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

ELON MUSK, an individual,

Plaintiff,

v.

SAMUEL ALTMAN, an individual,
GREGORY BROCKMAN, an
individual, OPENAI, INC., a
Delaware corporation, OPENAI,
L.P., a Delaware limited
partnership, OPENAI, L.L.C., a
Delaware limited liability company,
OPENAI GP, L.L.C., a Delaware
limited liability company, OPENAI
OPCO, LLC, a Delaware limited
liability company, OPENAI
GLOBAL, LLC, a Delaware limited
liability company, OAI
CORPORATION, LLC, a Delaware
limited liability company, OPENAI
HOLDINGS, LLC, a Delaware
limited liability company,

Case No. 3:24-cv-04722

COMPLAINT FOR:

1. **PROMISSORY FRAUD**
2. **CONSTRUCTIVE FRAUD**
3. **AIDING AND ABETTING FRAUD**
4. **VIOLATIONS OF FEDERAL CIVIL RICO, 18 U.S.C. § 1962(C)**
5. **CONSPIRACY TO VIOLATE FEDERAL CIVIL RICO, 18 U.S.C. § 1962(D)**
6. **BREACH OF EXPRESS CONTRACT**
7. **BREACH OF IMPLIED-IN-FACT CONTRACT**
8. **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

1 OPENAI INVESTMENT LLC, a
2 Delaware limited liability company, OPENAI STARTUP FUND
3 MANAGEMENT, LLC, a Delaware
4 limited liability company, OPENAI
5 STARTUP FUND GP I, L.L.C., a
6 limited liability company, OPENAI
7 STARTUP FUND I, L.P. a
8 Delaware limited partnership,
9 OPENAI STARTUP FUND SPV
10 GP I, L.L.C., a Delaware limited
11 liability company, OPENAI
12 STARTUP FUND SPV GP II,
13 L.L.C., a Delaware limited liability
14 company, OPENAI STARTUP
15 FUND SPV GP III, L.L.C., a
16 Delaware limited liability company,
17 OPENAI STARTUP FUND SPV
18 GP IV, L.L.C., a Delaware limited
19 liability company, OPENAI
20 STARTUP FUND SPV I, L.P., a
21 Delaware limited partnership,
22 OPENAI STARTUP FUND SPV II,
23 L.P., a Delaware limited
24 partnership, OPENAI STARTUP
25 FUND SPV III, L.P., a Delaware
26 limited partnership, OPENAI
27 STARTUP FUND SPV IV, L.P., a
28 Delaware limited partnership,
AESTAS MANAGEMENT
COMPANY, LLC, a Delaware
limited liability company, AESTAS,
LLC, a Delaware limited liability
company, and DOES 1-10,

Defendants.

9. **BREACH OF QUASI-
CONTRACT/UNJUST
ENRICHMENT**
10. **FALSE ADVERTISING UNDER
THE LANHAM ACT, 15 U.S.C.
§ 1125(A)(1)(B)**
11. **UNFAIR COMPETITION
UNDER CAL. BUS. & PROF.
CODE §§ 17200 *et seq.***
12. **FALSE ADVERTISING UNDER
CAL. BUS. & PROF. CODE
§§ 17500 *et seq.***
13. **AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY**
14. **TORTIOUS INTERFERENCE
WITH CONTRACT**
15. **DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Elon Musk (“Musk” or “Plaintiff”), for his complaint against
2 defendants Samuel Altman (“Altman”), Gregory Brockman (“Brockman”),
3 OpenAI, Inc., OpenAI, L.P., OpenAI, L.L.C., OpenAI GP, L.L.C., OpenAI
4 OpCo, LLC, OpenAI Global, LLC, OAI Corporation, LLC, OpenAI Holdings,
5 LLC, OpenAI Investment LLC, OpenAI Startup Fund Management, LLC,
6 OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I, L.P., OpenAI
7 Startup Fund SPV GP I, L.L.C., OpenAI Startup Fund SPV GP II, L.L.C.,
8 OpenAI Startup Fund SPV GP III, L.L.C., OpenAI Startup Fund SPV GP IV,
9 L.L.C., OpenAI Startup Fund SPV I, L.P., OpenAI Startup Fund SPV II, L.P.,
10 OpenAI Startup Fund SPV III, L.P., OpenAI Startup Fund SPV IV, L.P., Aestas
11 Management Company, LLC, and Aestas, LLC¹ (collectively, “Defendants”),
12 alleges as follows:

13 NATURE OF THE ACTION

14 1. Elon Musk’s case against Sam Altman and OpenAI is a textbook
15 tale of altruism versus greed. Altman, in concert with other Defendants,
16 intentionally courted and deceived Musk, preying on Musk’s humanitarian
17 concern about the existential dangers posed by artificial intelligence (“AI”).
18 Altman and his long-time associate Brockman assiduously manipulated Musk
19 into co-founding their spurious non-profit venture, OpenAI, Inc., by promising
20 that it would chart a safer, more open course than profit-driven tech giants. The
21 idea Altman sold Musk was that a non-profit, funded and backed by Musk,
22 would attract world-class scientists, conduct leading AI research and
23 development, and, as a meaningful counterweight to Google’s DeepMind in the
24 race for Artificial General Intelligence (“AGI”), decentralize its technology by
25 making it open source. Altman assured Musk that the non-profit structure
26 guaranteed neutrality and a focus on safety and openness for the benefit of

27 ¹ This Complaint hereinafter uses “OpenAI” to refer to the non-profit (OpenAI, Inc.) and all
28 entity Defendants, collectively.

1 humanity, not shareholder value. But as it turns out, this was all hot-air
2 philanthropy—the hook for Altman’s long con.

3 2. After Musk lent his name to the venture, invested significant time,
4 tens of millions of dollars in seed capital, and recruited top AI scientists for
5 OpenAI, Inc., Musk and the non-profit’s namesake objective were betrayed by
6 Altman and his accomplices. The perfidy and deceit are of Shakespearean
7 proportions.

8 3. Once OpenAI, Inc.’s technology approached transformative AGI,
9 Altman flipped the narrative and proceeded to cash in. In partnership with
10 Microsoft, Altman established an opaque web of *for-profit* OpenAI affiliates,
11 engaged in rampant self-dealing, seized OpenAI, Inc.’s Board, and
12 systematically drained the non-profit of its valuable technology and personnel.
13 The resulting OpenAI network, in which Altman and Microsoft hold significant
14 interests, was recently valued at a staggering \$100 billion.

15 4. The world has gotten wise to Defendants’ scheme. Not only are
16 there several pending lawsuits against OpenAI, Inc. over its unlawful practices,
17 but Defendants are also under investigation by multiple federal agencies,
18 including the Securities and Exchange Commission and the Federal Trade
19 Commission, and are the subject of numerous consumer advocacy complaints to
20 the California Attorney General. A recent spate of OpenAI executives and
21 insiders have blown the whistle on Altman, exposing his unscrupulous
22 maneuvering and self-dealing. Indeed, just this June it was reported that Altman,
23 foregoing any further humanitarian pretense, proposed to OpenAI’s stakeholders
24 that it be converted to an entirely *for-profit* enterprise, shielding Defendants
25 from public oversight and the mandatory financial disclosures of a non-profit.

26 5. As a result of their unlawful actions, Defendants have been unjustly
27 enriched to the tune of billions of dollars in value, while Musk, who co-founded
28 their *de-facto* for-profit start-up, has been conned along with the public, whom

1 its vital technology was supposed to benefit. Musk brings this remedial action to
2 divest Defendants of their ill-gotten gains.

3 **PARTIES**

4 6. Plaintiff Elon Musk is an individual, citizen, and resident of Texas.

5 7. Plaintiff is informed and believes and thereon alleges that
6 Defendant Samuel Altman is a resident of San Francisco, California.

7 8. Plaintiff is informed and believes and thereon alleges that
8 Defendant Gregory Brockman is a resident of San Francisco, California.

9 9. OpenAI, Inc. is a registered non-profit organization incorporated
10 under the laws of Delaware on December 8, 2015. OpenAI, Inc. is registered as
11 an out-of-state corporation with the California Secretary of State and has its
12 principal place of business at 3180 18th Street, San Francisco, CA 94110.

13 10. OpenAI, L.P. is a limited partnership formed under the laws of
14 Delaware on September 19, 2018, originally as SummerSafe, L.P. On
15 information and belief, on January 23, 2023 OpenAI, L.P. was converted to
16 OpenAI OpCo, LLC. OpenAI, L.P. is registered as an out-of-state limited
17 partnership with the California Secretary of State and has its principal place of
18 business at 3180 18th Street, San Francisco, CA 94110.

19 11. OpenAI, L.L.C. is a limited liability company formed in Delaware
20 on September 17, 2020. OpenAI, L.L.C. maintains its principal place of business
21 in California.

22 12. OpenAI GP, L.L.C. is a limited liability company formed in
23 Delaware on September 19, 2018. OpenAI GP, L.L.C is registered as an out-of-
24 state limited liability company registered with the California Secretary of State
25 and has its principal place of business at 3180 18th Street, San Francisco, CA
26 94110.

27 13. OpenAI OpCo, LLC is a limited liability company formed in
28 Delaware on September 19, 2018 as OpenAI, L.P, but was later converted on

1 January 23, 2023 to OpenAI OpCo, LLC. OpenAI OpCo, LLC is registered as
2 an out-of-state limited liability company with the California Secretary of State
3 and has its principal place of business at 1960 Bryant Street, San Francisco, CA
4 94110.

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

9 15. OAI Corporation, LLC is a limited liability company formed in
10 Delaware. OAI Corporation, LLC maintains its principal place of business in
11 California.

12 16. OpenAI Holdings, LLC is a limited liability company formed in
13 Delaware on March 17, 2023. OpenAI Holdings, LLC is registered as an out-of-
14 state limited liability company with the California Secretary of State and has its
15 principal place of business at 1960 Bryant Street, San Francisco, CA 94110.

16 17. OpenAI Investment LLC is a limited liability company formed in
17 Delaware on February 6, 2023. Plaintiff is informed and believes and thereon
18 alleges that OpenAI Investment LLC also maintains its principal place of
19 business in San Francisco, California.

20 18. OpenAI Startup Fund Management, LLC is a limited liability
21 company formed in Delaware on July 16, 2021. OpenAI Startup Fund
22 Management, LLC is registered as an out-of-state limited liability company with
23 the California Secretary of State and has its principal place of business at 3180
24 18th Street, San Francisco, CA 94110.

25 19. OpenAI Startup Fund GP I, L.L.C. is a limited liability company
26 formed in Delaware on July 28, 2021. OpenAI Startup Fund GP I, L.L.C. is
27 registered as an out-of-state limited liability company with the California
28 Secretary of State and has its principal place of business at 3180 18th Street, San

1 Francisco, CA 94110.

2 20. OpenAI Startup Fund I, L.P. is a limited partnership formed in
3 Delaware on July 28, 2021. OpenAI Startup Fund I, L.P. is registered as an out-
4 of-state limited partnership with the California Secretary of State and has its
5 principal place of business at 3180 18th Street, San Francisco, CA 94110.

6 21. OpenAI Startup Fund SPV GP I, L.L.C. is a limited liability
7 company formed in Delaware on December 5, 2023. Plaintiff is informed and
8 believes and thereon alleges that OpenAI Startup Fund SPV GP I, L.L.C.
9 maintains its principal place of business in San Francisco, California.

10 22. OpenAI Startup Fund SPV GP II, L.L.C. is a limited liability
11 company formed in Delaware on April 4, 2024. Plaintiff is informed and
12 believes and thereon alleges that OpenAI Startup Fund SPV GP II, L.L.C.
13 maintains its principal place of business in San Francisco, California.

14 23. OpenAI Startup Fund SPV GP III, L.L.C. is a limited liability
15 company formed in Delaware on April 4, 2024. Plaintiff is informed and
16 believes and thereon alleges that OpenAI Startup Fund SPV GP III, L.L.C.
17 maintains its principal place of business in San Francisco, California.

18 24. OpenAI Startup Fund SPV GP IV, L.L.C. is a limited liability
19 company formed in Delaware on May 9, 2024. Plaintiff is informed and believes
20 and thereon alleges that OpenAI Startup Fund SPV GP IV, L.L.C. maintains its
21 principal place of business in San Francisco, California.

22 25. OpenAI Startup Fund SPV I, L.P. is a limited partnership formed in
23 Delaware on December 5, 2023. Plaintiff is informed and believes and thereon
24 alleges that OpenAI Startup Fund SPV I, L.P. maintains its principal place of
25 business in San Francisco, California.

26 26. OpenAI Startup Fund SPV II, L.P. is a limited partnership formed
27 in Delaware on April 4, 2024. Plaintiff is informed and believes and thereon
28 alleges that OpenAI Startup Fund SPV II, L.P. maintains its principal place of

1 business in San Francisco, California.

2 27. OpenAI Startup Fund SPV III, L.P. is a limited partnership formed
3 in Delaware on April 4, 2024. Plaintiff is informed and believes and thereon
4 alleges that OpenAI Startup Fund SPV III, L.P. maintains its principal place of
5 business in San Francisco, California.

6 28. OpenAI Startup Fund SPV IV, L.P. is a limited partnership formed
7 in Delaware on May 9, 2024. Plaintiff is informed and believes and thereon
8 alleges that OpenAI Startup Fund SPV IV, L.P. maintains its principal place of
9 business in San Francisco, California.

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

15 30. Aestas, LLC is a limited liability company formed in Delaware on
16 September 19, 2018. Aestas, LLC is registered as an out-of-state limited liability
17 company with the California Secretary of State and has its principal place of
18 business at 1960 Bryant Street, San Francisco, CA 94110.

19 31. Plaintiff is informed and believes and based thereon alleges that the
20 fictitiously named defendants captioned hereinabove as Does 1 through 10,
21 inclusive, and each of them, were in some manner responsible or legally liable
22 for the actions, damages, events, transactions, and circumstances alleged herein.
23 The true names and capacities of such fictitiously named defendants, whether
24 individual, corporate, associate, or otherwise are presently unknown to Plaintiff,
25 and Plaintiff will amend this Complaint to assert the true names and capacities of
26 such fictitiously named defendants when they have been ascertained. For
27 convenience, each reference herein to the named Defendants shall also refer to
28 the Doe defendants and each of them.

1 **JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT**

2 32. This Court has subject matter jurisdiction under 28 U.S.C. § 1331,
3 as this is a civil case arising under the federal Racketeer Influenced and Corrupt
4 Organizations Act, 18 U.S.C. § 1965, Lanham Act, 15 U.S.C. § 1121, and
5 Declaratory Judgment Act, 18 U.S.C. § 2201, and has supplemental jurisdiction
6 over all other claims pursuant to 28 U.S.C. § 1367 because all claims herein
7 form part of the same case or controversy under Article III of the United States
8 Constitution. This Court also has subject matter jurisdiction under 28 U.S.C.
9 § 1332, as the matter in controversy well exceeds \$75,000 in value and is
10 between citizens of different states.

11 33. Plaintiff is informed and believes and thereon alleges that
12 jurisdiction over Samuel Altman is proper because he is domiciled in the State of
13 California and in this District, and because a substantial portion of the relevant
14 acts complained of herein occurred in the State of California and in this District.

15 34. Plaintiff is informed and believes and thereon alleges that
16 jurisdiction over Gregory Brockman is proper because he is domiciled in the
17 State of California and in this District, and because a substantial portion of the
18 relevant acts complained of herein occurred in the State of California and in this
19 District.

20 35. Jurisdiction over OpenAI, Inc. is proper because it has its principal
21 place of business in the State of California and in this District, and because a
22 substantial portion of the relevant acts complained of herein occurred in the
23 State of California and in this District.

24 36. Jurisdiction over OpenAI, L.P. is proper because it has its principal
25 place of business in the State of California and in this District, and because a
26 substantial portion of the relevant acts complained of herein occurred in the
27 State of California and in this District.

28 37. Jurisdiction over OpenAI, L.L.C. is proper because it has its

1 principal place of business in the State of California, and because a substantial
2 portion of the relevant acts complained of herein occurred in the State of
3 California and in this District.

4 38. Jurisdiction over OpenAI GP, L.L.C. is proper because it has its
5 principal place of business in the State of California and in this District, and
6 because a substantial portion of the relevant acts complained of herein occurred
7 in the State of California and in this District.

8 39. Jurisdiction over OpenAI OpCo, LLC is proper because it has its
9 principal place of business in the State of California and in this District, and
10 because a substantial portion of the relevant acts complained of herein occurred
11 in the State of California and in this District.

12 40. Jurisdiction over OpenAI Global, LLC is proper because it has its
13 principal place of business in the State of California and in this District, and
14 because a substantial portion of the relevant acts complained of herein occurred
15 in the State of California and in this District.

16 41. Jurisdiction over OAI Corporation, LLC is proper because it has its
17 principal place of business in the State of California, and because a substantial
18 portion of the relevant acts complained of herein occurred in the State of
19 California and in this District.

20 42. Jurisdiction over OpenAI Holdings, LLC is proper because it has its
21 principal place of business in the State of California and in this District, and
22 because a substantial portion of the relevant acts complained of herein occurred
23 in the State of California and in this District.

