

1 MARC TOBEROFF (CA SBN 188547)
2 MToberoff@toberoffandassociates.com
3 JAYMIE PARKKINEN (CA SBN 318394)
4 JParkkinen@toberoffandassociates.com
5 TOBEROFF & ASSOCIATES, P.C.
6 23823 Malibu Road, Suite 50-363
7 Malibu, CA 90265
8 Telephone: (310) 246-3333

6 STEVEN F. MOLO (*pro hac vice*)
7 ROBERT K. KRY (*pro hac vice*)
8 JENNIFER M. SCHUBERT (*pro hac vice*)
9 MOLOLAMKEN LLP
10 430 Park Avenue
11 New York, NY 10022
12 Telephone: (212) 607-8160

10 | *Attorneys for Plaintiffs Elon Musk
and X.AI Corp.*

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

ELON MUSK, et al.,

Case No. 4:24-cv-04722-YGR (TSH)

5 Plaintiffs.

**PLAINTIFF'S ADMINISTRATIVE
MOTION TO AUTHORIZE
ALTERNATIVE SERVICE OF
DEPOSITION SUBPOENA AND
COMPEL COMPLIANCE**

1 Plaintiff Elon Musk moves for an order authorizing alternative service of a deposition
 2 subpoena on nonparty Ermira Murati, finding that Murati has been adequately served, and
 3 compelling Murati's compliance with the subpoena. Murati is an important witness. She was
 4 OpenAI's Chief Technology Officer. She was a central player in Sam Altman's 2023 ouster from
 5 OpenAI. And she appears to have managed OpenAI's relationship with Microsoft. Given her role,
 6 she is likely to have unique knowledge that is highly relevant to this lawsuit. Yet, despite Plaintiff's
 7 numerous attempts to serve Murati, she has not accepted service. Plaintiff has attempted to serve
 8 Murati a deposition subpoena in person *eleven times* at different locations. Murati's security
 9 personnel have made it clear that they "*know what the documents are*," but they have continuously
 10 refused to accept them or let Plaintiff's process servers near Murati.

11 Serving process should not be reduced to a game of cat and mouse. Given Plaintiff's
 12 diligent efforts, Murati's apparent actual knowledge of the current subpoena, and the likely futility
 13 of additional personal service attempts, Plaintiff respectfully requests the Court authorize alternative
 14 service and deem Plaintiff's latest efforts – service via FedEx overnight delivery to Murati's
 15 residence and workplace, after leaving a copy of the service packet with Murati's security team at
 16 her residence – sufficient. Plaintiff further requests the Court order compliance with the subpoena.
 17 Alternatively, Plaintiff requests an extension of time to serve Murati using any alternative measures
 18 the Court considers appropriate.

19 **I. Factual Background**

20 **a. Murati's Relevance to the Litigation**

21 According to public reporting, Murati worked at OpenAI from 2018 to 2024, until she left to
 22 found an AI company called Thinking Machines Lab.¹ Murati served as OpenAI's CTO from 2022
 23 to 2024, except for a brief period when she replaced Altman as CEO in November 2023.
 24 Deposition witnesses have testified that prior to Altman's ouster, [REDACTED]
 25 [REDACTED], including [REDACTED]

26
 27 ¹ Thinking Machines Lab was recently valued at \$12 billion. *Mira Murati's AI startup Thinking*
Machines valued at \$12 billion in early-stage funding, REUTERS (July 15, 2025),
 28 <https://www.reuters.com/technology/mira-muratis-ai-startup-thinking-machines-raises-2-billion-a16z-led-round-2025-07-15/>.

1 [REDACTED]. McCauley Tr. 84:24-85:16, 87:3-88:1, 138:3-
 2 139:5, 225:2-14; Sutskever Tr. 118:11-120:1; 128:20-129:8. Former OpenAI Board members who
 3 elected to fire Altman confirmed that [REDACTED]. McCauley Tr.
 4 221:25-225:14.

