 **RESPONSE:** Denied. The OpenAI Defendants repeat and incorporate by reference their
3 responses to the allegations in Paragraphs 82-88, and further deny the allegations in Paragraph 247.

4 429. Altman and Brockman knowingly and repeatedly accepted contributions from Musk
5 and other member of the public in order to develop AI/AGI with no intention of honoring and
6 performing their promises at the time they were made, and failed to perform them. For instance,
7 OpenAI's recent GPT-4, GPT-4T, GPT-4o, and OpenAI o1 models are all closed source and
8 shrouded in secrecy for Defendants' commercial advantage and gain.

9 **RESPONSE:** Denied.

10 430. Altman and Brockman used and exploited Musk's contributions to fund and support
11 OpenAI, Inc.'s research and development of AI/AGI, and on information and belief, to attract
12 massive investment by Microsoft, as well as to launch the For-Profit Entities, in which, on
13 information and belief, Altman and Microsoft are significant shareholders.

14 **RESPONSE:** Denied.

15 431. Microsoft and the For-Profit Entities were aware of, benefitted from, and aided and
16 abetted the continuation of this unlawful conduct by, without limitation, providing the capital,
17 corporate structure(s), and advice and encouragement to exploit OpenAI, Inc. and its assets for
18 Defendants' enrichment rather than the public's benefit. Microsoft and the For-Profit Entities
19 further participated by siphoning off and exploiting OpenAI, Inc.'s valuable AI/AGI technology
20 and highly skilled personnel and by facilitating and concealing Defendants' profiteering, as
21 described in detail in paragraphs 127-133, *supra*.

22 **RESPONSE:** Denied. The OpenAI Defendants repeat and incorporate by reference their
23 responses to the allegations in Paragraphs 127-33.

24 432. While publicly cloaked as a mere fundraising apparatus, the For-Profit Entities are,
25 in reality, the foundation of Defendants' scheme to control, co-opt, and cash in on OpenAI, Inc.'s
26 valuable technology developed with Musk's significant contributions.

27 **RESPONSE:** Denied.

28 433. For instance, after Altman and Brockman launched OpenAI, L.P. (now OpenAI

1 OpCo, LLC), they transferred much of the non-profit's staff over to the new company, which also
2 now houses and operates much of OpenAI's technological research and development. Altman,
3 Brockman, and the For-Profit Entities' reshuffling of OpenAI, Inc.'s assets, in concert with
4 Microsoft, served to conveniently shield them and their scheme from public scrutiny and to evade
5 the financial disclosures non-profits like OpenAI, Inc. must make.

6 **RESPONSE:** Denied.

7 434. Each of the predicate acts by Altman and/or Brockman alleged hereinabove were
8 committed within the scope of their employment, their positions as officers and/or directors at, or
9 their agency relationship with, the For-Profit Entities and/or Microsoft.

10 **RESPONSE:** Denied.

11 435. In addition, Altman, with the assistance and cooperation of Brockman, the For-
12 Profit Entities, and/or Microsoft, brazenly engaged in rampant self-dealing involving OpenAI, Inc.
13 and its assets, as described in detail in paragraphs 135-45, *supra*.

14 **RESPONSE:** Denied. The OpenAI Defendants repeat and incorporate by reference their
15 responses to the allegations in Paragraphs 135-45.

16 436. Altman and Brockman, in concert with the For-Profit Entities and Microsoft,
17 intentionally concealed their unlawful conduct, which prevented Musk from discovering their
18 scheme, notwithstanding his exercise of due diligence. Musk would not have contributed to
19 OpenAI, Inc. had he known of Defendants' true intentions and scheme.

20 **RESPONSE:** Denied.

21 437. Altman, Brockman, Microsoft, and the For-Profit Entities directly and indirectly
22 committed or aided and abetted these numerous predicate acts of wire fraud in furtherance of their
23 scheme. The predicate acts by Microsoft and the For-Profit Entities were committed by Altman,
24 Brockman, and/or representatives of such entities acting through, or on behalf of and for the benefit
25 of those entities. Each of these Defendants voluntarily and intentionally committed and/or aided
26 and abetted the commission of the predicate acts to effectuate and/or further their illicit scheme.

27 **RESPONSE:** Denied.

28

1 **B. Pattern of Racketeering Activity**

2 438. Defendants committed multiple predicate acts of wire fraud which are indictable
3 under 18 U.S.C. § 1961(1)(B). Defendants knowingly, willfully, and unlawfully conducted or
4 participated, directly or indirectly, in a pattern of racketeering activity within the meaning of
5 18 U.S.C. § 1961(5).

6 **RESPONSE:** Denied.

7 439. Altman, Brockman, the For-Profit Entities, and/or Microsoft committed, or
8 conspired with or aided and abetted one another in committing, at least two (and in fact, numerous)
9 predicate acts of wire fraud constituting a continuous course of conduct spanning a period from at
10 least March 2015 to the present. The temporal duration and the number of predicate acts are so
11 extensive as to constitute a cognizable pattern of racketeering activity with, at minimum, closed-
12 ended continuity, though, on information and belief, such conduct is continuing—e.g., Defendants
13 continue to form new for-profit entities, and to exploit the non-profit’s technology for their private
14 gain, all while continuing to promote their counterfeit charitable mission—and there exists a
15 specific threat such conduct will persist indefinitely, constituting a pattern of racketeering activity
16 that is open-ended.

17 **RESPONSE:** Denied.