24 43. Jurisdiction over OpenAI Investment LLC is proper because it has
25 its principal place of business in the State of California and in this District, and
26 because a substantial portion of the relevant acts complained of herein occurred
27 in the State of California and in this District.

28 44. Jurisdiction over OpenAI Startup Fund Management, LLC is proper

1 because it has its principal place of business in the State of California and in this
2 District, and because a substantial portion of the relevant acts complained of
3 herein occurred in the State of California and in this District.

4 45. Jurisdiction over OpenAI Startup Fund GP I, L.L.C. is proper
5 because it has its principal place of business in the State of California and in this
6 District, and because a substantial portion of the relevant acts complained of
7 herein occurred in the State of California and in this District.

8 46. Jurisdiction over OpenAI Startup Fund I, L.P. is proper because it
9 has its principal place of business in the State of California and in this District,
10 and because a substantial portion of the relevant acts complained of herein
11 occurred in the State of California and in this District.

12 47. Jurisdiction over OpenAI Startup Fund SPV GP I, L.L.C. is proper
13 because it has its principal place of business in the State of California and in this
14 District, and because a substantial portion of the relevant acts complained of
15 herein occurred in the State of California and in this District.

16 48. Jurisdiction over OpenAI Startup Fund SPV GP II, L.L.C. is proper
17 because it has its principal place of business in the State of California and in this
18 District, and because a substantial portion of the relevant acts complained of
19 herein occurred in the State of California and in this District.

20 49. Jurisdiction over OpenAI Startup Fund SPV GP III, L.L.C. is
21 proper because it has its principal place of business in the State of California and
22 in this District, and because a substantial portion of the relevant acts complained
23 of herein occurred in the State of California and in this District.

24 50. Jurisdiction over OpenAI Startup Fund SPV GP IV, L.L.C. is proper
25 because it has its principal place of business in the State of California and in this
26 District, and because a substantial portion of the relevant acts complained of
27 herein occurred in the State of California and in this District.

28 51. Jurisdiction over OpenAI Startup Fund SPV I, L.P. is proper

1 because it has its principal place of business in the State of California and in this
2 District, and because a substantial portion of the relevant acts complained of
3 herein occurred in the State of California and in this District.

4 52. Jurisdiction over OpenAI Startup Fund SPV II, L.P. is proper
5 because it has its principal place of business in the State of California and in this
6 District, and because a substantial portion of the relevant acts complained of
7 herein occurred in the State of California and in this District.

8 53. Jurisdiction over OpenAI Startup Fund SPV III, L.P. is proper
9 because it has its principal place of business in the State of California and in this
10 District, and because a substantial portion of the relevant acts complained of
11 herein occurred in the State of California and in this District.

12 54. Jurisdiction over OpenAI Startup Fund SPV IV, L.P. is proper
13 because it has its principal place of business in the State of California and in this
14 District, and because a substantial portion of the relevant acts complained of
15 herein occurred in the State of California and in this District.

16 55. Jurisdiction over Aestas Management Company, LLC is proper
17 because it has its principal place of business in the State of California and in this
18 District, and because a substantial portion of the relevant acts complained of
19 herein occurred in the State of California and in this District.

20 56. Jurisdiction over Aestas, LLC is proper because it has its principal
21 place of business in the State of California and in this District, and because a
22 substantial portion of the relevant acts complained of herein occurred in the
23 State of California and in this District.

24 57. Upon information and belief, venue is proper in this Court pursuant
25 to 28 U.S.C. § 1391(b)(1) because all Defendants are residents of the State of
26 California and at least one of the Defendants is a resident of this District, and
27 pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events
28 giving rise to this action occurred in this District.

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

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

7 **A. The Dangers of Artificial Intelligence**

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

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

21 61. Musk has long been concerned by the grave threat these advanced
22 systems pose to humanity, which he has repeatedly warned is likely the greatest
23 existential threat we face today. These dangers include, without limitation (or
24 exaggeration), completely replacing the human workforce, supercharging the
25 spread of disinformation, malicious human impersonation, and the manipulation
26 of political and military systems, ultimately leading to the extinction of
27 humanity. Musk’s concerns are shared by other leading figures before him like
28 Stephen Hawking and Bill Joy who chillingly warned that with AGI, “the future

1 doesn't need us.”

2 62. Musk has publicly called for a variety of measures to address the
3 dangers of AGI, from voluntary moratoria to regulation, but his calls largely fell
4 on deaf ears.

5 63. Where some like Musk see AGI as an existential threat, others like
6 Google—and as it would turn out, Defendants—see it as a source of even greater
7 profit and power.

8 64. At the end of 2013, Musk learned that Google was planning to
9 acquire DeepMind, which at the time was one of the most advanced AI
10 companies in the industry. Musk, who is well-known for his opposition to closed
11 technology—e.g., Musk's rocket company SpaceX holds almost no patents and
12 his electric vehicle company Tesla makes its patents open and available for
13 public use—was deeply troubled by this development and believed that in the
14 hands of a giant private company like Google, AGI would pose a particularly
15 acute and noxious danger to humanity. To prevent this, Musk tried to stop the
16 sale, but was ultimately unsuccessful.

17 65. In 2014, Google acquired DeepMind and with its team, was
18 immediately catapulted to the front of the race for AGI.

19 66. Following Google's acquisition, Musk began hosting a series of
20 dinner discussions on ways to counter Google and promote AI safety. He even
21 reached out to President Barack Obama in 2015 to discuss the issue, but
22 regulation never came.

23 67. Musk continued to advocate for safe AI practices and in 2015, he
24 thought he found someone who understood his concerns: Sam Altman.

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

26 68. From the start, Altman courted Musk by presenting himself as
27 sharing Musk's well-known concerns over the threat posed by AI/AGI. Altman,
28 an experienced tech player, feigned altruism to convince Musk into giving him

1 free start-up capital and recruiting top AI scientists to develop technological
2 assets from which Defendants would stand to make billions.

3 69. Altman began by testing the waters. In early March 2015, he
4 approached Musk to help draft an open letter to the U.S. Government
5 emphasizing the need for regulation to ensure the safe creation of AI. Musk
6 agreed, and the two began preparing the open letter and approaching Musk's
7 influential contacts in the technology and AI sectors about signing the letter,
8 which was published on October 28, 2015.

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

19 71. To convince Musk of his sincerity, Altman promised that he too
20 would have skin in the game and would make meaningful financial contributions
21 to the non-profit. It has since been revealed, however, that Altman grossly
22 inflated and misrepresented his actual contributions, which pale in comparison
23 to what he had promised.

24 72. A month later on June 24, 2015, Altman tried again, this time
25 wooing Musk with a detailed proposal for a new AI lab: "The mission would be
26 to create the first general AI [AGI] and use it for individual empowerment—ie
27 [*sic*], the distributed version of the future that seems the safest. More generally,
28 safety should be a first-class requirement." "The technology would be owned by

1 the foundation and used ‘for the good of the world[.]’” This time Musk agreed.

2 73. Soon thereafter, Altman recruited Stripe’s CTO Gregory Brockman
3 who helped him seal the deal.

4 74. Altman’s plan worked. In November 2015, Musk agreed to commit
5 funding and help recruit the top scientists necessary to make Altman’s project a
6 success provided that—as Altman and Brockman had repeatedly promised—
7 OpenAI, Inc. would be a non-profit devoted to developing AI/AGI for the
8 benefit of humanity and would accomplish this mission by (i) distributing its
9 research and technology openly, preventing its concentration, and (ii) focusing
10 on safety, not profits. Indeed, to celebrate what he was led to believe was their
11 mission, Musk named the endeavor—“OpenAI.”

12 75. Altman moved fast. Just a month later on December 8, 2015, a
13 Certificate of Incorporation for OpenAI, Inc. was filed with the Delaware
14 Secretary of State, which reaffirmed Altman and Brockman’s promises to Musk:

15 This Corporation shall be a nonprofit corporation organized
16 exclusively for charitable and/or educational purposes within the
17 meaning of section 501(c)(3) of the Internal Revenue Code of 1986,
18 as amended, or the corresponding provision of any future United
19 States Internal Revenue law. **The specific purpose of this
20 corporation is to provide funding for research, development and
21 distribution of technology related to artificial intelligence. The
22 resulting technology will benefit the public and the corporation
23 will seek to open source technology for the public benefit when
24 applicable. The corporation is not organized for the private gain
25 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 (emphasis added).**

26 76. OpenAI, Inc. was publicly announced on December 11, 2015 and
27 leveraged Musk’s name by making him co-chair of its Board of Directors
28 (“Board”) alongside Altman, with Brockman as the CTO. The promotional

1 announcement published on OpenAI’s website further touted: “OpenAI is a non-
2 profit artificial intelligence research company [whose] goal is to advance digital
3 intelligence in the way that is most likely to benefit humanity as a whole,
4 unconstrained by a need to generate financial return. Since our research is free
5 from financial obligations, we can better focus on a positive human impact.”

6 77. Around this same time, Altman and Brockman also began to
7 broadly advertise their new endeavor, specifically promoting its humanitarian
8 purpose on their respective social media accounts, which reach many millions of
9 followers.

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

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

17 79. As Altman had devised, Musk proved to be a driving force as the
18 co-founder of OpenAI, Inc. He contributed the majority of its funding in its first
19 several years, provided valuable advice and guidance on research directions, and
20 most importantly, recruited some of the world’s leading scientists and engineers
21 to work at the non-profit. In fact, recruiting for OpenAI, Inc. was a Herculean
22 task in the face of relentless counter-recruiting by Google/DeepMind, which
23 offered lavish compensation packages to squelch the new venture. But Musk
24 persevered and proved instrumental in securing key talent including Chief
25 Scientist Dr. Ilya Sutskever (“Sutskever”), whom he hired away from Google, as
26 well as top research scientists Tim Salimans, Filip Wolski, and others.

27 80. Just as Altman planned, Musk used his connections, credibility, and
28 clout to launch the venture. The mere fact OpenAI, Inc. was an “Elon Musk”-

1 sponsored initiative and that Musk served as co-chair was key to its successful
2 recruiting efforts.

3 81. Musk also brought the capital to give OpenAI, Inc. a fighting
4 chance. In late February 2016, he emailed Altman and Brockman: “Whatever it
5 takes to bring on ace talent is fin[e] by me. Deepmind is causing me extreme
6 mental stress. If they win, it will be really bad news with their one mind to rule
7 the world philosophy.”

8 82. In fact, Musk was OpenAI, Inc.’s largest financial backer. In 2016,
9 Musk contributed over \$15 million and contributed another nearly \$20 million in
10 2017. He leased OpenAI, Inc.’s office space in the Pioneer Building in San
11 Francisco, paid its monthly overhead expenses, and even though he stepped
12 down from the Board on February 21, 2018, he nevertheless continued to make
13 regular contributions to OpenAI, Inc. until September 14, 2020. All told, Musk
14 contributed more than \$44 million to OpenAI, Inc. in its first five critical years.
15 It is fair to say that without Musk’s involvement, backing, and substantial
16 supportive efforts, there would have been no OpenAI, Inc.

17 **D. Defendants Seek to Convert OpenAI, Inc. For Profit**

18 83. In 2017-2018, Altman and Brockman moved to recast the non-
19 profit as a moneymaking endeavor to bring in shareholders, sell equity, and raise
20 capital. Brockman and others suggested the move to Musk, who briefly toyed
21 with the idea of using Tesla as OpenAI, Inc.’s “cash cow” to solve the non-
22 profit’s cash-flow concerns while keeping it in good hands and maintaining its
23 mission.

24 84. After some back and forth, Musk wrote to Altman and Brockman:
25 “Either go do something on your own or continue with OpenAI as a non-profit. I
26 will no longer fund OpenAI until you have made a firm commitment to stay or
27 I’m just being a fool who is essentially providing free funding to a start-up.
28 Discussions are over.”

1 85. Altman tried to play the whole thing off, reassuring Musk: “[I]
2 remain enthusiastic about the non-profit structure!” with Brockman soon
3 following suit. But we now know that was a lie. Indeed, Altman wanted to
4 convert the non-profit to a for-profit entity all along, but was only interested in
5 doing so with Altman at the helm and in a way that most profited him.

6 E. *Microsoft’s Involvement*

7 86. Even early on, Microsoft, which was working on developing its
8 own AI, was keen to exploit OpenAI, Inc. But as the non-profit had no
9 shareholders and Microsoft could not simply purchase influence, it sought to
10 obtain leverage in other ways by, for example, enticing OpenAI, Inc. to use and
11 become inextricably dependent on Microsoft’s cloud computing system.

12 87. In September 2016 Microsoft offered to sell “compute” to OpenAI,
13 Inc. at a steep discount (calling the difference in market price a “donation”) if
14 the non-profit would agree to publicly promote Microsoft’s products. Musk
15 rejected the “donation” and marketing ploy, writing to Altman: “This actually
16 made me feel nauseous. It sucks and is exactly what I would expect from them.”
17 The deal eventually went through, but without marketing gimmicks and at a
18 more fulsome price.

19 88. While Musk expressed a liking for Microsoft’s CEO Satya Nadella
20 (“Nadella”), the values of the company and OpenAI, Inc. did not align. Whereas
21 Musk was concerned that AI posed an existential danger to humankind and the
22 technology should be decentralized and open, Nadella and Microsoft’s co-
23 founder Bill Gates minimized Musk’s concerns as “panic” and too far off in the
24 future.

25 89. Musk wrote: “History unequivocally illustrates that a powerful
26 technology is a double-edged sword . . . The recent example of Microsoft’s AI

27 ///

28 ///

1 chatbot² shows how quickly it can turn incredibly negative. The wise course of
2 action is to approach the advent of AI with caution and ensure that its power is
3 widely distributed and not controlled by any one company or person. That is
4 why we created OpenAI.”

5 90. Over the course of the next few years and continuing to today,
6 Microsoft methodically entrenched itself further into OpenAI, Inc., gaining
7 increasing leverage over the non-profit, its technology, and employees in
8 lockstep with Defendants.

9 **F. Defendants Craft Their Path to Profit**

10 91. After Musk rebuffed Altman’s proposal to transform OpenAI, Inc.
11 into a for-profit venture in 2017, Defendants continued to pursue their ambitions,
12 but pivoted to a shrewder and methodical plan.

13 92. The first step was to quietly craft a profitmaking apparatus that
14 would allow Defendants to do indirectly what Musk had expressly denied them.
15 Altman was appointed the non-profit’s CEO in 2019. At his urging and with his
16 assistance, on information and belief, Defendants began forming numerous for-
17 profit entities, in which Altman held generous stakes, and weaving them into an
18 increasingly labyrinthian OpenAI corporate web for the purpose of profiting
19 from OpenAI, Inc.’s assets.

20 93. On information and belief, Defendants’ OpenAI web proceeded as
21 follows: On March 11, 2019, Altman announced a new for-profit entity, OpenAI,
22 L.P., which was established as, what Defendants call a “capped-profit company,”
23 where investors can make a profit capped at a certain multiple of their
24 investment (e.g., 100x investment). On January 23, 2023, OpenAI, L.P. was
25 converted to OpenAI OpCo, LLC.

26
27 ² Referring to the incident where Microsoft’s chatbot began posting inflammatory and
28 offensive tweets through its Twitter account, causing Microsoft to shut the service down just
16 hours after its launch.

1 94. On September 17, 2020, OpenAI, L.L.C. was formed in Delaware.
2 OpenAI, L.L.C.’s sole member is OpenAI OpCo, LLC.

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

7 96. On March 17, 2023, OAI Corporation, LLC, was formed in
8 Delaware as a limited liability company. The sole owner of OAI Corporation,
9 LLC is OpenAI Holdings, LLC.

10 97. On March 17, 2023, OpenAI Holdings, LLC was formed in
11 Delaware, and has multiple members including Aestas, LLC and various
12 individuals.

13 98. On information and belief, OpenAI OpCo, LLC and OpenAI
14 Global, LLC are managed by OpenAI GP, L.L.C., which on September 19, 2018
15 was registered as a limited liability company in Delaware.

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

19 100. On information and belief, the other entities—OpenAI Investment
20 LLC, OpenAI Startup Fund Management, LLC, OpenAI Startup Fund GP I,
21 L.L.C., OpenAI Startup Fund I, L.P., OpenAI Startup Fund SPV GP I, L.L.C.,
22 OpenAI Startup Fund SPV GP II, L.L.C., OpenAI Startup Fund SPV GP III,
23 L.L.C., OpenAI Startup Fund SPV GP IV, L.L.C., OpenAI Startup Fund SPV I,
24 L.P., OpenAI Startup Fund SPV II, L.P., OpenAI Startup Fund SPV III, L.P.,
25 OpenAI Startup Fund SPV IV, L.P.—are also interwoven into Defendants’
26 corporate web for the purpose of profiting from the non-profit’s assets.³ Many of

27 _____
28 ³ OpenAI, L.P., OpenAI, L.L.C., OpenAI GP, L.L.C., OpenAI OpCo, LLC, OpenAI Global,
LLC, OAI Corporation, LLC, OpenAI Holdings, LLC, OpenAI Investment LLC, OpenAI

1 these entities were only recently registered and indeed, more OpenAI entities are
2 popping up every month as part of Defendants’ shell game.

