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

11 ELON MUSK, et al.,  
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 13 Plaintiffs,  
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 15 v.  
 16 SAMUEL ALTMAN, et al.,  
 17  
 18 Defendants.

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

Assigned to Hon. Yvonne Gonzalez Rogers

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

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

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

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

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

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

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

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DATED: February 12, 2025

Respectfully Submitted,

TOBEROFF & ASSOCIATES, P.C.

/s/ Marc Toberoff  
Marc Toberoff

*Attorneys for Plaintiffs Elon Musk,  
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