18 440. In order to implement their scheme, Defendants repeatedly used the interstate wires
19 to defraud Musk and other contributors. The predicate acts were related, having the same or similar
20 purposes and results (e.g., to obtain significant financial and other contributions to develop valuable
21 AI/AGI technology to be wrongfully exploited for Defendants’ self-enrichment); involved the same
22 or similar participants (e.g., Defendants); and victims (e.g., Plaintiffs, donors, AI scientists and
23 engineers, and other contributors); and involved the same or similar methods of commission (e.g.,
24 misrepresentations via email, online marketing, etc.).

25 **RESPONSE:** Denied.

26 441. Altman, Brockman, the For-Profit Entities, and Microsoft each participated as a
27 principal in the pattern of racketeering activity by, acting with intent or knowledge, committing,
28 causing, aiding, abetting, counseling, commanding, inducing, or procuring the commission of, two

1 or more acts of wire fraud that make up the alleged pattern of racketeering activity, or by willfully
2 causing the commission of two or more acts of wire fraud that make up the pattern of racketeering
3 activity, which, if Altman, Brockman, the For-Profit Entities, or Microsoft directly performed,
4 would constitute the commission of two or more acts of wire fraud comprising such pattern.

5 **RESPONSE:** Denied.

6 **C. Violations of Section 1962(c)**

7 442. Title 18, Section 1962(c) makes it “unlawful for any person employed by or
8 associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of
9 such enterprise’s affairs through a pattern of racketeering activity[.]”

10 **RESPONSE:** Paragraph 442 purports to quote from and characterize 18 U.S.C.
11 § 1962(c), to which the OpenAI Defendants respectfully refer the Court for its complete and
12 accurate contents.

13 443. OpenAI, Inc. is an “enterprise” as defined by 18 U.S.C. § 1961(4), and engaged in,
14 and its activities affected, interstate and foreign commerce. At all relevant times, OpenAI, Inc. had
15 an existence separate and distinct from the pattern of racketeering in which Altman, Brockman, the
16 For-Profit Entities, and Microsoft engaged.

17 **RESPONSE:** Denied.

18 444. Altman, Brockman, the For-Profit Entities, and Microsoft are “persons” within the
19 definition of 18 U.S.C. § 1961(3), and at all relevant times were employed by and/or associated
20 with OpenAI, Inc. Altman and Brockman are OpenAI, Inc.’s CEO and sometimes President/CTO,
21 respectively, and at various times have sat, and Altman currently sits, on its Board. On information
22 and belief, from November 29, 2023 to July 9, 2024, Microsoft held its so-called “observer seat”
23 on the Board, from which it participated in the management, operation, and/or control of OpenAI,
24 Inc. The For-Profit Entities, which on information and belief are largely owned, operated, and/or
25 controlled by Altman and Microsoft, knowingly implemented decisions of Altman, Brockman,
26 and/or Microsoft and have now so thoroughly infiltrated OpenAI, Inc., and are so intertwined with
27 OpenAI, Inc., so as to effectively participate in, manage, control, and/or operate the non-profit with
28 impunity for Defendants private gain.

1 **RESPONSE:** Denied.

2 445. Defendants conducted the affairs of OpenAI, Inc. through a pattern of racketeering
3 activity by systematically engaging in wire fraud to direct, operate, and manage the enterprise.
4 Specifically:

5 a. Altman and Brockman, as officers with operational control, used their
6 positions within OpenAI, Inc. to execute and direct the enterprise’s core activities through the
7 commission of multiple predicate acts of wire fraud. Defendants directed OpenAI, Inc.’s
8 solicitation of charitable contributions and managed its fundraising operations through interstate
9 wires containing systematic fraudulent misrepresentations about the enterprise’s non-profit
10 mission, as detailed above. Indeed, in reliance on Defendants’ repeated misrepresentations, Musk
11 contributed approximately \$44,811,795.00³⁵ in seed capital via interstate wires to OpenAI, Inc. as
12 set forth in the detailed table above, provided office rent and overhead through Musk Industries,
13 and invested his time, reputation, and connections to recruit premier AI scientists and engineers for
14 the non-profit; and

15 b. After securing initial control over the enterprise through multiple systematic
16 predicate acts of wire fraud, Defendants maintained and strengthened their control by transmitting
17 additional express misrepresentations via interstate wires to Musk in September 2017, falsely
18 claiming a continuing commitment to and enthusiasm for OpenAI’s non-profit structure and
19 charitable mission, as detailed above. These strategic misrepresentations induced Musk to continue
20 to make substantial financial contributions to the enterprise (evidenced by numerous wire transfers
21 after September 2017), allowing Defendants to maintain control over the enterprise’s financing and
22 operations.

23 **RESPONSE:** Denied.

24 446. The For-Profit Entities and Microsoft did more than just benefit from this pattern of
25 racketeering activity, they were vital to the scheme’s success and actively aided and abetted Altman
26 and Brockman in operating the enterprise through this pattern by:

27 _____
28 ³⁵ In addition to his wired contributions, Musk donated Model 3 Teslas to OpenAI, Inc., valued at \$248,295.00, which contribution required communication over e-mail.