3 101. As with many things, the issue here is one of degree. While there is
4 little concern caused by using a for-profit entity to help fundraise for a non-
5 profit, it is quite another thing to launch a dense fleet of dozens of for-profit
6 entities to facilitate veiled and unchecked profiteering, rife with conflicts
7 including those of Altman, the non-profit’s CEO and Board member, and
8 Brockman, its CTO, as Defendants have done.

9 102. The complex profiteering arm of OpenAI—in which, on
10 information and belief, Microsoft and Altman are significant shareholders, and
11 Musk is not—while publicly cloaked as a mere fundraising apparatus, is in
12 reality, the foundation for Defendants’ scheme to control and cash in on OpenAI,
13 Inc.’s technology.

14 103. When Defendants launched OpenAI, L.P. (now OpenAI OpCo,
15 LLC), they drained the non-profit OpenAI, Inc. of most of its staff and
16 transferred them over to the new company, which also now houses much of
17 OpenAI’s research and development. Altman and Brockman too are now
18 employees of the private, for-profit OpenAI OpCo, LLC, which conveniently
19 shields them from the public oversight and financial disclosures non-profits like
20 OpenAI, Inc. must make.

21 104. With their web in place, Defendants’ next step was to lock down the
22 non-profit’s technology. Obviously, the public would not pay for something that
23 was open and free, so as detailed below, Defendants began withholding OpenAI,
24

25 Startup Fund Management, LLC, OpenAI Startup Fund GP I, L.L.C., OpenAI Startup Fund I,
26 L.P., OpenAI Startup Fund SPV GP I, L.L.C., OpenAI Startup Fund SPV GP II, L.L.C.,
27 OpenAI Startup Fund SPV GP III, L.L.C., OpenAI Startup Fund SPV GP IV, L.L.C., OpenAI
28 Startup Fund SPV I, L.P., OpenAI Startup Fund SPV II, L.P., OpenAI Startup Fund SPV III,
L.P., OpenAI Startup Fund SPV IV, L.P., Aestas Management Company, LLC, and Aestas,
LLC are collectively referred to hereinafter as the “OpenAI For-Profit Entities.”

1 Inc.'s scientific research and hoarding its technology.

2 105. From there, on information and belief, they hollowed out the non-
3 profit and fed its assets to the OpenAI For-Profit Entities, from which they stood
4 to make a bundle. Just *follow the money*. The non-profit's 2022 IRS tax return⁴
5 showed just \$44,485.00 in revenue, but one year later, OpenAI overall
6 reportedly generated *hundreds of millions of dollars*.

7 106. In addition, Altman, with the assistance and/or cooperation of
8 Brockman and the OpenAI For-Profit Entities, began to self-deal with impunity.

9 107. It has been reported that Altman deliberately withheld key
10 information and lied about his personal holdings and investments both in and
11 outside of OpenAI in an effort to keep the then-independent Board from
12 discovering his glaring conflicts of interest.

13 108. For example, a June 3, 2024 Wall Street Journal article⁵ reported
14 that Altman induced OpenAI to partner with Reddit in a deal wherein OpenAI
15 would pay to bring Reddit's content to OpenAI, Inc.'s ChatGPT. On information
16 and belief, Altman and/or entities he controls own a whopping 7.6% of Reddit,
17 making him one of the company's largest outside shareholders. After the deal
18 was announced, Reddit's stock shot up 10%, boosting Altman's stake by \$69
19 million.

20 109. On information and belief, Altman, in seeking further business with
21 the non-profit, claimed to be an independent board member of the venture fund,
22 OpenAI Startup Fund, while intentionally withholding from the non-profit's
23 Board that he, in fact, *owned* the OpenAI Startup Fund and stood to personally
24 profit from it. Further still, on information and belief, Altman caused OpenAI to
25

26 ⁴ 2022 was the last year Defendants made such documents readily available to the public.

27 ⁵ Jin, Dotan & Hagey, *The Opaque Investment Empire Making OpenAI's Sam Altman Rich*,
28 Wall Street Journal (June 3, 2024), https://www.wsj.com/tech/ai/openai-sam-altman-investments-004fc785?mod=hp_lead_pos1.

1 sign a \$51 million AI chip deal with Rain AI, a company in which he also held a
2 significant interest. On information and belief, Altman and former Apple chief
3 design officer, Jony Ive, have also reportedly launched their own AI device
4 company, which plans to exploit OpenAI’s technology to compete with Apple
5 and build the “iPhone of AI.” And currently, on information and belief, OpenAI
6 is hammering out a deal with Helion Energy (in which Altman owns a massive
7 stake) for OpenAI to buy vast quantities of electricity to power its data centers.

8 110. On information and belief, Altman, Brockman, and the OpenAI
9 For-Profit Entities have been and will continue to be enriched by their respective
10 stake in OpenAI’s for-profit machine and Altman alone stands to make billions
11 from the humble non-profit Musk co-founded.

12 111. Defendants’ scheme has now become clear: lure Musk with phony
13 philanthropy; exploit his money, stature, and contacts to secure world-class AI
14 scientists to develop leading technology; then feed the non-profit’s lucrative
15 assets into an opaque profit engine and proceed to cash in.

16 **G. Defendants Renege in 2023**

17 112. In its early years, OpenAI, Inc.’s research and development were
18 performed in the open, providing the public with free access to designs, models,
19 and code.

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

26 114. In 2019, OpenAI, Inc. released the full, open version of a second-
27 generation Generative Pre-Trained Transformer (“GPT”), GPT-2 with the stated
28 hope that it would “be useful to developers of future powerful models.” It also

1 released a detailed report describing the new model and acknowledged some of
2 the many benefits of openly releasing such models to the public.

3 115. In 2020, OpenAI, Inc. announced a third version of its model, GPT-
4 3 and again, published a research paper detailing its complete implementation
5 for others to build on.

6 116. OpenAI, Inc.’s initial findings, while technologically interesting,
7 had little commercial value and were openly published by Altman. But having
8 reached the threshold of AGI, which under the founding agreement Defendants
9 were to develop for the benefit of humanity rather than profit, Altman about-
10 faced and began locking down the technology for personal gain.

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

18 118. Reuters has reported that OpenAI is also developing a secret
19 algorithm called Q*, and that several OpenAI staff members wrote a letter
20 warning about its potential power. It appears Q* may be an even clearer and
21 more striking example of AGI developed by OpenAI.

22 119. On information and belief, Altman caused the non-profit to
23 exclusively license its technology to Microsoft, the world’s largest for-profit
24 corporation,⁶ contrary to Altman and the non-profit’s black-letter
25 commitments—e.g., OpenAI, Inc.’s Certificate of Incorporation: “no part of the
26 net income or assets of this corporation shall ever inure to the benefit of . . . any
27

28 ⁶ As of August 2024, Microsoft is worth a reported \$3.11 trillion.

1 private person”; and Charter: “We commit to . . . avoid enabling uses of AI or
2 AGI that . . . unduly concentrate power.”

3 120. The Microsoft license includes all OpenAI, Inc.’s “pre-AGI”⁷
4 technologies, and tasks the Board with determining when “AGI” has been
5 attained. To date, the Board has made no such finding, thus giving Microsoft
6 unfettered access to OpenAI’s suite of technology. With full access to the non-
7 profit’s research and employees, many of whom, on information and belief, now
8 work for the for-profit OpenAI enterprise or Microsoft, it is a short walk to
9 develop a “complete” AGI system based on the non-profit’s research and
10 technology.

11 121. Defendants have kept GPT-4, and subsequent models including
12 without limitation, GPT-4T and GPT-4o (released May 2024), entirely closed.
13 On information and belief, the internal details of GPT-4, GPT-4T, and GPT-4o
14 are known only to OpenAI and its partner Microsoft. The reason for the secrecy
15 is obvious: Defendants and Microsoft stand to make a fortune selling this
16 technology to the public, which would not be possible if the non-profit made its
17 research and technology freely available, as Altman had repeatedly promised
18 Musk.

19 **H. Defendants Seize then Neuter OpenAI, Inc.’s Board**

20 122. In a series of extraordinary developments, Microsoft and Altman
21 leveraged their positions to force a majority of OpenAI, Inc.’s Board to resign on
22 November 22, 2023, and replaced them with underqualified and compliant allies
23 handpicked by Altman and blessed by Microsoft.

24 123. The Board had consisted of Dr. Sutskever, Brockman, Altman, plus
25 Helen Toner (“Toner”), Adam D’Angelo (“D’Angelo”), and Tasha McCauley
26

27 ⁷ OpenAI’s website defines AGI as “a highly autonomous system that outperforms humans at
28 most economically valuable work” and states such technology “is excluded from IP licenses
and other commercial terms with Microsoft, which only apply to pre-AGI technology.”

1 (“McCauley”). In addition to serving on the Board, Toner is a researcher and
2 advisor for the Center for the Governance of AI (“GovAI”) and the Director of
3 Strategy at Georgetown’s Center for Security and Emerging Technology.
4 McCauley is a Senior Management Scientist at RAND Corporation, a non-profit
5 which specializes in public policy decision making. Like Toner, McCauley is
6 also an advisor for GovAI.

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

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

20 126. It has been reported that indeed the Board fired Altman because he
21 had deliberately misrepresented what was happening at OpenAI, Inc. and
22 explicitly lied to the Board to obstruct its ability to carry out its oversight duties.
23 The Board was likewise concerned by the numerous side hustles and conflicts of
24 interest Altman had and his purposeful withholding of information necessary for
25 the Board to evaluate the scope and extent of his self-dealing and myriad
26 conflicts.

27 127. News reports further suggest Altman’s firing was due in part to
28 OpenAI, Inc.’s breakthrough in realizing AGI and Altman’s prioritizing profit

1 over safety and the non-profit's founding principles. After Altman was fired, his
2 close associate Brockman chose to immediately leave with him.

3 128. On information and belief, when Microsoft's CEO Nadella learned
4 of Altman's firing, he was furious. Reportedly, as a 49% shareholder in
5 OpenAI's for-profit arm(s), Nadella felt Microsoft should have been consulted
6 before the decision was made. However, at this time, aside from Altman and
7 Brockman, OpenAI, Inc.'s Board, on information and belief, had no ties to
8 Microsoft. Rather, Altman was the primary liaison between Microsoft and
9 OpenAI, Inc. and with him gone, Microsoft's continued exclusive access to the
10 non-profit's valuable technology was in jeopardy.

11 129. Microsoft's response was swift. Nadella invited Altman and
12 Brockman to lead a new Microsoft AI research lab, unbound by the constraints
13 of OpenAI, Inc.'s humanitarian mission and the three actively solicited OpenAI,
14 Inc.'s employees to leave OpenAI to join Microsoft's new lab.

15 130. Microsoft was confident that, through its substantial ownership in
16 OpenAI's for-profit arm, it could completely sequester OpenAI, Inc.'s research
17 and technology should the non-profit cease to exist. Indeed, during an interview
18 shortly after Altman's firing, Nadella stated:

19 We [now] have all the IP rights and all the capability. If OpenAI
20 disappeared tomorrow, I don't want any customer of ours to be
21 worried about it quite honestly, because we have all of the rights to
22 continue the innovation. Not just to serve the product, but we can go
23 and just do what we were doing in partnership ourselves. We have
24 the people, we have the compute, we have the data, we have
everything.

25 131. Despite Microsoft's bold statements, it apparently still wanted its
26 man Altman on the inside as OpenAI, Inc.'s CEO. In the days following his
27 firing, OpenAI, Inc.'s Board faced mounting pressure from Microsoft to
28 reinstate Altman. Nadella even bragged about Microsoft's influence over the

1 non-profit: “We are in there. We are below them, above them, around them.”

2 132. Microsoft indeed had leverage. On information and belief, at the
3 time of Altman’s ouster, Microsoft had only paid a fraction of a \$13 billion
4 investment commitment it had made to OpenAI. And if Microsoft were to
5 withhold its cloud computing system on which OpenAI, Inc. was reliant, the
6 non-profit would be effectively incapacitated.

7 133. The pressure on the Board from Altman, Brockman, and Microsoft
8 continued until November 21, 2023, when Altman was reinstated as CEO just
9 days after his dismissal, and Brockman as CTO. Upon his return, Altman took
10 the opportunity to clean house and purge those who ousted him, demanding the
11 resignation of Toner, McCauley, and Dr. Sutskever from the Board. Notably,
12 D’Angelo—the sole board member to remain after Altman’s reinstatement—is a
13 tech CEO and entrepreneur.

14 134. On information and belief, Altman then handpicked a new Board
15 that lacked the technical expertise and substantial background in AI governance,
16 which the previous Board had by design. The new members were reportedly
17 “big fans of Altman.”

18 135. Microsoft too obtained an influential observer seat on the Board
19 from which it could keep a close eye on its non-profit golden goose. Though just
20 recently, on July 9, 2024, Microsoft relinquished its seat amid scrutiny and
21 pressure from antitrust agencies in the U.S. and Europe suspicious of its all-too-
22 cozy relationship with OpenAI.⁸

23 136. With the reinstatement of Altman and the restructuring of the
24 Board, OpenAI, Inc.’s once carefully crafted non-profit structure is now
25 compromised by a fully profit-driven CEO (Altman) and CTO (Brockman), a
26

27 ⁸ Orru & Laursen, *Microsoft Quits OpenAI’s Board Amid Antitrust Scrutiny*, Wall Street
28 Journal (July 10, 2024), https://www.wsj.com/tech/ai/microsoft-withdraws-from-openai-board-amid-antitrust-scrutiny-aab6ff1e?reflink=desktopwebshare_permalink.

1 compliant Board with inferior technical expertise and almost no AI-governance
2 experience, and a trillion-dollar pro-profit partner (Microsoft).

3 137. The loss of the Board’s technical expertise in AI, neutrality, and
4 commitment to OpenAI, Inc.’s non-profit purposes are particularly
5 compromising as it is the Board that determines whether OpenAI has attained
6 AGI, which, as detailed above, OpenAI, Inc. had previously excluded from its
7 license to Microsoft. Given Microsoft and the OpenAI profit machine’s
8 enormous financial interest in keeping the technology closed to the public,
9 OpenAI, Inc.’s newly captured, conflicted, and compliant Board will have every
10 reason to delay ever making a finding that OpenAI, Inc. has attained AGI.
11 OpenAI’s for-profit apparatus may now operate fully unchecked.

12 **I. OpenAI Today**

13 138. Defendants’ unbridled power and profit focus have led to a recent
14 flurry of safety and legal concerns and forceful pushback against OpenAI and
15 Altman for abandoning their non-profit mission.

16 139. Along with pending civil litigation from media outlets like *The New*
17 *York Times*, *Raw Story*, and *The Intercept* concerning OpenAI’s illegal use of
18 their media content to train GPT models, the takeover of the Board and
19 Microsoft’s increasingly close relationship with OpenAI have sparked numerous
20 ongoing investigations by the Securities and Exchange Commission, U.S.
21 Federal Trade Commission, and various U.K. and E.U. regulators. On July 22
22 and August 1, 2024, the U.S. Senate sent Altman demand letters seeking
23 documents and questioning OpenAI’s commercial practices, commitment to
24 safety, and its attempts to muzzle employee-whistleblowers.⁹

25 ///

26 _____
27 ⁹ Letter from Sens. King, Lujan, Schatz, Warner & Welch to Samuel Altman, CEO of OpenAI
28 (July 22, 2024), https://www.schatz.senate.gov/imo/media/doc/letter_to_openai.pdf; Letter
from Sen. Grassley to Samuel Altman, CEO of OpenAI (August 1, 2024),
<https://www.washingtonpost.com/documents/8bf076a6-663b-4552-be52-079b79274f9c.pdf>.

1 140. Further, in a series of letters dated January 9,¹⁰ March 5,¹¹ and June
2 6, 2024¹² to the California Attorney General, the prominent consumer advocacy
3 organization Public Citizen detailed numerous issues concerning Altman’s self-
4 dealing and the troublesome power OpenAI’s for-profit arm is wielding over the
5 non-profit, urging the AG to investigate OpenAI, Inc.’s section 501(c)(3) status.

6 141. In addition, on information and belief, OpenAI is hemorrhaging
7 employees and executives on a continual basis. In large part, the resignations
8 appear to be in protest to Altman and OpenAI’s increasingly unfettered and
9 conflicted pursuit of profits at the expense of safety.

10 142. For instance, in May 2024, Chief Scientist Dr. Sutskever and
11 OpenAI, Inc. executive Jan Leike resigned. The two had been the leaders of
12 OpenAI, Inc.’s “Superalignment” team tasked with managing the risk that its
13 technology “could lead to the disempowerment of humanity or even human
14 extinction.”¹³ Leike stated he could no longer work at the company because he
15 was concerned that safety and societal impact “have taken a backseat to shiny
16 products.”¹⁴

17 143. Other employees, including Daniel Kokotajlo resigned because they
18 “lost trust in OpenAI leadership and their ability to responsibly handle AGI.” In
19

20 ¹⁰ Letter from Public Citizen to California Attorney General on OpenAI’s Nonprofit Status
21 (Jan. 9, 2024), <https://www.citizen.org/article/letter-to-california-attorney-general-on-openai-nonprofit-status/>.

22 ¹¹ Follow Up Letter from Public Citizen to California Attorney General on OpenAI’s
23 Nonprofit Status (Mar. 5, 2024), <https://www.citizen.org/article/second-letter-california-attorney-general-openai-nonprofit-status-musk-lawsuit/>.

24 ¹² June 2024 Follow Up Letter from Public Citizen to California Attorney General Regarding
25 OpenAI’s Nonprofit Status (June 6, 2024), <https://www.citizen.org/article/june-2024-california-ag-openai-nonprofit-status-letter/>.

26 ¹³ <https://www.openai.com/index/introducing-superalignment/>.

27 ¹⁴ <https://www.x.com/janleike/status/1791498174659715494>.

1 an interview with Vox on May 18, 2024,¹⁵ Kokotajlo stated: “I joined with
2 substantial hope that OpenAI would rise to the occasion and behave more
3 responsibly as they got closer to achieving AGI. It slowly became clear to many
4 of us that this would not happen.” That same article reported numerous other
5 departures: “at least seven people [] tried to push OpenAI to greater safety from
6 within, but ultimately lost so much faith in its charismatic leader [Altman] that
7 their position became untenable.”

8 144. Carroll Wainwright, a former alignment researcher for OpenAI, also
9 resigned in May 2024 because “I worry that the board will not be able to
10 effectively control the for-profit subsidiary, and I worry that the for-profit
11 subsidiary will not be able to effectively prioritize the mission when the
12 incentive to maximize profits is so strong.”¹⁶

13 145. The world is finally seeing through Altman’s long con.

14 146. A June 15, 2024 article in *Cointelegraph* entitled “OpenAI
15 Reportedly Considering Shift to For-profit as CEO Stacks Board” details how
16 Altman “told shareholders he was considering the [for-profit] move sometime
17 during the week of June 10. If realized, the pivot would ostensibly result in
18 OpenAI’s nonprofit board losing control of the company.”¹⁷ Altman is now fast-
19 tracking his plan to turn the non-profit Musk co-founded into the for-profit
20 business Altman had always envisaged.

21 147. Altman set the bait and hooked Musk with sham altruism then
22 flipped the script as the non-profit’s technology approached AGI and profits

23 ¹⁵ Samuel, “*I lost trust*”: *Why the OpenAI team in charge of safeguarding humanity imploded*,
24 Vox (May 18, 2024), [https://www.vox.com/future-perfect/2024/5/17/24158403/openai-
25 resignations-ai-safety-ilya-sutskever-jan-leike-artificial-intelligence](https://www.vox.com/future-perfect/2024/5/17/24158403/openai-resignations-ai-safety-ilya-sutskever-jan-leike-artificial-intelligence).

26 ¹⁶ https://www.x.com/clwainwright?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwee.

27 ¹⁷ Greene, *OpenAI reportedly considering shift to for-profit as CEO stacks board*,
28 Cointelegraph (June 15, 2024), [https://www.cointelegraph.com/news/open-ai-artificial-
intelligence-for-profit](https://www.cointelegraph.com/news/open-ai-artificial-intelligence-for-profit).

1 neared, mobilizing Defendants to turn OpenAI, Inc. into their personal piggy
2 bank and OpenAI into a moneymaking bonanza, worth billions.

3 **COUNT I: PROMISSORY FRAUD**

4 **(Against Altman, Brockman, and OpenAI, Inc.)**

5 148. Plaintiff re-alleges and incorporates by reference paragraphs 1
6 through 147 inclusive, as though fully set forth herein.

7 149. Beginning in 2015, Altman and his collaborator Brockman preyed
8 on Musk’s well-known concerns about the existential harms posed by AI/AGI,
9 and convinced him to fund and back what they falsely claimed would be a “non-
10 profit” devoted to the safe and open development of AI to be “distributed . . . for
11 the good of the world.”

12 150. On May 25, 2015, in correspondence by email, Altman proposed to
13 Musk they start an AI lab and “structure it so that the tech belongs to the world
14 via some sort of nonprofit[,]” and further represented: “Obviously we’d comply
15 with/aggressively support regulation.”

16 151. On June 24, 2015, Altman corresponded with Musk by email and
17 represented: “The mission would be to create the first general AI and use it for
18 individual empowerment—ie [*sic*], the distributed version of the future that
19 seems the safest. More generally, safety should be a first-class requirement.”
20 “The technology would be owned by the foundation and used ‘for the good of
21 the world[.]’”

22 152. Based on Defendants’ express promises, representations, and
23 reassurances that the venture would be a non-profit devoted to the open-source
24 development of AI for the benefit of humanity, Musk agreed to fund and back
25 the endeavor.

26 153. Between 2015 and 2020, Altman and Brockman reaffirmed these
27 material promises and representations to Musk on numerous occasions,
28 intentionally inducing Musk to regularly contribute his valuable resources to

1 OpenAI, Inc.

2 154. On December 11, 2015, OpenAI, Inc. made the following public
3 announcement on its website, which Altman had previously emailed to Musk on
4 December 8, 2015 for his review:

5 OpenAI is a non-profit artificial intelligence research company
6 [whose] goal is to advance digital intelligence in the way that is most
7 likely to benefit humanity as a whole, unconstrained by a need to
8 generate financial return. Since our research is free from financial
9 obligations, we can better focus on a positive human impact. . . . We
10 believe AI should be . . . as broadly and evenly distributed as
11 possible. . . . As a non-profit, our aim is to build value for everyone
12 rather than shareholders . . . and our patents (if any) will be shared
13 with the world.

12 155. On December 11, 2015 (the same date as OpenAI, Inc.’s
13 announcement), Musk emailed Altman and Brockman stating: “Our most
14 important consideration is recruitment of the best people,” and pledged this
15 would be his “absolute top priority 24/7[.]” Musk immediately contacted and
16 recruited one of the top scientists in the AI field, Dr. Ilya Sutskever.

17 156. The false promises, representations, and assurances Altman and
18 Brockman made to Musk were enshrined, among other places, in OpenAI, Inc.’s
19 December 2015 Certificate of Incorporation: “[OpenAI’s] technology will
20 benefit the public and the corporation will seek to open source technology for
21 the public benefit when applicable. The corporation is not organized for the
22 private gain of any person,” and “no part of the net income or assets of this
23 corporation shall ever inure to the benefit of any director, officer or member
24 thereof or to the benefit of any private person.”

25 157. In reliance on Defendants’ promises, representations, and
26 assurances Musk thereafter contributed more than \$15 million to the project and
27 paid much of its overhead expenses in pricey San Francisco.

28 158. On March 14, 2017, with Brockman copied, Musk was emailed a

1 draft online post for his review, promising: “We will share our research and
2 techniques unless there is evidence that doing so would harm humanity.” The
3 post explained “openness [is] desirable” because it helps to: “Ensure that AI
4 progress benefits everyone, rather than primarily benefiting whoever controls the
5 technology.” That same year, Musk contributed another \$20 million to OpenAI,
6 Inc. and helped recruit additional top scientists for the endeavor.

7 159. On April 2, 2018, Altman emailed Musk a draft OpenAI, Inc.
8 Charter to review, which was later published on its website, representing: “We
9 commit to use any influence we obtain over AGI’s deployment to ensure it is
10 used for the benefit of all, and to avoid enabling uses of AI or AGI that harm
11 humanity or unduly concentrate power. Our primary fiduciary duty is to
12 humanity.” And in 2018, Musk contributed millions of dollars more.

13 160. Even in marketing the creation of OpenAI, L.P., on March 11, 2019,
14 Defendants represented: “The General Partner’s duty to this mission and the
15 principles advanced in the OpenAI Inc. Charter take precedence over any
16 obligation to generate a profit.” Altman emailed a draft of this announcement to
17 Musk on March, 6, 2019 promising: “We’ve designed OpenAI LP to put our
18 overall mission—ensuring the creation and adoption of safe and beneficial
19 AGI—over generating returns for investors.” Musk continued contributing to the
20 non-profit OpenAI, Inc. based on these representations.

21 161. Altman and Brockman knew or could have reasonably foreseen that
22 their express promises, representations, and assurances would be relied upon by
23 Musk. Indeed, they obviously intended Musk to rely on such statements and in
24 good faith, Musk reasonably did rely on them to his detriment. Based thereon, he
25 contributed tens of millions of dollars of seed money to OpenAI, Inc. and,
26 importantly, invested his time, reputation, and connections to recruit world-class
27 AI scientists and engineers for the project.

28 162. Altman and Brockman knew their representations and promises

1 were false when made; they had no intention of performing them and failed to
2 perform them. In reality, Altman and Brockman wished to launch a competitor to
3 Google, who was so far ahead of all other AI companies that a small for-profit
4 start-up had zero chance of success without an angle. To Altman and Brockman,
5 “non-profit” and “open source” were simply philanthropic hooks, altruistic
6 buzzwords to attract wealthy, connected donors like Musk and talented scientists
7 like Dr. Sutskever to back and participate in their endeavor.

8 163. Brockman essentially admitted as much. He wrote: “I hope for us to
9 enter the field as a neutral group looking to collaborate widely and shift the
10 dialog towards being about humanity winning rather than any particular group or
11 company. (*I think that’s the best way to bootstrap ourselves into being a leading*
12 *research institution.*)” (emphasis added).

13 164. Once they got Musk’s backing and a talented team of scientists in
14 place, Defendants’ objective was to develop valuable AI/AGI and from there,
15 convert the non-profit to a for-profit enterprise and cash in—essentially turning
16 Musk’s contributions into free start-up capital and their years of section
17 501(c)(3) tax benefits into a free government subsidy.

18 165. Indeed, in 2017 Altman and Brockman guardedly approached Musk
19 about converting the non-profit to a for-profit enterprise, but Musk refused and
20 demanded further assurances from Altman and Brockman that they honor their
21 promises and the non-profit’s mission or get out. In response, Altman reassured
22 Musk: “[I] remain enthusiastic about the non-profit structure!” with Brockman
23 following suit. Musk thereafter continued to contribute millions of dollars to the
24 project in good faith reliance on Altman and Brockman’s representations and
25 further assurances.

26 166. Defendants, still committed to their scheme, became even more
27 cunning and deceptive. They sequestered OpenAI, Inc.’s technology and
28 orchestrated an increasingly opaque corporate web in which they were major

1 stakeholders, thus enabling them to covertly self-deal for enormous future
2 profits.

3 167. On information and belief, Altman took full advantage of his
4 position of trust within OpenAI, Inc., causing it to make deals worth tens of
5 millions of dollars with side companies he owned or had major stakes in. On
6 information and belief, in just a single deal between OpenAI, Inc. and Reddit, in
7 which Altman is one of the largest shareholders, he scored a \$69 million
8 windfall. On information and belief, Altman further induced Microsoft to buy
9 electricity from a power company he owned, and in turn, when Microsoft
10 wanted an exclusive license to OpenAI, Inc.’s technology (itself, defying the
11 non-profit’s mission and principles), Altman was happy to oblige.

12 168. Defendants also had no intention to “comply with/aggressively
13 support regulation.” We now know such representations were false and
14 intentionally misleading when made, as exposed in an open letter published by
15 OpenAI employees on June 4, 2024, which criticized the company for having
16 “strong financial incentives to avoid effective oversight,” maintaining “only
17 weak obligations to share [safety] information with governments, and none with
18 civil society,” and enforcing “broad confidentiality agreements block[ing] us
19 from voicing our concerns.”¹⁸

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

24 170. Defendants intentionally concealed their fraudulent conduct, which
25 prevented Musk from discovering their scheme, notwithstanding his exercise of
26 due diligence.

27 ¹⁸ Open Letter From AI Researchers: A Right to Warn about Advanced Artificial Intelligence
28 (June 4, 2024), <https://righttowarn.ai/>.

1 171. As a direct and proximate result of Altman, Brockman, and
2 OpenAI, Inc.'s conduct, acts, and omissions alleged hereinabove, Musk is
3 entitled to recover the damages he sustained and will sustain, including any
4 income, gains, compensation, profits, and advantages obtained, received, or to
5 be received by Defendants, or any of them, arising from the wrongful acquisition
6 of Musk's contributions to OpenAI, Inc., including prejudgment interest. Musk
7 is entitled to an order requiring Defendants, jointly and severally, to render an
8 accounting to ascertain the amount of such proceeds.

9 172. As a direct and proximate result of Defendants' wrongful conduct,
10 acts, and omissions alleged hereinabove, Musk has been damaged, and
11 Defendants have been and will continue to be unjustly enriched, in an amount
12 that shall be assessed at trial, but which vastly exceeds \$75,000, and for which
13 restitution and/or non-restitutionary disgorgement is appropriate. Such should
14 include the imposition of a constructive trust; a declaration by this Court that
15 Defendants are jointly and severally the constructive trustee(s) for the benefit of
16 Musk; and an order that Defendants convey to Musk all of the profits, assets,
17 property, and ill-gotten gains received or to be received by Defendants, which
18 are traceable to Musk's wrongfully acquired financial and other contributions to
19 OpenAI, Inc.

20 173. Defendants' wrongful conduct, acts, and omissions have
21 proximately caused and will continue to cause Musk substantial injury and
22 damage, much of which cannot be reasonably or adequately measured or
23 compensated in money damages. The harm this wrongful conduct will cause to
24 Musk is both imminent and irreparable, and the amount of damage sustained by
25 Musk will be difficult to ascertain if such wrongful conduct is allowed to
26 continue without restraint. Musk is entitled to an injunction during the pendency
27 of this action, and permanently enjoining Defendants, their officers, agents, and
28 employees, and all persons acting in concert with them, from engaging in such

1 further tortious conduct.

2 174. Defendants' wrongful conduct constitutes oppression, fraud, and/or
3 malice under Cal. Civ. Code § 3294, entitling Musk to an award of punitive
4 damages appropriate to punish or set an example of Defendants in an amount to
5 be determined at trial.

6 **COUNT II: CONSTRUCTIVE FRAUD**

7 **(Against Altman, Brockman, and OpenAI, Inc.)**

8 175. Plaintiff re-alleges and incorporates by reference paragraphs 1
9 through 174 inclusive, as though fully set forth herein.

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

14 177. As fiduciaries, Altman, Brockman, and OpenAI, Inc. owe Musk a
15 duty to use his contributions for the declared charitable purposes for which they
16 were sought, and are liable for constructive fraud for any advantages they gained
17 by misleading Musk with their repeated promises, representations, and
18 reassurances, regardless of whether they intended to deceive him.

19 178. Altman and Brockman solicited and obtained contributions from
20 Musk by making repeated and material promises, representations, and
21 reassurances to him that they would develop AI for the benefit of humanity,
22 would predominantly open source their technology, avoid concentrating it, and
23 would not operate for the profit of any person or company, as evidenced in,
24 without limitation, the emails, corporate filings, and online advertisements
25 alleged above.

26 179. Defendants knew or could have reasonably foreseen that their
27 promises, representations, and reassurances would be relied upon by and were
28 material to Musk.

1 180. Defendants misled Musk by providing him with information that
2 was inaccurate and/or incomplete and/or by failing to disclose to Musk Altman
3 and Brockman’s true commercial intentions, which were known to them.

4 181. In 2023-2024, Defendants began keeping OpenAI, Inc.’s
5 technology—including GPT-4, GPT-4T, GPT-4o—secret and closed, and
6 concentrated it in the hands of Microsoft for private profit—all in knowing
7 violation of their promises and representations to Musk.

8 182. Altman and Brockman also engaged in unfettered self-dealing as
9 alleged hereinabove. On information and belief, after developing the non-profit’s
10 valuable technology with Musk’s contributions, they, with the assistance and/or
11 cooperation of the OpenAI For-Profit Entities, manipulated and leveraged the
12 non-profit’s assets for their own personal gain and profit. Undeterred,
13 Defendants are presently working to collapse the non-profit into an entirely for-
14 profit enterprise, further defying their promises, representations, and
15 reassurances to Musk.

16 183. Defendants intentionally concealed their fraudulent conduct, which
17 prevented Musk from discovering their scheme, notwithstanding his exercise of
18 due diligence.

19 184. As a direct and proximate result of Altman, Brockman, and
20 OpenAI, Inc.’s conduct, acts, and omissions alleged hereinabove, Musk is
21 entitled to recover the damages he sustained and will sustain, including any
22 income, gains, compensation, profits, and advantages obtained, received, or to
23 be received by Defendants, or any of them, arising from the wrongful acquisition
24 of Musk’s contributions to OpenAI, Inc., including prejudgment interest. Musk
25 is entitled to an order requiring Defendants, jointly and severally, to render an
26 accounting to ascertain the amount of such proceeds.

27 185. As a direct and proximate result of Defendants’ wrongful conduct,
28 acts, and omissions alleged hereinabove, Musk has been damaged, and

1 Defendants have been and will continue to be unjustly enriched, in an amount
2 that shall be assessed at trial, but which vastly exceeds \$75,000, and for which
3 restitution and/or non-restitutionary disgorgement is appropriate. Such should
4 include the imposition of a constructive trust; a declaration by this Court that
5 Defendants are jointly and severally the constructive trustee(s) for the benefit of
6 Musk; and an order that Defendants convey to Musk all of the profits, assets,
7 property, and ill-gotten gains received or to be received by Defendants, which
8 are traceable to Musk's wrongfully acquired financial and other contributions to
9 OpenAI, Inc.