1 a. Knowingly providing the capital, corporate structure(s), and advice and
2 encouragement that enabled Altman and Brockman to perpetuate their continuing wire fraud
3 scheme, thereby aiding and abetting the operation of the enterprise through the ongoing
4 transmission of fraudulent representations via interstate wires;

5 b. Willfully participating in the deception of donors and the public by
6 facilitating and concealing Defendants' profiteering, thus aiding and abetting the continued
7 operation of OpenAI, Inc. through wire fraud that misrepresented its charitable mission and
8 obscured Defendants' profiteering;

9 c. Serving as vital participants in siphoning off and exploiting OpenAI, Inc.'s
10 valuable AI/AGI technology and highly skilled personnel, acts that directly aided and abetted the
11 core wire fraud scheme; and

12 d. Intentionally executing the reshuffling of OpenAI, Inc.'s assets that served
13 to conveniently shield them and their scheme from public scrutiny and to evade the financial
14 disclosures non-profits like OpenAI, Inc. must make, thus directly aiding and abetting the wire
15 fraud. The concealment of Defendants' scheme from Musk, regulators, and the public was critical
16 to its success.

17 **RESPONSE:** Denied.

18 447. Further, the For-Profit Entities did not simply aid and abet the wire fraud scheme
19 but actively participated in it by making material misrepresentations transmitted via interstate wires
20 about their purpose and investors' expected returns, including falsely stating that investors should
21 "consider their investment in the spirit of a donation" and that it is "clear that [investors] should
22 never expect a profit," and claiming that "The [for-profit endeavor] exists to advance OpenAI,
23 Inc.'s mission." These fraudulent communications, deliberately directed at both Musk and the
24 public, served to reassure Musk and induced him to make further financial contributions to the
25 enterprise. The For-Profit Entities themselves participated in the operation of the enterprise and
26 directed its affairs by utilizing wire fraud to secure the enterprise's funding while concealing that
27 its structure was designed to retain the vast majority of revenue in the For-Profit Entities and to
28 maximize private financial returns, as revealed, for example, by OpenAI's recent agreement to

1 remove all profit caps to amplify its investors' financial gains.

2 **RESPONSE:** Denied.

3 448. Defendants' concerted pattern of racketeering activity was not merely coincidental
4 to the enterprise but was integral to its operation. Defendants did not simply commit predicate acts
5 of wire fraud while associated with OpenAI, Inc., their ongoing wire fraud constituted the primary
6 means through which they directed and controlled the enterprise's most critical functions: securing
7 the necessary capital and top AI scientific talent to develop valuable AI technology so that
8 Defendants could systematically loot and exploit that technology for their own enrichment.

9 **RESPONSE:** Denied.

10 * * *

11 449. The foregoing unlawful actions of Altman, Brockman, the For-Profit Entities, and
12 Microsoft directly, illegally, and proximately caused and continue to cause injuries to Musk and
13 xAI's respective business and property in an amount to be proven at the time of trial.

14 **RESPONSE:** Denied.

15 450. In addition to the loss of Musk's considerable contributions to OpenAI, Inc.,
16 Plaintiffs were further harmed by Defendants' investment of the proceeds from their unlawful
17 conduct in OpenAI, Inc. and/or Defendants' acquisition of an interest in, or control over, OpenAI,
18 Inc. in furtherance of their scheme.

19 **RESPONSE:** Denied.

20 451. OpenAI, now a competitor to xAI, used Musk's tax-free startup capital to gain an
21 unfair competitive advantage in the market for generative AI, resulting in decreased market share
22 and profits for xAI, diversion of customers/investors away from them, and/or the competitive
23 injuries detailed in Counts VIII-XVII.

24 **RESPONSE:** Denied.

25 452. Defendants further leveraged their control over OpenAI, Inc. and market power,
26 acquired through the pattern of unlawful activity described above, to undercut and block Musk and
27 xAI's entrance and/or growth in the generative AI market, including by controlling the limited
28 supply of available compute, investors, and limited pool of qualified AI talent.

1 **RESPONSE:** Denied.

2 453. Pursuant to the civil remedy provisions of 18 U.S.C. § 1964(c), Musk and xAI are
3 entitled to recover three times the damages they sustained, reasonable attorneys' fees, and costs of
4 litigation, as well as any other relief as authorized by statute.

5 **RESPONSE:** Denied.

6 **COUNT XXI: CONSPIRACY TO VIOLATE FEDERAL CIVIL RICO,**
7 **18 U.S.C. § 1962(d)**

8 **(Musk and xAI Against Altman, Brockman, Microsoft, and the For-Profit Entities)**

9 454. Plaintiffs Musk and xAI re-allege and incorporate by reference paragraphs 1 through
10 453 inclusive, as though fully set forth herein.

11 **RESPONSE:** The OpenAI Defendants repeat and incorporate by reference their
12 responses to the foregoing allegations in the Second Amended Complaint.

13 455. Altman, Brockman, the For-Profit Entities, and Microsoft have undertaken the
14 wrongful acts described in Count XX above as part of a common scheme. Defendants willfully,
15 knowingly, and unlawfully conspired, confederated, and agreed together and with others to violate
16 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d). Defendants intentionally concealed their
17 illicit conduct, which prevented Plaintiffs from discovering their scheme, notwithstanding
18 Plaintiffs' exercise of due diligence.

19 **RESPONSE:** Denied.