10 186. Defendants' wrongful conduct, acts, and omissions have
11 proximately caused and will continue to cause Musk substantial injury and
12 damage, much of which cannot be reasonably or adequately measured or
13 compensated in money damages. The harm this wrongful conduct will cause to
14 Musk is both imminent and irreparable, and the amount of damage sustained by
15 Musk will be difficult to ascertain if such wrongful conduct is allowed to
16 continue without restraint. Musk is therefore entitled to an injunction during the
17 pendency of this action, and permanently enjoining Defendants, their officers,
18 agents, and employees, and all persons acting in concert with them, from
19 engaging in such further tortious conduct.

20 187. Defendants' wrongful conduct constitutes oppression, fraud, and/or
21 malice under Cal. Civ. Code § 3294, entitling Musk to an award of punitive
22 damages appropriate to punish or set an example of Defendants in an amount to
23 be determined at trial.

24 **COUNT III: AIDING AND ABETTING FRAUD**

25 **(Against the OpenAI For-Profit Entities)**

26 188. Plaintiff re-alleges and incorporates by reference paragraphs 1
27 through 187 inclusive, as though fully set forth herein.

28 189. Altman and Brockman participated in a scheme to defraud Musk of

1 his valuable contributions and backing to enrich themselves, as alleged
2 hereinabove.

3 190. The OpenAI For-Profit Entities had actual knowledge that Altman
4 and Brockman were engaging in such fraud, because Altman and Brockman
5 formed the OpenAI For-Profit Entities for that very purpose, and on information
6 and belief, have at all relevant times been officers, agents, employees, and/or
7 owners whose knowledge and intent is imputed to the OpenAI For-Profit
8 Entities.

9 191. The OpenAI For-Profit Entities knowingly gave substantial
10 assistance, encouragement, and/or actively participated in Altman and
11 Brockman's fraud by willfully draining the non-profit's most valuable assets into
12 their for-profit apparatus. On information and belief, the OpenAI For-Profit
13 Entities currently employ much of the non-profit's former staff, including
14 Altman and Brockman, house its research and intellectual property, have
15 facilitated rampant self-dealing, as alleged herein, and have been greatly
16 enriched as a result.

17 192. Defendants intentionally concealed their fraudulent conduct, which
18 prevented Musk from discovering their scheme, notwithstanding his exercise of
19 due diligence.

20 193. As a direct and proximate result of the OpenAI For-Profit Entities'
21 conduct, acts, and omissions alleged hereinabove, Musk is entitled to recover the
22 damages he sustained and will sustain, including any income, gains,
23 compensation, profits, and advantages obtained, received, or to be received by
24 Defendants, or any of them, arising from the wrongful acquisition of Musk's
25 contributions to OpenAI, Inc., including prejudgment interest. Musk is entitled
26 to an order requiring Defendants, jointly and severally, to render an accounting
27 to ascertain the amount of such proceeds.

28 194. As a direct and proximate result of Defendants' wrongful conduct,

1 acts, and omissions alleged hereinabove, Musk has been damaged, and
2 Defendants have been and will continue to be unjustly enriched, in an amount
3 that shall be assessed at trial, but which vastly exceeds \$75,000, and for which
4 restitution and/or non-restitutionary disgorgement is appropriate. Such should
5 include the imposition of a constructive trust; a declaration by this Court that
6 Defendants are jointly and severally the constructive trustee(s) for the benefit of
7 Musk; and an order that Defendants convey to Musk all of the profits, assets,
8 property, and ill-gotten gains received or to be received by Defendants, which
9 are traceable to Musk's wrongfully acquired financial and other contributions to
10 OpenAI, Inc.

11 195. Defendants' wrongful conduct, acts, and omissions have
12 proximately caused and will continue to cause Musk substantial injury and
13 damage, much of which cannot be reasonably or adequately measured or
14 compensated in money damages. The harm this wrongful conduct will cause to
15 Musk is both imminent and irreparable, and the amount of damage sustained by
16 Musk will be difficult to ascertain if such wrongful conduct is allowed to
17 continue without restraint. Musk is entitled to an injunction during the pendency
18 of this action, and permanently enjoining Defendants, their officers, agents, and
19 employees, and all persons acting in concert with them, from engaging in such
20 further tortious conduct.

21 196. Defendants' wrongful conduct constitutes oppression, fraud, and/or
22 malice under Cal. Civ. Code § 3294, entitling Musk to an award of punitive
23 damages appropriate to punish or set an example of Defendants in an amount to
24 be determined at trial.

25 **COUNT IV: VIOLATIONS OF FEDERAL CIVIL RICO,**

26 **18 U.S.C. § 1962(c)**

27 **(Against Altman, Brockman, and the OpenAI For-Profit Entities)**

28 197. Plaintiff re-alleges and incorporates by reference paragraphs 1

1 through 196 inclusive, as though fully set forth herein.

2 198. The federal Racketeer Influenced and Corrupt Organizations Act
3 (“RICO”), 18 U.S.C. §§ 1962, 1964, provides a private right of action for
4 plaintiffs to recover against defendants who harm them by conducting an
5 enterprise through a pattern of racketeering activity, as well as defendants who
6 conspire to do so.

7 **A. Wire Fraud Predicate Offenses**

8 199. Defendants knowingly participated in a scheme to exploit Musk and
9 others by fraudulently inducing him to make significant financial and other
10 contributions to develop valuable AI/AGI for ostensibly charitable purposes,
11 which Defendants exploited to enrich themselves, as alleged hereinabove.

12 200. In furtherance of their scheme, Defendants transmitted, or caused to
13 be transmitted, by means of wire communication in interstate commerce,
14 writings, signs, signals, pictures, and sounds, in violation of 18 U.S.C. § 1343.
15 The specific wirings in furtherance of the scheme to defraud Musk include, but
16 are not limited to the following:

- 17 a. On May 25, 2015, in correspondence by email, Altman proposed to
18 Musk that they start an AI lab and “structure it so that the tech
19 belongs to the world via some sort of nonprofit[,]” and further
20 represented: “Obviously we’d comply with/aggressively support
21 regulation.”
- 22 b. On June 24, 2015, Altman corresponded with Musk by email and
23 represented: “The mission would be to create the first general AI
24 and use it for individual empowerment—ie [*sic*], the distributed
25 version of the future that seems the safest. More generally, safety
26 should be a first-class requirement.” “The technology would be
27 owned by the foundation and used ‘for the good of the world[.]’”
- 28 c. On November 22, 2015, Brockman sent Musk further email

1 correspondence representing: “I hope for us to enter the field as a
2 neutral group looking to collaborate widely and shift the dialog
3 towards being about humanity winning rather than any particular
4 group or company. (I think that’s the best way to bootstrap
5 ourselves into being a leading research institution.)”

6 d. On December 8, 2015, Altman sent Musk via email the following
7 announcement for his review:

8 OpenAI is a non-profit artificial intelligence research
9 company [whose] goal is to advance digital intelligence in
10 the way that is most likely to benefit humanity as a whole,
11 unconstrained by a need to generate financial return. Since
12 our research is free from financial obligations, we can
13 better focus on a positive human impact. . . . We believe
14 AI should be . . . as broadly and evenly distributed as
possible. . . . As a non-profit, our aim is to build value for
everyone rather than shareholders . . . and our patents (if
any) will be shared with the world.

15 e. On March 14, 2017, Musk was emailed (with Brockman copied) a
16 draft online post for his review, promising: “We will share our
17 research and techniques unless there is evidence that doing so
18 would harm humanity.” The post stated “openness [is] desirable”
19 because it helps to: “Ensure that AI progress benefits everyone,
20 rather than primarily benefiting whoever controls the technology.”

21 f. On September 21, 2017, after Musk rebuffed Altman’s efforts to
22 turn OpenAI, Inc. into a for-profit company, Altman wrote to Musk
23 via email reassuring him: “[I] remain enthusiastic about the non-
24 profit structure!”

25 g. On April 2, 2018, Altman emailed Musk a draft OpenAI, Inc.
26 Charter to review, which it later published on its website, stating:
27 “We commit to use any influence we obtain over AGI’s deployment
28 to ensure it is used for the benefit of all, and to avoid enabling uses

1 of AI or AGI that harm humanity or unduly concentrate power. Our
2 primary fiduciary duty is to humanity.”

3 h. On March 11, 2019, in marketing the creation of OpenAI, L.P.,
4 Defendants represented: “The General Partner’s duty to this mission
5 and the principles advanced in the OpenAI Inc. Charter take
6 precedence over any obligation to generate a profit.” On March 6,
7 2019, Altman emailed Musk a draft of this announcement,
8 promising: “We’ve designed OpenAI LP to put our overall
9 mission—ensuring the creation and adoption of safe and beneficial
10 AGI—over generating returns for investors.”

11 201. Defendants intended Musk to rely on their express promises,
12 representations, and assurances and in good faith, Musk reasonably did rely on
13 them to his detriment. Based thereon, Musk caused to be wired tens of millions
14 of dollars of seed money to OpenAI, Inc. as follows:

15

Date	Amount
5/27/2016	\$500,000.00 ¹⁹
6/8/2016	\$5,000,000.00
8/26/2016	\$4,500,000.00
10/3/2016	\$142,000.00
10/25/2016	\$142,000.00
11/21/2016	\$750,000.00
11/23/2016	\$142,000.00
12/7/2016	\$4,250,000.00
1/1/2017	\$1,140,000.00

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27 ¹⁹ On information and belief, Musk’s initial \$10 million in donations to OpenAI, Inc. in 2016
28 were first wired to Altman’s “YC Org.,” and then wired to OpenAI, Inc. once OpenAI, Inc.
obtained its section 501(c)(3) status.

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Date	Amount
1/1/2017	\$700,000.00
1/1/2017	\$16,028,500.00
1/5/2017	\$142,000.00
1/27/2017	\$142,000.00
7/18/2017	\$175,000.00
8/14/2017	\$175,000.00
9/15/2017	\$175,000.00
9/29/2017	\$85,000.00
10/16/2017	\$235,000.00
11/14/2017	\$235,000.00
12/14/2017	\$235,000.00
1/18/2018	\$290,000.00
2/20/2018	\$390,000.00
3/14/2018	\$290,000.00
4/16/2018	\$290,000.00
5/15/2018	\$290,000.00
6/14/2018	\$290,000.00
7/16/2018	\$290,000.00
8/14/2018	\$290,000.00
9/18/2018	\$290,000.00
10/17/2018	\$290,000.00
11/14/2018	\$290,000.00
12/17/2018	\$290,000.00
1/16/2019	\$290,000.00
2/14/2019	\$290,000.00
3/22/2019	\$290,000.00

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Date	Amount
4/16/2019	\$290,000.00
5/14/2019	\$290,000.00
6/14/2019	\$290,000.00
7/17/2019	\$290,000.00
8/14/2019	\$290,000.00
9/16/2019	\$290,000.00
10/17/2019	\$290,000.00
11/15/2019	\$290,000.00
12/17/2019	\$290,000.00
1/14/2020	\$290,000.00
2/14/2020	\$290,000.00
3/16/2020	\$290,000.00
4/13/2020	\$290,000.00
5/13/2020	\$290,000.00
6/15/2020	\$290,000.00
7/14/2020	\$290,000.00
8/17/2020	\$290,000.00
9/14/2020	\$290,000.00
Total	\$44,563,500.00

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202. During this period, Musk further invested his time, reputation, and connections to recruit top AI scientists and engineers for the OpenAI project, which included the transmission of emails and cellular telephonic communications.

203. In addition, Defendants in their marketing, 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

1 whose charitable mission is to develop safe and open-source AI/AGI technology
2 for the public good, not private gain. And these public pronouncements further
3 served to reassure Musk.

4 204. From December 11, 2015 to today, OpenAI’s website represented:

- 5 • “OpenAI is a non-profit artificial intelligence research
6 company [whose] goal is to advance digital intelligence in the
7 way that is most likely to benefit humanity as a whole,
8 unconstrained by a need to generate financial return. Since our
9 research is free from financial obligations, we can better focus
10 on a positive human impact.”
- 11 • “We believe AI should be an extension of individual human
12 will and, in the spirit of liberty, as broadly and evenly
13 distributed as possible.”
- 14 • “Because of AI’s surprising history, it’s hard to predict when
15 human-level AI might come within reach. When it does, it’ll
16 be important to have a leading research institution which can
17 prioritize a good outcome for all over its own self-interest.”
- 18 • “As a non-profit, our aim is to build value for everyone rather
19 than shareholders.”
- 20 • “Our primary fiduciary duty is to humanity. We anticipate
21 needing to marshal substantial resources to fulfill our mission,
22 but will always diligently act to minimize conflicts of interest
23 among our employees and stakeholders that could
24 compromise broad benefit.”
- 25 • “Researchers will be strongly encouraged to publish their
26 work, whether as papers, blog posts, or code, and our patents
(if any) will be shared with the world.”
- 27 • “Our mission is to ensure that [AGI] benefits all humanity,
28 primarily by attempting to build safe AGI and share the
benefits with the world.”

205. Defendants knew or could have reasonably foreseen that their
promises and representations would be relied upon by Musk and other

1 contributors to OpenAI, Inc.

2 206. Altman, Brockman, and the OpenAI For-Profit Entities each knew
3 of, and participated in, numerous acts of wire fraud. Defendants knowingly and
4 repeatedly accepted contributions from Musk and the public in order to develop
5 AGI with no intention of honoring their promises and representations once AGI
6 was in reach. As alleged hereinabove, GPT-4, GPT-4T, and GPT-4o are all
7 closed source and shrouded in secrecy for Defendants and Microsoft's gain.

8 207. It was reasonably foreseeable that interstate wire communications
9 would be used in connection with Defendants' scheme. In addition to the
10 fraudulent wire transmissions described above, Defendants relied on wires to
11 receive the financial contributions of Musk and, on information and belief, other
12 contributors, and to invest these funds in their fraudulent scheme. On
13 information and belief, Defendants received many or all of these funds through
14 an online wire, deposited such funds into Defendants' accounts through an
15 online wire, and relied on email or other forms of electronic communication to
16 exchange information about their receipt and usage of these misappropriated
17 funds and contributions.

18 208. Altman and Brockman used Musk's contributions to fund and
19 support OpenAI, Inc.'s research and development and on information and belief,
20 to launch dozens of for-profit shell entities (the OpenAI For-Profit Entities). The
21 OpenAI For-Profit Entities furthered Defendants' scheme by harboring and
22 exploiting OpenAI, Inc.'s valuable AI/AGI technology and helping to facilitate
23 and conceal Defendants' profiteering and self-dealing.

24 209. This private, complex profitmaking arm of OpenAI, in which on
25 information and belief, Microsoft and Altman are significant shareholders, is
26 publicly cloaked as a mere fundraising apparatus, but in reality, is the foundation
27 of Defendants' scheme to control, co-opt, and cash in on OpenAI, Inc.'s valuable
28 technology developed with Musk's significant contributions.

1 210. When Altman and Brockman launched OpenAI, L.P. (now OpenAI
2 OpCo, LLC), they transferred most of the non-profit's staff over to the new
3 company, which also now houses and operates much of OpenAI's technological
4 research and development. Defendants' reshuffling of OpenAI, Inc.'s assets
5 served to conveniently shield them and their scheme from public scrutiny and to
6 evade the financial disclosures non-profits like OpenAI, Inc. must make. Each of
7 these predicate acts by Altman and/or Brockman were committed within the
8 scope of their employment, officership, and/or directorship position(s) at, or
9 their agency relationship with, the OpenAI For-Profit Entities.

10 211. In addition, Altman, with the assistance and/or cooperation of
11 Brockman and/or the OpenAI For-Profit Entities, brazenly engaged in self-
12 dealing.

13 212. For instance, it was recently reported that Altman induced OpenAI
14 to partner with Reddit in a deal to bring Reddit's content to OpenAI's ChatGPT.
15 On information and belief, Altman and/or entities he controls own 7.6% of
16 Reddit and, after the OpenAI deal was announced, Reddit's stock went up 10%,
17 boosting Altman's stake by \$69 million.

18 213. Further, on information and belief, Altman caused OpenAI to sign a
19 \$51 million AI chip deal with Rain AI, a company in which he also held a
20 significant interest. On information and belief, Altman and Jony Ive, formerly of
21 Apple, have also reportedly launched their own AI device company, which plans
22 to exploit OpenAI's technology to compete with the iPhone. And, on
23 information and belief, Altman is currently causing OpenAI, Inc. to work out a
24 deal with Altman's Helion Energy for OpenAI, Inc. to buy large amounts of
25 electricity to power its data centers.

26 214. Defendants have also caused OpenAI, Inc. to exclusively license
27 and/or furnish its now-closed technology to Microsoft, in partnership with
28 Defendants, including its recent GPT-4, GPT-4T, and GPT-4o models for

1 Defendants and Microsoft’s private gain, in contravention of the repeated
2 representations to Musk and other contributors that its technology would be
3 predominantly open source for the benefit of the public and humanity.

4 215. Defendants knew their representations and promises alleged
5 hereinabove were false when made and they had no intention of performing such
6 promises and failed to perform them. Once they convinced Musk to back
7 OpenAI, Inc., Defendants’ aim was to develop valuable AI/AGI and exploit it for
8 their own enrichment. Defendants intentionally concealed their fraudulent
9 conduct, which prevented Musk from discovering their scheme, notwithstanding
10 his exercise of due diligence. Musk would not have contributed to OpenAI, Inc.
11 if he knew of Defendants’ true intentions and scheme.

12 216. Altman and Brockman directly and indirectly committed or aided
13 and abetted these numerous predicate acts of wire fraud in furtherance of their
14 scheme. The predicate acts by the OpenAI For-Profit Entities were committed
15 by Altman, Brockman, and/or representatives of such entities acting through, or
16 on behalf of and for the benefit of those entities. Each of these Defendants
17 voluntarily and intentionally committed and/or aided and abetted the
18 commission of the predicate acts to effectuate and/or further their illicit scheme.

19 **B. Pattern of Racketeering Activity**

20 217. Defendants committed multiple predicate acts of wire fraud which
21 are indictable under the provisions of the U.S. code enumerated in 18 U.S.C.
22 § 1961(1)(B). Defendants did knowingly, willfully, and unlawfully conduct or
23 participate, directly or indirectly, in a pattern of racketeering activity within the
24 meaning of 18 U.S.C. § 1961(5).

25 218. Altman, Brockman, and/or the OpenAI For-Profit Entities
26 committed, or conspired with or aided and abetted other Defendants in
27 committing, at least two predicate acts of wire fraud constituting a continuous
28 course of conduct spanning a period from at least March 2015 to the present.

1 The temporal duration and the number of predicate acts are so extensive as to
2 constitute a pattern of racketeering activity with, at minimum, closed-ended
3 continuity, though on information and belief, such conduct is continuing—e.g.,
4 Defendants are continuously forming new for-profit entities and continuing to
5 promote their false non-profit mission—and there exists a specific threat it will
6 persist indefinitely, constituting a pattern of racketeering activity that is open-
7 ended.

8 219. In order to implement their scheme, Defendants used the interstate
9 wires to defraud Musk, as alleged herein. Such acts not only shared a common
10 or related result, participants, and victims, but also shared a common method of
11 commission. Defendants’ acts of racketeering were all committed for the
12 purpose of defrauding Musk and others of valuable financial and other
13 contributions in furtherance of a scheme to develop valuable AI/AGI technology
14 to be wrongfully exploited for Defendants’ self-enrichment.

15 220. On information and belief, the public, including without limitation,
16 consumers, donors to OpenAI, Inc., and other contributors such as its leading AI
17 scientists and engineers who were induced by Defendants’ fake humanitarian
18 mission, were also victimized by their fraudulent scheme. Defendants’
19 fraudulent wire communications concerning OpenAI, Inc.’s non-profit mission
20 to develop predominantly open-source AI/AGI technology and conduct research
21 to be shared with the public for the benefit of humanity, have caused these
22 individuals and/or groups to fund, support, back, and/or otherwise contribute to
23 OpenAI, Inc. in the false belief that they were doing so to help further the non-
24 profit’s humanitarian purpose.

25 221. On information and belief, Altman, Brockman, and the OpenAI
26 For-Profit Entities’ racketeering yielded financial and other contributions from
27 Musk and others, which were, in turn, used to develop valuable AI/AGI
28 technology that Altman along with other Defendants leveraged and exploited to

1 attract the powerful tech giant Microsoft and gain undue influence, which they
2 used to acquire and/or maintain significant control over OpenAI, Inc. and its
3 operations.

4 222. To illustrate, on November 17, 2023, OpenAI, Inc.'s Board
5 dismissed Altman as CEO and from the Board because, on information and
6 belief, he had lied to the Board to obstruct its oversight of him, and because the
7 Board was concerned by Altman's numerous conflicts of interest and instances
8 of self-dealing.

9 223. Prior to his dismissal, Altman had aligned himself with Microsoft
10 and orchestrated deals causing OpenAI, Inc. to become inextricably dependent
11 on Microsoft—e.g., on information and belief, Microsoft had paid only a
12 fraction of its reported \$13 billion commitment to OpenAI, and OpenAI, Inc.
13 needed Microsoft's cloud computing system to continue to operate and function.
14 On information and belief, when Microsoft learned of Altman's dismissal, it and
15 Altman made a concerted and coordinated effort to use their influence and
16 leverage to threaten and pressure OpenAI, Inc.'s Board to have Altman quickly
17 reinstated.

18 224. On November 21, 2023, Altman was reinstated as CEO just days
19 after his dismissal. Upon his return, Altman purged the Board members who had
20 dismissed him and handpicked new compliant Board members, effectively
21 taking over OpenAI, Inc. in furtherance of Defendants' scheme.

22 225. Microsoft too obtained an influential observer seat on the Board,
23 permitting it to exercise internal pressure and further influence over OpenAI,
24 Inc.'s operations. Recently, on July 9, 2024, Microsoft relinquished its seat amid
25 scrutiny from antitrust agencies in the U.S. and Europe investigating its close
26 relationship with OpenAI.

27 226. On information and belief, Defendants' illicit activities have placed
28 them under investigation by multiple federal agencies including the Securities

1 and Exchange Commission and the Federal Trade Commission, U.K. and E.U.
2 regulators, and as of July 22 and August 1, 2024, the U.S. Senate. Defendants
3 are also the subject of numerous consumer advocacy complaints to the
4 California Attorney General, which have encouraged the AG to investigate
5 Defendants' wrongful exploitation of OpenAI, Inc. for personal gain.

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

7 227. Altman, Brockman, and the OpenAI For-Profit Entities are
8 "persons" within the definition of 18 U.S.C. § 1961(3), and at all relevant times
9 were employed by and/or associated with OpenAI, Inc.

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

15 229. Altman, Brockman, and the OpenAI For-Profit Entities wrongfully
16 conducted or participated, directly or indirectly, in the conduct of the
17 Enterprise's affairs through a pattern of racketeering activity.

18 230. Altman, Brockman, and the OpenAI For-Profit Entities infiltrated
19 the Enterprise. Altman and Brockman are OpenAI, Inc.'s CEO and CTO
20 respectively, and at various times have sat, and Altman currently sits, on its
21 Board. The OpenAI For-Profit Entities, which on information and belief are
22 largely owned, operated, and/or controlled by Altman and Microsoft, have now
23 so thoroughly infiltrated the non-profit and are so intertwined with OpenAI, Inc.
24 so as to effectively participate in, manage, control, and/or operate the Enterprise
25 with impunity.

26 231. Altman, Brockman, and the OpenAI For-Profit Entities'
27 racketeering acts were committed in furtherance of a common fraudulent scheme
28 to wrongfully exploit the financial and other contributions of Musk and others to

1 OpenAI, Inc. to develop valuable AI/AGI technology and assets, which Altman,
2 Brockman, and the OpenAI For-Profit Entities then illicitly leveraged to enrich
3 themselves.

4 232. Altman induced Musk to contribute his money and resources to the
5 Enterprise in the belief he was supporting an open-source, not-for-profit AI/AGI
6 research foundation for the benefit of mankind, when, in fact, he was
7 unwittingly providing capital, support, and/or services to a coordinated, covert
8 profiteering scheme for Defendants' private gain.

9 233. Based on Altman and Brockman's fraudulent misrepresentations,
10 Musk contributed approximately \$44,811,795.00²⁰ of seed capital to OpenAI,
11 Inc. and invested his time, reputation, and connections to recruit premier AI
12 scientists and engineers for the project.

13 234. Defendants then furthered the scheme by using these contributions
14 to develop valuable AI technology, which, once it approached marketable AGI,
15 they kept closed source and exclusively licensed and/or furnished to Microsoft
16 for Defendants' private gain.

17 235. On information and belief, Altman and Brockman furthered the
18 scheme by launching the OpenAI For-Profit Entities and transferring much of
19 OpenAI, Inc.'s staff over to them. On information and belief, the OpenAI For-
20 Profit Entities also now operate most of the non-profit's research and
21 development, from which Altman, Brockman, and the OpenAI For-Profit
22 Entities stand to make a veritable fortune.

23 236. In addition, on information and belief, Altman along with other
24 Defendants have engaged in unbridled self-dealing under cover of the "non-
25 profit." On information and belief, the OpenAI For-Profit Entities facilitated
26 and/or aided and abetted Defendants' conflicted dealings and furthered the

27 ²⁰ In addition to the wired contributions tabled above, Musk donated Model 3 Teslas to
28 OpenAI, Inc., valued at \$248,295.00.

1 scheme by accepting receipt of OpenAI, Inc.'s misappropriated assets and staff,
2 and helping to conceal Defendants' fraudulent conduct.

3 237. On information and belief, Altman, Brockman, and the OpenAI
4 For-Profit Entities have been and will continue to be enriched by their
5 exploitation of OpenAI, Inc.'s assets, made possible by Musk's fraudulently
6 obtained funding and contributions.

7 238. The unlawful actions of Altman, Brockman, and the OpenAI For-
8 Profit Entities directly, illegally, and proximately caused and continue to cause
9 injuries to Musk in his business and property. In furtherance of their scheme and
10 through fraudulent acts, Defendants caused Musk to make financial and other
11 contributions to OpenAI, Inc., to which they were not entitled. But for
12 Defendants' knowing misrepresentations, Musk would not have made such
13 contributions and it was reasonably foreseeable to Defendants that their scheme
14 would harm Musk.

15 239. Pursuant to the civil remedy provisions of 18 U.S.C. § 1964(c),
16 Musk is hereby entitled to recover three times the damages he sustained,
17 reasonable attorneys' fees, and costs of litigation, as well as any other relief as
18 authorized by statute.

19 **COUNT V: CONSPIRACY TO VIOLATE FEDERAL CIVIL RICO,**

20 **18 U.S.C. § 1962(d)**

21 **(Against Altman, Brockman, and the OpenAI For-Profit Entities)**

22 240. Plaintiff re-alleges and incorporates by reference paragraphs 1
23 through 239 inclusive, as though fully set forth herein.

24 241. Altman, Brockman, and the OpenAI For-Profit Entities have
25 undertaken the fraudulent acts described in Count IV above as part of a common
26 scheme. Defendants willfully, knowingly, and unlawfully conspired,
27 confederated, and agreed together and with others to violate 18 U.S.C.
28 § 1962(c), in violation of 18 U.S.C. § 1962(d). Defendants intentionally

1 concealed their fraudulent conduct, which prevented Musk from discovering
2 their scheme, notwithstanding his exercise of due diligence.

3 242. Altman, Brockman, and the OpenAI For-Profit Entities were aware
4 of the illegal activity. Altman, as OpenAI, Inc.’s co-founder, CEO, and Board
5 member, and Brockman as its CTO and prior Board member, knew that they had
6 made false and/or misleading representations to Musk and other contributors that
7 OpenAI, Inc. would be a non-profit devoted to the open-source development of
8 AI for the benefit of humanity, and that Musk’s financial or other contributions
9 were supposed to be used solely to further such charitable purpose. On
10 information and belief, Altman and Brockman have at all relevant times been
11 officers, agents, employees, and/or owners whose knowledge and intent is
12 imputed to the OpenAI For-Profit Entities. The OpenAI For-Profit Entities knew
13 of and agreed to facilitate the operation of the Enterprise and/or Defendants’
14 scheme.

15 243. Altman and Brockman directed and caused the OpenAI For-Profit
16 Entities to engage in the racketeering activity alleged hereinabove.

17 244. Each Defendant understood that he or it was committing numerous
18 RICO predicate acts and participating in a racketeering scheme, evidenced
19 among other things, by his or its overt acts and involvement in repeatedly
20 promulgating false and/or misleading representations via wire transmissions,
21 including email correspondence, online transmittal, and social media posts, and
22 receiving financial and other contributions, including wired funds, based on
23 those fraudulent communications. In addition, on information and belief, the
24 OpenAI For-Profit Entities understood they were facilitating and/or aiding and
25 abetting Altman’s self-dealing and furthering the scheme by helping to conceal
26 Defendants’ fraudulent conduct.

27 245. The participation and agreement of Altman, Brockman, and each of
28 the OpenAI For-Profit Entities was necessary to the scheme. Defendants knew

1 their predicate acts were part of a pattern of racketeering activity and agreed to
2 the commission of those acts to further the scheme, and agreed and conspired to
3 conduct and participate in the affairs of the Enterprise through a consistent and
4 continual pattern of racketeering activity. Further evidence of the agreement
5 among Altman, Brockman, and the OpenAI For-Profit Entities is peculiarly
6 within the knowledge and control of Defendants.

7 246. As a direct and proximate result of Defendants' conspiracy and
8 violations of 18 U.S.C. § 1962(d), Musk has been injured in his business and
9 property, as alleged herein, and is entitled to treble damages, attorneys' fees, and
10 costs of suit.

11 **COUNT VI: BREACH OF EXPRESS CONTRACT**

12 **(Against Altman and OpenAI, Inc.)**

13 247. Plaintiff re-alleges and incorporates by reference paragraphs 1
14 through 246 inclusive, as though fully set forth herein.

15 248. In a series of express written correspondence in 2015, Altman and
16 Musk entered into a valid, enforceable, and binding agreement to co-found a
17 non-profit entity (OpenAI, Inc.) to develop leading AI/AGI technology. Per their
18 founding agreement, which under Altman's leadership was ratified and/or
19 adopted by OpenAI, Inc., Musk was to contribute capital, provide integral
20 advice, and use his stature and track record to recruit leading scientific talent,
21 attracting further contributions to OpenAI, Inc. In exchange, and as
22 consideration for Musk's contributions, Altman promised that OpenAI, Inc. (i)
23 would be a non-profit and develop AI/AGI for the benefit of humanity, not
24 personal profits, and (ii) to that end, would make OpenAI, Inc.'s technology
25 largely open source, subject only to genuine safety considerations, and to not
26 conceal nor concentrate its technology for proprietary commercial reasons.

27 249. Musk fulfilled all of his obligations and has performed and/or
28 complied with all terms and conditions of the agreement that he was required to

1 perform and/or comply with, except those which were waived and/or excused, or
2 the non-performance of which was justified, and is in no matter or respect in
3 breach of said agreement. From OpenAI, Inc.’s founding in 2015 through
4 September 2020, Musk contributed more than \$44 million to OpenAI, Inc.,
5 provided key advice on research to be conducted, played an integral role in
6 recruiting world-class talent to OpenAI, Inc. like its Chief Scientist Dr.
7 Sutskever, and due to his participation and stature, attracted financial
8 contributions by others to the non-profit.

9 250. In 2023, on information and belief, Altman and OpenAI, Inc.
10 breached their agreement with Musk by, among other things:

- 11 a. Failing to publicly disclose the non-profit’s research and
12 development, including details on GPT-4, GPT-4T, and GPT-4o’s
13 architecture, hardware, training method, and training computation;
- 14 b. Licensing and/or furnishing OpenAI, Inc.’s GPT-4 and related
15 technology exclusively to Microsoft, and by concentrating it in this
16 single giant for-profit corporation;
- 17 c. Permitting Microsoft, a publicly traded for-profit business, to
18 occupy a seat on OpenAI, Inc.’s Board of Directors and exert undue
19 influence and control over OpenAI’s activities;
- 20 d. Closing off OpenAI, Inc.’s technology for profit and erecting a
21 “paywall” excluding the public from open usage of GPT-4 and
22 related technology to advance Defendants and Microsoft’s own
23 private commercial interests;
- 24 e. Self-dealing and manipulating the non-profit’s assets to enrich
25 themselves by, for example causing OpenAI, Inc. to excessively
26 patronize businesses in which Altman owns a significant interest,
27 for his personal enrichment; and
- 28 f. Currently working to convert the non-profit into a fully for-profit

1 commercial entity.

2 251. Defendants’ obligations to perform were not waived nor were their
3 breaches and/or failures to perform justified and/or excused. Defendants
4 intentionally concealed their wrongful conduct, which prevented Musk from
5 discovering their scheme, notwithstanding his exercise of due diligence.

6 252. As a direct and proximate result of Altman and OpenAI, Inc.’s
7 conduct, acts, and omissions alleged hereinabove, Defendants have deprived
8 Musk of the benefit of the parties’ agreement and have caused Musk to suffer
9 damages, including but not limited to the financial contributions he made to
10 OpenAI, Inc., the loss of the time and resources he expended to direct research
11 and recruit talent and damage to his reputation, in an amount to be adjudicated
12 and determined at trial, but which vastly exceeds \$75,000, plus prejudgment
13 interest.

14 253. Musk has no adequate remedy at law for many of the injuries he
15 suffered as a result of Defendants’ breaches and failures, and such injuries
16 cannot reasonably, adequately, or precisely be measured or compensated in
17 damages. Accordingly, Musk also seeks and is entitled to specific performance
18 of Defendants’ contractual obligations.

19 **COUNT VII: BREACH OF IMPLIED-IN-FACT CONTRACT**

20 **(In the alternative to Count VI)**

21 **(Against Altman and OpenAI, Inc.)**

22 254. Plaintiff re-alleges and incorporates by reference paragraphs 1
23 through 253 inclusive, as though fully set forth herein.

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

27 256. Altman proposed that he and Musk co-found an AI research non-
28 profit which Altman promised would make its findings open for the good of all

1 and would avoid concentrating its technology for the profit of any person or
2 company. Musk assented and in turn agreed to use his time, name, reputation,
3 and extensive connections to recruit premier talent, and make significant
4 financial contributions to help launch the non-profit.