20 456. Altman, Brockman, the For-Profit Entities, and Microsoft were aware of the
21 unlawful activity alleged hereinabove. Altman, as OpenAI, Inc.'s co-founder, CEO, and Board
22 member, and Brockman, as its President and prior CTO and Board member, in concert with
23 Microsoft, knew that Altman, Brockman and through them, OpenAI, Inc., had made false and/or
24 misleading representations to Musk and other contributors that OpenAI, Inc. would be a non-profit
25 devoted to the open-source development of AI/AGI for the public's benefit, and that Musk's
26 financial or other contributions were supposed to be used solely to further such charitable purpose.
27 On information and belief, Altman and Brockman have at all relevant times been officers, agents,
28 employees, and/or owners whose knowledge and intent is imputed to the For-Profit Entities. The

1 For-Profit Entities and Microsoft knew of and agreed to facilitate the operation of OpenAI, Inc.
2 and/or Defendants' scheme.

3 **RESPONSE:** Denied.

4 457. Altman, Brockman, and Microsoft directed and caused the For-Profit Entities to
5 engage in the racketeering activity alleged hereinabove.

6 **RESPONSE:** Denied.

7 458. Altman and Brockman understood that they were committing numerous RICO
8 predicate acts and participating in a racketeering scheme, evidenced among other things, by their
9 overt acts and involvement in repeatedly promulgating false and/or misleading representations via
10 wire transmissions, including email correspondence, online transmittal, and social media posts, and
11 receiving financial and other contributions, including wired funds, in response to those fraudulent
12 communications. In addition, on information and belief, the For-Profit Entities and Microsoft
13 understood they were facilitating and/or aiding and abetting Altman and Brockman's self-dealing
14 and furthering the scheme by helping to conceal their fraudulent conduct and aiding in the
15 exploitation of the non-profit's assets for private inurement.

16 **RESPONSE:** Denied.

17 459. The participation and agreement of Altman, Brockman, each of the For-Profit
18 Entities, and Microsoft was necessary to the scheme. Defendants knew their predicate acts were
19 part of a pattern of racketeering activity and agreed to the commission of those acts to further the
20 scheme, and agreed and conspired to conduct and participate in the affairs of OpenAI, Inc. through
21 a consistent and continual pattern of racketeering activity. Further evidence of the agreement
22 among Altman, Brockman, the For-Profit Entities, and Microsoft is peculiarly within the
23 knowledge and control of Defendants.

24 **RESPONSE:** Denied.

25 460. As a direct and proximate result of Defendants' conspiracy and violations of
26 18 U.S.C. § 1962(d), Musk and xAI have been injured in their business and property, as alleged
27 herein, and are entitled to treble damages, attorneys' fees, and costs of suit.

28 **RESPONSE:** Denied.

1 **PRAYER FOR RELIEF**

2 Answering the prayer for relief, the OpenAI Defendants deny that Plaintiffs are entitled to
3 any of the relief sought.

4 **AFFIRMATIVE DEFENSES**³⁶

5 The OpenAI Defendants assert the following defenses, which are based on, without
6 limitation, the allegations asserted in Paragraphs 1 through 127 of the foregoing Amended
7 Counterclaims, Answer, and Defenses, as well as the OpenAI Defendants' responses to the
8 allegations of the Second Amended Complaint. These allegations and responses are incorporated
9 as though fully set forth herein.

10 **FIRST DEFENSE: STATUTE OF LIMITATIONS**

11 Each of the Subject Claims is barred, in whole or in part, by statutes of limitations:

12 Counts II (Breach of Implied-in-Fact Contract) and III (Breach of Implied Covenant of
13 Good Faith and Fair Dealing) are time-barred under Cal. Code Civ. Proc. § 339(1)'s two-year
14 limitations period. Musk claims that Altman and OpenAI, Inc. breached his alleged contract by,
15 among other things, (1) "[c]ausing less than all of OpenAI, Inc.'s technology to be owned by
16 OpenAI, Inc. by . . . assigning OpenAI, Inc.'s intellectual property to the For-Profit Entities"
17 (SAC ¶ 250(a)); (2) "[o]perating OpenAI, Inc. for the private gain of . . . the For-Profit
18 Entities . . . by . . . allowing [the For-Profit Entities] to reap significant financial benefits from
19 commercial activities" (SAC ¶ 247(b)); and (3) "[p]roviding OpenAI's research and development
20 personnel with compensation in the form of equity, units, or other things of value in the For-Profit
21 Entities" (SAC ¶ 250(i)).

22 Musk was aware of the conduct purportedly constituting these alleged breaches no later
23 than 2019, well outside the limitations period. OpenAI, Inc. publicly announced the incorporation
24 of the capped-profit subsidiary, OpenAI L.P.—which Musk alleges amounted to a "mov[e] to recast

25 _____
26 ³⁶ The OpenAI Defendants have not included in this proposed amended answer three defenses on
27 which Plaintiffs bear the burden: (1) excusal of performance; (2) no consideration; and
28 (3) economic loss rule. The OpenAI Defendants reserve the right to raise these defenses on
summary judgment or at trial to the extent they negate elements of Plaintiffs' claims, as set forth in
the OpenAI Defendants' opposition to Plaintiffs' motion to strike. *See* Dkt. 205 at 15 & n.4.

1 the [OpenAI] non-profit as a moneymaking endeavor to bring in shareholders, sell equity, and raise
2 capital,” and an effort to “convert to a for-profit structure” (SAC ¶¶ 100, 104)—in a blog post in
3 March 2019; Altman notified Musk of OpenAI, L.P.’s incorporation around that time; Musk was
4 offered, and declined, equity in the new entity; and Musk raised no objection to the new entity’s
5 formation.