5 257. From there, Altman individually and/or on behalf of OpenAI, Inc.
6 proceeded and continued to reaffirm both publicly and to Musk directly that
7 OpenAI, Inc. would be open and not for-profit. Such reaffirmations by
8 Defendants were made, without limitation, in OpenAI, Inc.'s Certificate of
9 Incorporation, the non-profit's Charter (circulated to Musk), numerous OpenAI
10 online announcements, and countless communications to Musk from 2015 to
11 2020, as alleged in detail hereinabove.

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

15 259. Musk fulfilled any and all obligations and has performed and/or
16 complied with any and all terms and conditions of the agreement that he was
17 required to perform and/or comply with, except those which were waived and/or
18 excused, or the non-performance of which was justified, and is in no matter or
19 respect in breach of said agreement. During OpenAI, Inc.'s critical first five
20 years, Musk used his power and connections to bring in the workforce necessary
21 to launch the non-profit and contributed considerable funding each year, totaling
22 approximately \$44,811,795.00 from 2016 to 2020.

23 260. Initially, Altman and OpenAI, Inc. performed their obligations, and
24 publicly disclosed the non-profit's findings and research supporting its
25 preliminary GPT models.

26 261. In 2023, however, Altman and OpenAI, Inc. breached their implied-
27 in-fact contract by, without limitation, failing to publicly disclose the non-
28 profit's research, closing off the non-profit's technology for private profit,

1 excluding the public from open usage, self-dealing and exploiting the non-
2 profit's assets to enrich themselves, and as recently as June 2024, working to
3 convert the non-profit to a fully for-profit entity.

4 262. Defendants' obligations to perform were not waived nor were their
5 breaches and/or failures to perform justified and/or excused. Defendants
6 intentionally concealed their wrongful conduct, which prevented Musk from
7 discovering their scheme, notwithstanding his exercise of due diligence.

8 263. As a direct and proximate result of Altman and OpenAI, Inc.'s
9 conduct, acts, and omissions alleged hereinabove, Defendants have deprived
10 Musk of the benefit of the parties' agreement and have caused Musk to suffer
11 damages, including but not limited to the loss of the time and resources he
12 expended to direct research and recruit talent, the financial contributions he
13 made to OpenAI, and damage to his reputation, in an amount to be adjudicated
14 and determined at trial, but which vastly exceeds \$75,000, plus prejudgment
15 interest.

16 264. Musk has no adequate remedy at law for many of the injuries he
17 suffered as a result of Defendants' breaches and failures, and such injuries
18 cannot reasonably, adequately, or precisely be measured or compensated in
19 damages. Thus, Musk also seeks and is entitled to specific performance of
20 Defendants' contractual obligations.

21 **COUNT VIII: BREACH OF IMPLIED COVENANT OF GOOD FAITH**
22 **AND FAIR DEALING**
23 **(Against Altman and OpenAI, Inc.)**

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

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

1 267. Musk entered into a valid, binding, and enforceable agreement with
2 Altman and OpenAI, Inc. with the purpose of developing AI/AGI technology to
3 be openly shared with the public for the benefit of all, and not for private
4 profiteering.

5 268. Musk fulfilled any and all obligations and has performed and/or
6 complied with any and all terms and conditions of the agreement with Altman
7 and OpenAI, Inc. that he was required to perform and/or comply with, except
8 those which were waived and/or excused, or the non-performance of which was
9 justified, and is in no matter or respect in breach of said agreement. Musk paid
10 over \$44 million to OpenAI, Inc. and invested substantial time and resources,
11 including using his valuable track record and notoriety to recruit leading
12 scientific talent and attract further financial contributions to the non-profit.

13 269. Altman and OpenAI, Inc. did not act fairly and in good faith by
14 fraudulently inducing Musk to make significant contributions, failing to disclose
15 material information to him, closing off the non-profit's technology for personal
16 monetary gain, and engaging in brazen self-dealing and other profiteering as
17 alleged hereinabove. Defendants thereby breached the implied covenant of good
18 faith and fair dealing and consciously and deliberately frustrated the agreed-
19 upon purpose and mission of the non-profit, wrongfully depriving Musk of the
20 benefits of the parties' agreement.

21 270. Defendants' obligations to perform were not waived nor were their
22 breaches and/or failures to perform justified and/or excused.

23 271. As a direct and proximate result of Altman and OpenAI, Inc.'s
24 conduct, acts, and omissions alleged hereinabove, Defendants have deprived
25 Musk of the benefit of the parties' agreement and have caused Musk to suffer
26 damages, including but not limited to the financial contributions he made to
27 OpenAI, Inc., the loss of the time and resources he expended to direct research
28 and recruit talent, and damage to his reputation, in an amount to be adjudicated

1 and determined at trial, but which vastly exceeds \$75,000, plus prejudgment
2 interest.

3 272. Musk has no adequate remedy at law for many of the injuries he
4 suffered as a result of Defendants' breaches and failures, and such injuries
5 cannot reasonably, adequately, or precisely be measured or compensated in
6 damages. Musk therefore also seeks and is entitled to specific performance of
7 Defendants' contractual obligations.

8 **COUNT IX: BREACH OF QUASI-CONTRACT/UNJUST ENRICHMENT**

9 **(In the alternative to Counts VI, VII, and VIII)**

10 **(Against All Defendants)**

11 273. Plaintiff re-alleges and incorporates by reference paragraphs 1
12 through 272 inclusive, as though fully set forth herein.

13 274. In the absence of an enforceable agreement, Defendants have still
14 been unjustly enriched at Musk's expense as a result of their improper
15 exploitation for personal profit of OpenAI, Inc.'s resources, intellectual property,
16 and assets.

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

21 276. Defendants knowingly and repeatedly accepted Musk's
22 contributions in order to develop AGI, with no intention of honoring those
23 conditions once AGI was in reach. Case in point: GPT-4, GPT-4T, and GPT-4o
24 are all closed source and shrouded in secrecy, while Defendants actively work to
25 transform the non-profit into a thoroughly commercial business.

26 277. Defendants intentionally concealed their wrongful conduct, which
27 prevented Musk from discovering their scheme, notwithstanding his exercise of
28 due diligence.

1 278. It would be unjust and inequitable to allow Defendants to retain the
2 substantial benefits that were obtained as a direct and proximate result of their
3 wrongful conduct including, without limitation, their solicitation of capital and
4 other valuable resources from Musk under the false pretense and repeated
5 promises that such would be used for charitable purposes, and while
6 misrepresenting to Musk and the public that OpenAI, Inc. was developing
7 AI/AGI for the public's benefit and not for private gain.

8 279. As a direct and proximate result of Defendants' wrongful conduct,
9 acts, and omissions alleged hereinabove, Musk has been damaged, and
10 Defendants have been and will continue to be unjustly enriched, in an amount
11 that shall be assessed at trial, but which vastly exceeds \$75,000, and for which
12 restitution and/or non-restitutionary disgorgement is appropriate. Such should
13 include the imposition of a constructive trust; a declaration by this Court that
14 Defendants are jointly and severally the constructive trustee(s) for the benefit of
15 Musk; and an order that Defendants convey to Musk all of the profits, assets,
16 property, and ill-gotten gains received or to be received by Defendants, which
17 are traceable to Musk's wrongfully acquired financial and other contributions to
18 OpenAI, Inc.

19 **COUNT X: FALSE ADVERTISING UNDER THE LANHAM ACT,**

20 **15 U.S.C. § 1125(a)(1)(B)**

21 **(Against Altman, Brockman, and OpenAI, Inc.)**

22 280. Plaintiff re-alleges and incorporates by reference paragraphs 1
23 through 279 inclusive, as though fully set forth herein.

24 281. Altman and Brockman induced an unwitting Musk to co-found their
25 spurious non-profit, OpenAI, Inc. They then exploited Musk's stature and
26 reputation to elicit public trust and support for the non-profit, recruit top AI
27 scientists and engineers, and solicit financial contributions from third parties
28 through knowingly false marketing and promotion of the non-profit, harming

1 Musk’s business interests and reputation.

2 282. Musk is well-known for his commitment to open technology—e.g.,
3 Tesla and SpaceX generally do not hold and/or do not enforce patents for their
4 technology, which is free for the public to use.

5 283. Altman and Brockman, in their individual capacities and on behalf
6 of OpenAI, Inc., harnessed Musk’s business reputation by among other things,
7 making Musk co-chair of the Board, using his track record to recruit top talent,
8 and promoting his name and involvement on OpenAI, Inc.’s website and other
9 marketing of OpenAI, Inc.

10 284. Defendants in their marketing, advertisements, and promotions
11 made knowingly false and/or misleading representations to the public that
12 OpenAI, Inc. would be a non-profit whose mission is to develop safe and open-
13 source AI/AGI technology for the public good, not private gain.

14 285. Commencing on December 11, 2015 and continuing to today,
15 OpenAI, Inc.’s website represented that “OpenAI’s co-chairs are Sam Altman
16 and Elon Musk” and that:

- 17 • “OpenAI is a non-profit artificial intelligence research
18 company [whose] goal is to advance digital intelligence in the
19 way that is most likely to benefit humanity as a whole,
20 unconstrained by a need to generate financial return. Since our
21 research is free from financial obligations, we can better focus
22 on a positive human impact.”
- 23 • “We believe AI should be an extension of individual human
24 will and, in the spirit of liberty, as broadly and evenly
25 distributed as possible.”
- 26 • “Because of AI’s surprising history, it’s hard to predict when
27 human-level AI might come within reach. When it does, it’ll
28 be important to have a leading research institution which can
prioritize a good outcome for all over its own self-interest.”

- 1 • “As a non-profit, our aim is to build value for everyone rather
2 than shareholders.”
- 3 • “Our primary fiduciary duty is to humanity. We anticipate
4 needing to marshal substantial resources to fulfill our mission,
5 but will always diligently act to minimize conflicts of interest
6 among our employees and stakeholders that could
7 compromise broad benefit.”
- 8 • “Researchers will be strongly encouraged to publish their
9 work, whether as papers, blog posts, or code, and our patents
10 (if any) will be shared with the world.”
- 11 • “Our mission is to ensure that [AGI] benefits all humanity,
12 primarily by attempting to build safe AGI and share the
13 benefits with the world.”

12 286. OpenAI, Inc.’s Charter, posted on its website, claims: “We commit
13 to use any influence we obtain over AGI’s deployment to ensure it is used for the
14 benefit of all, and to avoid enabling uses of AI or AGI that harm humanity or
15 unduly concentrate power. Our primary fiduciary duty is to humanity.”

16 287. Even in marketing OpenAI, L.P., on March 11, 2019, Defendants
17 claimed: “The General Partner’s duty to this mission and the principles advanced
18 in the OpenAI Inc. Charter take precedence over any obligation to generate a
19 profit.” OpenAI, Inc.’s website stated: “We’ve designed OpenAI LP [*sic*] to put
20 our overall mission—ensuring the creation and adoption of safe and beneficial
21 AGI—ahead of generating returns for investors. . . . Regardless of how the
22 world evolves, we are committed—legally and personally—to our mission.”

23 288. Altman and Brockman made these material, false, and misleading
24 representations of fact about the nature, characteristics, and qualities of
25 Defendants’ products and services in commercial advertising or promotion in
26 interstate commerce, namely, OpenAI, Inc.’s website, online marketing, online
27 blog posts, and Defendants’ social media.

28 289. These false and misleading statements have deceived and/or are

1 likely to deceive a substantial segment of the public.

2 290. Defendants' false and misleading claims are material because they
3 are likely to induce the relevant public to make financial and/or other
4 contributions, including the rendering of services (like the top scientists they
5 recruited) to OpenAI, Inc. in the belief they are supporting an open-source, not-
6 for-profit AI/AGI research foundation, when in fact, they are providing capital,
7 support, and/or services to what is covertly a thoroughly commercial enterprise.

8 291. Defendants' conduct constitutes false advertising and unfair
9 competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
10 § 1125(a)(1)(B).

11 292. Defendants' deceptive conduct and false and misleading claims
12 have injured and will continue to injure Musk's valuable business reputation and
13 commercial interests. Defendants intentionally concealed their wrongful
14 conduct, which prevented Musk from discovering their scheme, notwithstanding
15 his exercise of due diligence.

16 293. As a prominent and well-respected tech figure, Musk's name and
17 reputation served to attract top-tier AI scientists and engineers to OpenAI, Inc.
18 Indeed, it was Musk's reputation and track record which served to recruit
19 OpenAI, Inc.'s prominent Chief Scientist, Dr. Sutskever away from Google. But
20 as alleged hereinabove, numerous key executives at OpenAI, Inc., including Dr.
21 Sutskever, are now resigning from the supposed non-profit due to Defendants'
22 conflicted pursuit of profits over safety.

23 294. Defendants' misrepresentations, by affiliation, have harmed, and
24 will continue to harm Musk's professional standing and commercial interests
25 particularly in the AI/tech industry, eroding his ability to recruit leading AI
26 scientists and engineers, as he had done for Defendants. Such harm is
27 particularly acute in the field of AI, where the recruitment of a very limited pool
28 of top scientists and engineers is fiercely competitive and pivotal to success.

1 295. As a direct and proximate result of Altman, Brockman, and
2 OpenAI, Inc.’s conduct, acts, and omissions alleged hereinabove, Musk is
3 entitled to recover the damages he sustained and will sustain, including any
4 income, gains, compensation, profits, and advantages obtained, received, or to
5 be received by Defendants, or any of them, arising from their wrongful conduct,
6 including prejudgment interest. Musk is entitled to an order requiring
7 Defendants, jointly and severally, to render an accounting to ascertain the
8 amount of such proceeds.

9 296. As a direct and proximate result of Defendants’ wrongful conduct,
10 acts, and omissions alleged hereinabove, Musk has been damaged, and
11 Defendants have been and will continue to be unjustly enriched, in an amount
12 that shall be assessed at trial, and for which restitution and/or non-restitutionary
13 disgorgement is appropriate. Such should include the imposition of a
14 constructive trust; a declaration by this Court that Defendants are jointly and
15 severally the constructive trustee(s) for the benefit of Musk; and an order that
16 Defendants convey to Musk all of the profits, assets, property, and ill-gotten
17 gains received or to be received by Defendants, which are traceable to Musk’s
18 wrongfully acquired financial and other contributions to OpenAI, Inc.

19 297. Unless enjoined by this Court pursuant to 15 U.S.C. § 1116,
20 Defendants will continue to mislead the public and cause harm to Musk. Musk is
21 entitled to an injunction during the pendency of this action, and permanently
22 enjoining Defendants, their officers, agents, and employees, and all persons
23 acting in concert with them, from engaging in such further acts.

24 298. Defendants’ false and misleading claims are deliberate, willful,
25 fraudulent, and without extenuating circumstances. Defendants’ conduct is thus
26 an “exceptional case” within the meaning of section 35(a) of the Lanham Act, 15
27 U.S.C. § 1117(a). Musk is therefore entitled to recover three times the amount of
28 his actual damages and his attorneys’ fees and costs incurred in this action.

1 **COUNT XI: UNFAIR COMPETITION UNDER CALIFORNIA**
2 **BUSINESS & PROFESSIONS CODE §§ 17200 et seq.**

3 **(Against All Defendants)**

4 299. Plaintiff re-alleges and incorporates by reference paragraphs 1
5 through 298 inclusive, as though fully set forth herein.

6 300. Defendants engaged in unfair competition and other unlawful
7 and/or fraudulent business practices by soliciting contributions from Musk and
8 others under the false pretense that such funds would be used for the non-profit
9 purposes articulated in OpenAI, Inc.’s Certificate of Incorporation, Charter,
10 website, online marketing, blog posts, emails, and other communications.

11 301. By founding OpenAI, Inc. as a non-profit, Defendants were able to
12 solicit significant “donations,” including from Musk, to purportedly develop
13 AI/AGI, which was to be made largely open source for the public benefit and
14 good of humanity—not closed and proprietary for profit.

15 302. Defendants actively deceived Musk and the public by effectively
16 using these “donations” as free start-up capital to develop valuable technology
17 which they have concealed for their own personal gain, as described herein.
18 Such conduct has deceived, and will likely continue to deceive, the public, and is
19 unethical, immoral, substantially injurious to consumers, and violates public
20 policy.

21 303. But for Defendants’ false, misleading, and unlawful practices, Musk
22 would not have made his significant contributions to OpenAI, Inc. Defendants
23 intentionally concealed their wrongful conduct, which prevented Musk from
24 discovering their scheme, notwithstanding his exercise of due diligence.

25 304. As a direct and proximate result of Defendants’ conduct, acts, and
26 omissions alleged hereinabove, Musk is entitled to recover the damages he
27 sustained and will sustain, including any income, gains, compensation, profits,
28 and advantages obtained, received, or to be received by Defendants, or any of

1 them, arising from the wrongfully obtained contributions Musk made to
2 OpenAI, Inc., which amount vastly exceeds \$75,000, including prejudgment
3 interest.

4 305. Defendants' wrongful conduct, acts, and omissions have
5 proximately caused and will continue to cause Musk substantial injury and
6 damage, much of which cannot be reasonably or adequately measured or
7 compensated in money damages. The harm this wrongful conduct will cause to
8 Musk is both imminent and irreparable, and the amount of damage sustained by
9 Musk will be difficult to ascertain if such wrongful conduct is allowed to
10 continue without restraint. Musk has no adequate remedy at law with respect to
11 Defendants' ongoing unlawful conduct.