6 In August 2018, prior to the public announcement of the capped-profit’s incorporation,
7 Altman sent Musk a draft summary of the transaction’s principal terms and solicited his feedback.
8 That term sheet made clear (a) that OpenAI, L.P. would be capitalized through the contribution of
9 OpenAI, Inc.’s assets (*i.e.*, that “less than all of OpenAI, Inc.’s technology [would] be owned by
10 OpenAI, Inc.” and would instead be owned by the so-called “For-Profit Entities”); (b) that OpenAI,
11 L.P., in connection with its commercial activities, would distribute profits to investors in proportion
12 to their respective capital contributions and potentially generate “significant revenue” by
13 “commercializ[ing] [OpenAI’s] technology” (*i.e.*, that the For-Profit Entities would be
14 “allow[ed] . . . to reap significant financial benefits from commercial activities”); and (c) that
15 OpenAI employees would hold “profit interests” in the capped-profit enterprise as part of their
16 compensation (*i.e.*, that “OpenAI’s research and development personnel” would be provided “with
17 compensation in the form of equity, units, or other things of value in the For-Profit Entities”).

18 Moreover, Musk personally reviewed a draft press release in March 2019 that included
19 information consistent with the draft term sheet regarding the incorporation of OpenAI, L.P. Musk
20 sent Altman a press story shortly after the incorporation of OpenAI, L.P., which likewise described
21 the conduct allegedly amounting to breach of Musk’s purported contract. And in November 2020,
22 OpenAI, Inc. filed an annual registration renewal with the California Attorney General’s Registry
23 of Charitable Trusts that described the formation of OpenAI, L.P. in detail, including the
24 contribution of assets from OpenAI, Inc. to OpenAI, L.P. This registration renewal form is publicly
25 available on the Attorney General’s website. Given all of these facts, Musk engaged in inexcusable
26 delay in asserting his contract claims for the first time in 2024.

27 For the same reasons, Musk’s claim for constructive fraud (Count VI) is time-barred under
28 Cal. Code Civ. Proc. § 338(d)’s three-year limitations period, and his claim for breach of charitable

1 trust (Count XVIII) is time-barred under Cal. Code Civ. Proc. § 338(d)'s three-year limitations
2 period and/or Cal. Prob. Code § 16460(a)'s three-year limitations period if applicable, and in all
3 events under Cal. Code Civ. Proc. § 343's four-year limitations period. Each of these claims is
4 grounded in the same alleged breaches as Musk's breach of implied contract claim
5 (*see* SAC ¶¶ 296, 399).

6 Likewise, Musk's fraud claim (Count VII) is time-barred under Cal. Code Civ. Proc.
7 § 338(d); his claim for breach of quasi-contract/unjust enrichment (Count IV) is time-barred under
8 Cal. Code Civ. Proc. § 339(1)'s two-year limitations period and/or Cal. Code Civ. Proc. § 338(d)'s
9 three-year limitations period; and Plaintiffs' claims for violations of federal civil RICO (Count XX)
10 and conspiracy to violate federal civil RICO (Count XXI) are time-barred under the four-year
11 statute of limitations applicable to civil RICO claims. The alleged breach or fraud asserted in each
12 of these claims is grounded in OpenAI, Inc.'s creation of its capped-profit enterprise, which was
13 disclosed to Musk in 2018 and 2019, as described above.

14 **SECOND DEFENSE: LACHES**

15 The Subject Claims are barred, in whole or in part, by the doctrine of laches, to the extent
16 the Subject Claims are equitable in nature (Counts IV, XVIII) or request equitable relief (Counts
17 II, III, IV, VI, VII, XVIII) because (a) Musk's delay in asserting these claims was unreasonable
18 and (b) his delay resulted in prejudice to the OpenAI Defendants.

19 Musk's delay in bringing the Subject Claims was unreasonable, including in light of
20 analogous statutes of limitations identified above. Musk was aware of the OpenAI Defendants'
21 actions now identified as the basis of the Subject Claims no later than 2019, yet Musk failed to
22 bring suit until 2024—far outside the analogous two-, three-, and/or four-year limitations periods.

23 Musk claims he was aware, as early as 2017 or 2018, that “Altman and Brockman” were
24 allegedly “mov[ing] to recast the [OpenAI] non-profit as a moneymaking endeavor to bring in
25 shareholders, sell equity, and raise capital” (SAC ¶ 100)—the conduct asserted as grounding the
26 Subject Claims. Moreover, Musk claims he knew by no later than March 2019 that “Altman and
27 Brockman had [purportedly] agreed . . . [to] convert to a for-profit structure,” *i.e.*, by launching a
28 capped-profit subsidiary enterprise (SAC ¶ 104). Brockman, Sutskever, and OpenAI, Inc.

1 announced the incorporation of the capped-profit enterprise, OpenAI L.P., in a blog post in March
2 2019; Altman personally notified Musk of that incorporation, including by providing Musk a draft
3 term sheet and draft press release for the transaction and soliciting Musk’s feedback concerning the
4 same; Musk was offered, and declined, equity in the new entity; and Musk raised no objection to
5 the new entity’s formation. In 2022, years after OpenAI, L.P.’s incorporation, Musk praised
6 Altman’s leadership of OpenAI, saying he had done an “amazing job.” Musk engaged in
7 inexcusable delay in asserting the Subject Claims for the first time in 2024.

8 Musk’s conduct demonstrates his acquiescence in the acts he now challenges in the Subject
9 Claims, and his delay in asserting the Subject Claims has prejudiced the OpenAI Defendants.
10 During the period of delay, the OpenAI Defendants have developed OpenAI’s capped-profit
11 enterprise, planned a potential reorganization of OpenAI’s capped-profit entities, developed
12 business relationships with third-party investors, and made decisions regarding the open-sourcing
13 of OpenAI’s technology—all in furtherance of OpenAI’s mission, yet now, according to Musk, all
14 inconsistent with purported rights owed to Musk personally. The OpenAI Defendants have also
15 been prejudiced in their ability to properly defend this action due to the passage of time, and the
16 pre-judgment interest Musk seeks to impose on the OpenAI Defendants has increased in that time.

17 **THIRD DEFENSE: STATUTE OF FRAUDS**

18 Counts II (Breach of Implied-in-Fact Contract) and III (Breach of Implied Covenant of
19 Good Faith and Fair Dealing) are barred by California’s statute of frauds, Cal. Civ. Code
20 § 1624(a)(1), because the contract alleged in Count II was not intended to be performed or capable
21 of being performed within one year. This includes, for example, (1) the alleged commitment that
22 Altman and OpenAI, Inc. purportedly made in 2016, 2017, and 2018 to “open source technology
23 for the public benefit . . . except where [that] technology can be dangerous” (SAC ¶ 247(f)), which
24 OpenAI, Inc. and Altman allegedly breached through their “[f]ailure to open source ol’s
25 architecture, hardware, training method, and training computation” in September 2024
26 (SAC ¶ 250(f)); and (2) the alleged requirement, “[e]ffective no later than September 22, 2017,”
27 that OpenAI, Inc. and Altman “continue with OpenAI as a nonprofit” (SAC ¶ 247(j)), which
28 Plaintiffs claim has been breached by OpenAI, Inc. and Altman “[c]urrently working to convert the

1 non-profit into a fully for-profit commercial entity without making it clear to investors that they
2 should never expect a profit” (SAC ¶ 250(1)).

3 **FOURTH DEFENSE: TERMINATION OF ALLEGED CONTRACT**

4 Counts II (Breach of Implied-in-Fact Contract) and III (Breach of Implied Covenant of
5 Good Faith and Fair Dealing) fail because, to the extent the contract alleged in Count II existed, it
6 terminated prior to the conduct alleged to constitute a breach of the purported contract. The pleaded
7 contract would have expired no later than Musk’s decision to end his affiliation with and support
8 of OpenAI, Inc in 2018. Musk’s termination of his affiliation and support for OpenAI, Inc. was
9 reflected in, among other things: (1) his decision to resign from OpenAI, Inc.’s board in February
10 2018; (2) his decision to stop providing financial support to OpenAI, Inc.; (3) his decision to
11 directly compete with OpenAI; and (4) his engagement in a relentless campaign of harassment
12 against OpenAI. Alternatively, such contract was terminable at will after a reasonable time with
13 reasonable notice and was in fact terminated by Musk through his conduct with respect to OpenAI,
14 Inc. since resigning from its board of directors.

15 **FIFTH DEFENSE: UNCLEAN HANDS**

16 Each of the Subject Claims is barred, in whole or in part, by Musk’s unclean hands because
17 Musk engaged in inequitable conduct directly related to the Subject Claims. Musk engaged in
18 conduct that violates conscience, good faith, and/or equitable standards of conduct, including as
19 follows:

- 20 • Musk sought a for-profit restructuring of OpenAI in 2017 that would afford him “sole
21 control of the new [entity], at least in the short term,” entitling Musk, as the hypothetical
22 for-profit’s CEO, to a “majority equity stake, and control [of] the majority of the board”;
- 23 • In 2017, while serving as co-Chair of OpenAI, Inc., Musk caused top AI engineers from
24 OpenAI to be seconded to his for-profit entity, Tesla, so they could impart scarce AI
25 learning to Tesla employees. He also poached one of OpenAI’s top engineers on behalf
26 of Tesla. Following Musk’s resignation from OpenAI, he continued to try to recruit
27 OpenAI engineers on behalf of businesses under his control;
- 28 • In early 2018, Musk proposed absorbing OpenAI into Tesla through a for-profit pivot

1 that would have Tesla operate as OpenAI’s “cash cow”;

- 2 • In 2023, only days after quietly incorporating nascent OpenAI competitor xAI, Musk
3 called for a six-month “moratorium” on development of advanced AI of the kind
4 OpenAI was then pursuing;
- 5 • A few weeks later, Musk demanded access to OpenAI’s confidential and commercially
6 sensitive internal documents, feigning concern as a former donor to, and director of
7 OpenAI, Inc., and without ever disclosing he was building a competitor in secret; and
- 8 • In February 2025, Musk, along with a “consortium of private investors,” orchestrated a
9 sham bid to purchase OpenAI, Inc.’s assets for \$97.375 billion, without a shred of
10 diligence or evidence of financing, as a naked effort to disrupt the OpenAI, Inc. board’s
11 consideration of a potential restructuring and to sow confusion among employees and
12 potential investors, for the ultimate purpose of threatening OpenAI’s ability to pursue
13 its mission on terms uncorrupted by unlawful harassment and interference.

14 Musk’s inequitable conduct relates directly to the Subject Claims. Those Claims are
15 grounded in Musk’s allegation that his alleged charitable contributions to OpenAI, Inc. afforded
16 him certain rights, including the right to bar the OpenAI Defendants from engaging in certain for-
17 profit activities and partnering with for-profit interests to advance OpenAI’s mission. At the same
18 time, Musk’s inequitable conduct toward the OpenAI Defendants demonstrates that he has
19 repeatedly sought to leverage OpenAI for his own for-profit gain and, since abandoning OpenAI,
20 has attempted to interfere with its business for his own competitive benefit, and the benefit of his
21 entity, xAI.