12 306. Pursuant to Cal. Bus. & Prof. Code § 17203, Musk is entitled to an
13 injunction during the pendency of this action, and permanently enjoining
14 Defendants, their officers, agents, and employees, and all persons acting in
15 concert with them, from engaging in such further acts of unfair competition.

16 **COUNT XII: FALSE ADVERTISING UNDER CALIFORNIA**

17 **BUSINESS & PROFESSIONS CODE §§ 17500 et seq.**

18 **(Against Altman, Brockman, and OpenAI, Inc.)**

19 307. Plaintiff re-alleges and incorporates by reference paragraphs 1
20 through 306 inclusive, as though fully set forth herein.

21 308. As described above, Altman and Brockman, in their individual
22 capacities and on behalf of OpenAI, Inc., have made materially false and/or
23 misleading representations of fact in commercial advertisements about the
24 nature, characteristics, and qualities of Defendants' products and services,
25 including that OpenAI, Inc.'s AI/AGI research and technology would be largely
26 open source for the benefit of humanity, and would not be concentrated or used
27 for private commercial gain.

28 309. Defendants knew and/or should have known their

1 communications—via OpenAI, Inc.’s website, online marketing, online blog
2 posts, and social media—were materially false and/or misleading when they
3 were made.

4 310. Defendants intended to use and did use the contributions from
5 Musk and others to fund the research and development of AI/AGI technology
6 which Defendants have kept secret from the public and have concentrated in
7 Microsoft and the OpenAI For-Profit Entities to enhance commercial profits and
8 personal gain.

9 311. Musk reasonably relied on these statements as he continued to fund
10 OpenAI, Inc., believing his contributions were going toward the AI research and
11 development project, as advertised and promoted by Defendants. Defendants’
12 conduct deceived Musk and is likely to deceive a substantial segment of the
13 public.

14 312. Defendants intentionally concealed their wrongful conduct, which
15 prevented Musk from discovering their scheme, notwithstanding his exercise of
16 due diligence.

17 313. As a direct and proximate result of Altman, Brockman, and
18 OpenAI, Inc.’s conduct, acts, and omissions alleged hereinabove, Musk is
19 entitled to recover the damages he sustained and will sustain, including any
20 income, gains, compensation, profits, and advantages obtained, received, or to
21 be received by Defendants, or any of them, arising from the wrongfully obtained
22 contributions Musk made to OpenAI, Inc., which amount vastly exceeds
23 \$75,000, including prejudgment interest.

24 314. Defendants’ wrongful conduct, acts, and omissions have
25 proximately caused and will continue to cause Musk substantial injury and
26 damage, much of which cannot be reasonably or adequately measured or
27 compensated in money damages. The harm this wrongful conduct will cause to
28 Musk is both imminent and irreparable, and the amount of damage sustained by

1 Musk will be difficult to ascertain if such wrongful conduct is allowed to
2 continue without restraint. Musk has no adequate remedy at law with respect to
3 Defendants' ongoing unlawful conduct.

4 315. Pursuant to Cal. Bus. & Prof. Code § 17203, Musk is entitled to an
5 injunction during the pendency of this action, and permanently enjoining
6 Defendants, their officers, agents, and employees, and all persons acting in
7 concert with them, from engaging in such further acts of false advertising.

8 **COUNT XIII: AIDING AND ABETTING BREACH OF**
9 **FIDUCIARY DUTY**

10 **(Against the OpenAI For-Profit Entities)**

11 316. Plaintiff re-alleges and incorporates by reference paragraphs 1
12 through 315 inclusive, as though fully set forth herein.

13 317. As a charity and persons soliciting contributions on behalf of a
14 charity, OpenAI, Inc., Altman, and Brockman each owe a fiduciary duty to
15 Musk, from whom charitable contributions were actively solicited, including
16 under Cal. Bus. & Prof. Code § 17510.8.

17 318. Altman, Brockman, and OpenAI, Inc. solicited and obtained
18 contributions from Musk by making repeated and material promises,
19 representations, and reassurances to him that they would develop AI for the
20 benefit of humanity, would predominantly open source their technology, avoid
21 concentrating it, and would not operate for the profit of any person or company,
22 as evidenced in, without limitation, the emails, corporate filings, and online
23 pronouncements alleged above.

24 319. On information and belief, Altman, Brockman, and OpenAI, Inc.
25 breached their fiduciary duties to Musk by:

- 26 a. Keeping secret the non-profit's research and development,
27 including details on GPT-4, GPT-4T, and GPT-4o's architecture,
28 hardware, training method, and training computation;

- 1 b. Exploiting Musk’s contributions, and the technological assets
- 2 funded by those contributions, in a thoroughly for-profit enterprise;
- 3 c. Licensing and/or furnishing OpenAI, Inc.’s GPT-4 and related
- 4 technology exclusively to Microsoft, concentrating it in this single
- 5 giant for-profit corporation;
- 6 d. Permitting Microsoft, a publicly traded business, to occupy a seat
- 7 on OpenAI, Inc.’s Board of Directors and otherwise to exert undue
- 8 influence and control over OpenAI’s activities;
- 9 e. Closing off OpenAI, Inc.’s technology for profit and erecting a
- 10 “paywall” excluding the public from open usage of GPT-4 and
- 11 related technology to advance Defendants and Microsoft’s own
- 12 commercial interests;
- 13 f. Self-dealing and manipulating the non-profit’s assets to enrich
- 14 themselves by, for example causing OpenAI, Inc. to excessively
- 15 patronize businesses in which Altman owns a significant interest,
- 16 for his personal enrichment; and
- 17 g. Currently working to convert the non-profit into a fully for-profit
- 18 commercial entity.

19 320. The OpenAI For-Profit Entities each had actual knowledge of the
20 fiduciary duties Altman, Brockman, and OpenAI, Inc. owed to Musk, because
21 Altman and Brockman were instrumental in their formation. The very purpose of
22 the OpenAI For-Profit Entities is to enable Altman and Brockman to operate for
23 non-charitable purposes and to circumvent the fiduciary duties they owe to the
24 donors. Further, on information and belief, Altman and Brockman have at all
25 relevant times been officers, agents, employees, and/or owners whose
26 knowledge and intent is imputed to the OpenAI For-Profit Entities.

27 321. The OpenAI For-Profit Entities provided substantial assistance to
28 Altman and Brockman, aiding and abetting their respective breaches of fiduciary

1 duty by helping them exploit OpenAI, Inc.'s intellectual property and staff for
2 Defendants' private gain, rather than advancing the non-profit's express
3 charitable purposes.

4 322. Defendants willfully aided and abetted these breaches of fiduciary
5 duty for Defendants' own benefit, and this was a substantial factor in causing
6 harm to Musk.

7 323. On information and belief, Defendants have been greatly enriched
8 by their resulting misappropriation of the non-profit's assets and their self-
9 dealing in blatant derogation of the fiduciary duties Altman, Brockman, and
10 OpenAI, Inc. owed and continue to owe Musk.

11 324. Defendants intentionally concealed their wrongful conduct, which
12 prevented Musk from discovering their scheme, notwithstanding his exercise of
13 due diligence.

14 325. As a direct and proximate result of the OpenAI For-Profit Entities'
15 conduct, acts, and omissions alleged hereinabove, Musk is entitled to recover the
16 damages he sustained and will sustain, including any income, gains,
17 compensation, profits, and advantages obtained, received, or to be received by
18 Defendants, or any of them, arising from the wrongful acquisition of Musk's
19 contributions to OpenAI, Inc., including prejudgment interest. Musk is entitled
20 to an order requiring Defendants, jointly and severally, to render an accounting
21 to ascertain the amount of such proceeds.

22 326. As a direct and proximate result of Defendants' wrongful conduct,
23 acts, and omissions alleged hereinabove, Musk has been damaged, and
24 Defendants have been and will continue to be unjustly enriched, in an amount
25 that shall be assessed at trial, but which vastly exceeds \$75,000, and for which
26 restitution and/or non-restitutionary disgorgement is appropriate. Such should
27 include the imposition of a constructive trust; a declaration by this Court that
28 Defendants are jointly and severally the constructive trustee(s) for the benefit of

1 Musk; and an order that Defendants convey to Musk all of the profits, assets,
2 property, and ill-gotten gains received or to be received by Defendants, which
3 are traceable to Musk’s wrongfully acquired financial and other contributions to
4 OpenAI, Inc.

5 327. Defendants’ wrongful conduct, acts, and omissions have
6 proximately caused and will continue to cause Musk substantial injury and
7 damage, much of which cannot be reasonably or adequately measured or
8 compensated in money damages. The harm this wrongful conduct will cause to
9 Musk is both imminent and irreparable, and the amount of damage sustained by
10 Musk will be difficult to ascertain if such wrongful conduct is allowed to
11 continue without restraint. Musk is entitled to an injunction during the pendency
12 of this action, and permanently enjoining Defendants, their officers, agents, and
13 employees, and all persons acting in concert with them, from engaging in such
14 further tortious conduct.

15 328. Defendants’ wrongful conduct constitutes oppression, fraud, and/or
16 malice under Cal. Civ. Code § 3294, entitling Musk to an award of punitive
17 damages appropriate to punish or set an example of Defendants in an amount to
18 be determined at trial.

19 **COUNT XIV: TORTIOUS INTERFERENCE WITH CONTRACT**

20 **(Against the OpenAI For-Profit Entities)**

21 329. Plaintiff re-alleges and incorporates by reference paragraphs 1
22 through 328 inclusive, as though fully set forth herein.

23 330. The OpenAI For-Profit Entities knew Musk had a valid contract
24 with Altman and OpenAI, Inc. and that the agreement required OpenAI, Inc.’s
25 technology to be predominantly open source for the benefit of humankind, not
26 for commercial gain. Aside from the name “OpenAI”—an appellation ironically
27 shared by almost all the OpenAI For-Profit Entities—these Defendants all had
28 knowledge of the charitable purpose for which Musk co-founded the non-profit,

1 as, on information and belief, Altman and Brockman have at all relevant times
2 been their officers, agents, employees, and/or owners whose knowledge and
3 intent is imputed to them.

4 331. On information and belief, the OpenAI For-Profit Entities intended
5 to disrupt Altman and OpenAI, Inc.'s performance of their contract with Musk
6 and/or knew that such disruption of their performance was certain or
7 substantially certain to occur as a result of their conduct.

8 332. The OpenAI For-Profit Entities induced OpenAI, Inc. to breach its
9 agreement with Musk and engaged in independently wrongful conduct by
10 siphoning the non-profit's most valuable assets into their for-profit apparatus. On
11 information and belief, the OpenAI For-Profit Entities currently employ much of
12 the non-profit's former staff, including Altman and Brockman, house its research
13 and intellectual property, and have facilitated rampant self-dealing.

14 333. On information and belief, Altman, a major stakeholder in
15 OpenAI's for-profit apparatus, could have donated his money to the non-profit
16 like Musk but instead, Altman put the majority of his investment in the
17 moneymaking scheme made possible by the OpenAI For-Profit Entities.

18 334. Defendants intentionally concealed their wrongful conduct, which
19 prevented Musk from discovering their scheme, notwithstanding his exercise of
20 due diligence.

21 335. As a direct and proximate result of the OpenAI For-Profit Entities'
22 conduct, acts, and omissions alleged hereinabove, Musk is entitled to recover the
23 damages he sustained and will sustain, including any income, gains,
24 compensation, profits, and advantages obtained, received, or to be received by
25 Defendants, or any of them, arising from the wrongful acquisition of Musk's
26 contributions to OpenAI, Inc., including prejudgment interest. Musk is entitled
27 to an order requiring Defendants, jointly and severally, to render an accounting
28 to ascertain the amount of such proceeds.

1 336. As a direct and proximate result of Defendants’ wrongful conduct,
2 acts, and omissions alleged hereinabove, Musk has been damaged, and
3 Defendants have been and will continue to be unjustly enriched, in an amount
4 that shall be assessed at trial, but which vastly exceeds \$75,000, and for which
5 restitution and/or non-restitutionary disgorgement is appropriate. Such should
6 include the imposition of a constructive trust; a declaration by this Court that
7 Defendants are jointly and severally the constructive trustee(s) for the benefit of
8 Musk; and an order that Defendants convey to Musk all of the profits, assets,
9 property, and ill-gotten gains received or to be received by Defendants, which
10 are traceable to Musk’s wrongfully acquired financial and other contributions to
11 OpenAI, Inc.

12 337. Defendants’ wrongful conduct, acts, and omissions have
13 proximately caused and will continue to cause Musk substantial injury and
14 damage, much of which cannot be reasonably or adequately measured or
15 compensated in money damages. The harm this wrongful conduct will cause to
16 Musk is both imminent and irreparable, and the amount of damage sustained by
17 Musk will be difficult to ascertain if such wrongful conduct is allowed to
18 continue without restraint. Musk is entitled to an injunction during the pendency
19 of this action, and permanently enjoining Defendants, their officers, agents, and
20 employees, and all persons acting in concert with them, from engaging in such
21 further tortious conduct.

22 338. Defendants’ wrongful conduct constitutes oppression, fraud, and/or
23 malice under Cal. Civ. Code § 3294, entitling Musk to an award of punitive
24 damages appropriate to punish or set an example of Defendants in an amount to
25 be determined at trial.

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1 **COUNT XV: DECLARATORY RELIEF**

2 **(Against All Defendants)**

3 339. Plaintiff re-alleges and incorporates by reference paragraphs 1
4 through 338 inclusive, as though fully set forth herein.

5 340. By reason of the foregoing facts, an actual and justiciable
6 controversy has arisen and now exists between Musk and Defendants as to
7 whether OpenAI, Inc.'s exclusive license to Microsoft is valid. Alternatively, if
8 the license is valid, an actual and justiciable controversy has arisen between
9 Musk and Defendants as to whether GPT-4, GPT-4T, GPT-4o, and other OpenAI
10 next generation large language models constitute AGI and are thus excluded
11 from Microsoft's license.

12 341. Musk contends and Defendants deny that the Microsoft license
13 violates OpenAI, Inc.'s non-profit mission and breaches the agreement between
14 Musk, Altman, and OpenAI, Inc.

15 342. Musk therefore desires a judicial determination that OpenAI, Inc.'s
16 license to Microsoft is null and void.

17 343. Musk contends and Defendants deny that GPT-4, GPT-4T, GPT-4o,
18 and other OpenAI next generation large language models constitute AGI and are
19 thus outside the scope of OpenAI, Inc.'s license to Microsoft.

20 344. Musk therefore desires a judicial determination that GPT-4, GPT-
21 4T, GPT-4o, and other OpenAI next generation large language models constitute
22 AGI and are outside the scope of the license to Microsoft, to the extent the
23 license is deemed valid by this Court.

24 345. A declaration of the Court is necessary and appropriate pursuant to
25 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, so the parties may
26 ascertain their rights with respect to the aforesaid agreement, the license, and
27 OpenAI's AGI technology.

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Musk respectfully prays for judgment against Defendants
3 as follows:

4 1. For compensatory, consequential, and statutory damages,
5 restitution, and non-restitutionary disgorgement, and any other relief that may be
6 permitted by law or equity, according to proof in an amount to be determined at
7 trial, together with interest thereon as provided by law;

8 2. For a constructive trust on Defendants' ill-gotten gains, property,
9 and assets traceable to Musk's significant contributions to OpenAI, Inc.;

10 3. For an accounting of all gains, profits, and advantages Defendants
11 have derived from their solicitation, receipt, use, and expenditure of Musk's
12 contributions to OpenAI, Inc., including the intellectual property and derivative
13 works funded by the same and from Defendants' use of the same for their benefit
14 or the benefit any third party;

15 4. For a judicial determination that OpenAI, Inc.'s license to Microsoft
16 is null and void, or to the extent it is deemed valid, that GPT-4, GPT-4T, GPT-
17 4o, and/or other OpenAI next generation large language models constitute
18 Artificial General Intelligence (AGI) and are therefore outside the scope of
19 OpenAI's license to Microsoft;

20 5. For an order compelling specific performance of Defendants'
21 contractual promises to Musk, as alleged herein;

22 6. For a preliminary and permanent injunction enjoining Defendants
23 from the unlawful, unfair, and unjust conduct alleged herein;

24 7. For treble damages pursuant to 18 U.S.C. § 1964(c);

25 8. For punitive and/or exemplary damages as provided by law;

26 9. For costs of suit;

27 10. For attorneys' fees pursuant to Cal. Civ. Proc. § 1021.5, 15 U.S.C.
28 § 1117(a), 18 U.S.C. § 1964(c), and as otherwise permitted by law; and

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11. For such other and further relief as the Court deems just and appropriate.

DATED: August 5, 2024

Respectfully Submitted,
TOBEROFF & ASSOCIATES, P.C.
By: /s/ Marc Toberoff
Marc Toberoff
Attorneys for Plaintiff Elon Musk

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury for all issues triable to a jury.

DATED: August 5, 2024

Respectfully Submitted,

TOBEROFF & ASSOCIATES, P.C.

By: /s/ Marc Toberoff
Marc Toberoff

Attorneys for Plaintiff Elon Musk