22 **NEGATIVE DEFENSES**³⁷

23 **SIXTH DEFENSE: FAILURE TO STATE A CLAIM**

24 The Second Amended Complaint fails to state a claim upon which relief may be granted.

25 _____
26 ³⁷ The OpenAI Defendants omitted these negative defenses in their proposed amended answer,
27 submitted as Ex. A to their opposition to Plaintiffs’ motion to strike (Dkt. 205-2), based on
28 Plaintiffs’ representations and subject to the understanding that removing the defenses would not
prejudice the OpenAI Defendants’ ability to raise them at summary judgment or trial. The OpenAI
Defendants remain willing to omit these defenses, based on that understanding, but have retained
and renumbered them in this answer in light of the Court’s denial of Plaintiffs’ motion as to these

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SEVENTH DEFENSE: LACK OF STANDING

Plaintiff Musk lacks standing to assert Count XVIII (Breach of Charitable Trust).

EIGHTH DEFENSE: LACK OF SUBJECT-MATTER JURISDICTION

Plaintiff Musk has failed to establish that the Court possesses subject-matter jurisdiction to adjudicate Count XVIII (Breach of Charitable Trust) because Plaintiff Musk does not have Article III standing to assert the claim.

NINTH DEFENSE: LACK OF CHARITABLE TRUST

Count XVIII (Breach of Charitable Trust) fails because no charitable trust has been formed under California or any other source of law.

TENTH DEFENSE: NO BREACH OF CHARITABLE TRUST

Count XVIII (Breach of Charitable Trust) fails because, to the extent the charitable trust alleged in Count XVIII existed, the OpenAI Defendants did not breach it.

ELEVENTH DEFENSE: NO BREACH OF ALLEGED CONTRACT

Count II (Breach of Implied-in-Fact Contract) fails because, to the extent the contract alleged in Count II existed, the OpenAI Defendants did not breach any of its terms.

TWELFTH DEFENSE: INDEFINITENESS OF ALLEGED CONTRACT

Count II (Breach of Implied-in-Fact Contract) fails because the terms of Plaintiff Musk’s purported contract, as alleged in Count II, are too vague, indefinite, and/or uncertain to constitute an enforceable contract.

THIRTEENTH DEFENSE: LACK OF IMPLIED-IN-FACT CONTRACT

Counts II (Breach of Implied-in-Fact Contract) and III (Breach of Implied Covenant of Good Faith and Fair Dealing) fail because no implied-in-fact contract exists.

FOURTEENTH DEFENSE: NO MUTUAL ASSENT

Counts II (Breach of Implied-in-Fact Contract) and III (Breach of Implied Covenant of Good Faith and Fair Dealing) fail for lack of mutual assent.

defenses (Dkt. 222).

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FIFTEENTH DEFENSE: NO UNFAIR INTERFERENCE

Count III (Breach of Implied Covenant of Good Faith and Fair Dealing) fails because, to the extent the contract alleged in Count II (Breach of Implied-in-Fact Contract) existed, none of the OpenAI Defendants unfairly interfered with Plaintiff Musk’s right to receive the benefits of the alleged contract.

SIXTEENTH DEFENSE: NO BREACH OF ALLEGED IMPLIED COVENANT

Count III (Breach of Implied Covenant of Good Faith and Fair Dealing) fails because, to the extent the contract alleged in Count II (Breach of Implied-in-Fact Contract) existed, the OpenAI Defendants did not breach any implied covenant contained therein.

SEVENTEENTH DEFENSE: NO HARM

Count III (Breach of Implied Covenant of Good Faith and Fair Dealing) fails because, to the extent the conduct alleged in Count III occurred, Plaintiff Musk was not harmed by that conduct.

EIGHTEENTH DEFENSE: IMPERMISSIBLY DUPLICATIVE

Count III (Breach of Implied Covenant of Good Faith and Fair Dealing) fails because it is impermissibly duplicative of Count II (Breach of Implied-in-Fact Contract).

NINETEENTH DEFENSE: NO BENEFIT

Count IV (Breach of Quasi-Contract/Unjust Enrichment) fails because Plaintiff Musk did not confer a benefit on any OpenAI Defendant at his expense.

TWENTIETH DEFENSE: NO UNJUST RETENTION OF A BENEFIT

Count IV (Breach of Quasi-Contract/Unjust Enrichment) fails because none of the OpenAI Defendants unjustly retained a benefit at the expense of Plaintiff Musk.

TWENTY-FIRST DEFENSE: NO FIDUCIARY/CONFIDENTIAL RELATIONSHIP

Count VI (Constructive Fraud) fails because no fiduciary or confidential relationship existed between Altman, Brockman, or OpenAI, Inc., on the one hand, and Plaintiff Musk, on the other hand.

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TWENTY-SECOND DEFENSE: NO BREACH OF ANY DUTY

Count VI (Constructive Fraud) fails because, to the extent the fiduciary or confidential relationship alleged in Count VI existed, there was no act, omission, or concealment that resulted in a breach of that alleged duty.

TWENTY-THIRD DEFENSE: NO FALSE STATEMENT

Counts VII (Fraud), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Federal Civil RICO) fail because Plaintiff Musk does not identify, and the OpenAI Defendants did not make, any actionably false or misleading statement or omission of material fact.

TWENTY-FOURTH DEFENSE: LACK OF SCIENTER

Counts VII (Fraud), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Federal Civil RICO) fail because the OpenAI Defendants lacked the requisite scienter.

TWENTY-FIFTH DEFENSE: LACK OF INTENT TO DEFRAUD

Counts VII (Fraud), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Federal Civil RICO) fail because the OpenAI Defendants lacked intent to defraud or deceive.

TWENTY-SIXTH DEFENSE: NO BREACHED PROMISE

Counts VII (Fraud), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Federal Civil RICO) fail because the OpenAI Defendants did not breach the promises alleged to have been made to Plaintiff Musk.

TWENTY-SEVENTH DEFENSE: LACK OF RELIANCE

Counts VI (Constructive Fraud), VII (Fraud), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Federal Civil RICO) fail because Plaintiff Musk did not reasonably rely on any promise, representation, or reassurance alleged to have been made to him.

TWENTY-EIGHTH DEFENSE: SUBSTANTIAL FACTOR

Counts VII (Fraud), XX (Violations of Federal Civil RICO), and XXI (Conspiracy to Violate Civil RICO) fail because, to the extent Plaintiff Musk reasonably relied on any promise, representation, or reassurance alleged to have been made to him, such reliance was not a substantial factor in causing Plaintiff Musk's alleged harm.

1 **TWENTY-NINTH DEFENSE: NO ACTS OF RACKETEERING ACTIVITY**

2 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
3 Civil RICO) fail because the OpenAI Defendants did not commit any acts of racketeering activity,
4 including wire fraud in violation of 18 U.S.C. § 1343.

5 **THIRTIETH DEFENSE: LACK OF CONDUCT**

6 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
7 Civil RICO) fail as to the For-Profit Entities because the For-Profit Entities had no part in directing
8 the affairs, or participating in the operation or management, of OpenAI, Inc.

9 **THIRTY-FIRST DEFENSE: LACK OF DISTINCTIVENESS**

10 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
11 Civil RICO) fail for lack of distinctiveness between the alleged persons and the alleged enterprise.

12 **THIRTY-SECOND DEFENSE: NO PATTERN**

13 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
14 Civil RICO) fail because none of the OpenAI Defendants, individually or collectively, has
15 committed two or more acts of racketeering activity.

16 **THIRTY-THIRD DEFENSE: NO RELATED ACTS**

17 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
18 Civil RICO) fail because any acts of racketeering activity were not sufficiently related to form a
19 pattern of racketeering activity.

20 **THIRTY-FOURTH DEFENSE: NO CONTINUOUS ACTS**

21 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
22 Civil RICO) fail because any acts of racketeering activity were not sufficiently continuous to form
23 a pattern of racketeering activity.

24 **THIRTY-FIFTH DEFENSE: LACK OF CONDUCT OF AN ENTERPRISE**

25 Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal
26 Civil RICO) fail because any alleged racketeering activity was not the conduct of OpenAI, Inc.'s
27 affairs.

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THIRTY-SIXTH DEFENSE: LACK OF INJURY

Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal Civil RICO) fail because Plaintiffs did not suffer any cognizable injury to their business or property.

THIRTY-SEVENTH DEFENSE: LACK OF CAUSATION

Counts XX (Violations of Federal Civil RICO) and XXI (Conspiracy to Violate Federal Civil RICO) fail because the OpenAI Defendants' alleged conduct was not a but-for cause or the proximate cause of Plaintiffs' purported injury.

THIRTY-EIGHTH DEFENSE: NO AGREEMENT TO VIOLATE RICO

Count XXI (Conspiracy to Violate Federal Civil RICO) fails because the OpenAI Defendants did not enter into any agreement to commit a substantive violation of 18 U.S.C. § 1962(c) or any other RICO provision.

THIRTY-NINTH DEFENSE: LACK OF STANDING

Plaintiffs lack standing to assert the Subject Claims.

FORTIETH DEFENSE: LACK OF SUBJECT-MATTER JURISDICTION

Plaintiffs have failed to establish that the Court possesses subject-matter jurisdiction to adjudicate any of the Subject Claims because Plaintiffs do not have Article III standing to assert the Subject Claims.

FORTY-FIRST DEFENSE: RIPENESS/MOOTNESS

Plaintiffs' claims are barred, in whole or in part, by the doctrines of ripeness and mootness.

FORTY-SECOND DEFENSE: NO DAMAGES

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have not suffered any injury, loss, or damages from the conduct challenged in the Second Amended Complaint.

FORTY-THIRD DEFENSE: NO ENHANCED DAMAGES

Plaintiffs' requests for punitive, exemplary, or other enhanced damages are barred because the OpenAI Defendants did not at any time act with oppression, fraud, malice, and/or willful or wanton negligence and such an award would, if granted, also violate the OpenAI Defendants' state and federal rights.

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FORTY-FOURTH DEFENSE: NO EQUITABLE RELIEF

Plaintiffs are not entitled to equitable relief, including but not limited to injunctive relief, because they have an adequate remedy at law and cannot show that they will suffer any irreparable harm, that the balance of equities tips in their favor, or that the public interest supports relief.

DEMAND FOR JURY TRIAL

Counterclaim Plaintiffs hereby demand a trial by jury for all issues triable to a jury under Rule 38(b) of the Federal Rules of Civil Procedure.

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DATED: August 6, 2025

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