5 Murati was also involved in OpenAI's relationship with Microsoft. According to public
 6 reporting, Murati "managed the technical relationship between OpenAI and its biggest investor,
 7 Microsoft, as well as how Microsoft would use OpenAI's conversational AI in its products."²
 8 Former OpenAI board members also confirmed [REDACTED]
 9 [REDACTED]

10 [REDACTED] McCauley Tr. 272:3-4, 101:6-14.

11 **b. Plaintiff's Service Attempts on Murati**

12 Plaintiff has repeatedly tried to personally serve Murati, without success. In August,
 13 Plaintiff attempted to serve Murati a document subpoena at two different residences associated with
 14 Murati. At the first ("Residence One"), Plaintiff's process server never received an answer, despite
 15 trying on five different days. Parkkinen Decl. ¶¶2-3, Exs. 1, 2. At the second ("Residence Two"),
 16 security refused to confirm whether Murati, in fact, resided there. Parkkinen Decl. ¶¶2-3, Exs. 1, 2.

17 Plaintiff then attempted to serve Murati a deposition subpoena. On September 11,
 18 Plaintiff's process server delivered a deposition subpoena directed to Murati to a security officer at
 19 Thinking Machines Lab's office in San Francisco. Parkkinen Decl. ¶4, Ex. 4. The security officer
 20 who received the subpoena represented that he was authorized to accept service on Murati's behalf.
 21 Parkkinen Decl. ¶4, Ex. 4. But Murati never contacted Plaintiff following her employee's
 22 acceptance of service, and Plaintiff could not reach her regarding her deposition.

23 So Plaintiff tried again. Between September 15 and September 19, Plaintiff attempted to
 24 serve Murati a deposition subpoena at her workplace every day. Parkkinen Decl. ¶5, Ex. 6. On
 25 September 15, security told Plaintiff's process server that Murati was not in and refused to provide
 26

27 ² Stephanie Palazzolo and Amir Efrati, *Can Greg Brockman Find a Future Back at OpenAI?*, THE
 28 INFORMATION (Oct. 18, 2024), <https://www.theinformation.com/articles/can-greg-brockman-find-a-future-back-at-openai>.

1 a time when Murati would typically be at the office. Parkkinen Decl. ¶5, Ex. 6. Plaintiff's process
 2 server returned at a different time each day that week, but he always received a similar response.
 3 Parkkinen Decl. ¶5, Ex. 6. Plaintiff continued trying to serve Murati a deposition subpoena at her
 4 work throughout September, but the same result occurred each time. *See* Parkkinen Decl., Ex. 8.

5 Stonewalled, Plaintiff engaged investigators to search for additional addresses associated
 6 with Murati. Parkkinen Decl. ¶6. The investigators determined that Residence Two was, in fact,
 7 associated with Murati. Parkkinen Decl. ¶8. So, on September 30, Plaintiff's investigators once
 8 again attempted service there. Conner Decl. ¶¶5-15; Parkkinen Decl. ¶¶7-9, Exs. 7, 8. When
 9 Plaintiff's investigators approached Residence Two, they were confronted by staff whom they
 10 understood to be security personnel associated with the residence. Conner Decl. ¶7. When
 11 Plaintiff's investigator informed those security personnel of the time-sensitive nature of the
 12 documents and the need to deliver them, one of the security guards stated that she "know[s] what
 13 the documents are" and that the residence would not accept any documents. Conner Decl. ¶7.

14 Plaintiff's investigators returned to Residence Two later in the day. Conner Decl. ¶¶9-15.
 15 This time, as soon as Plaintiff's investigators started explaining that they were attempting "to serve
 16 Ms. Murati," the security officer walked away, saying "I'm not taking any papers." Conner
 17 Decl. ¶11. As the security officer left, Plaintiff's investigators explained that they were leaving a
 18 copy of the service packet in the security guard's vehicle—placed on the dashboard through the
 19 parked car's open window—and another copy would be coming by mail. Conner Decl. ¶¶12-15.

20 That evening, having heard nothing from Murati, Plaintiff mailed two copies of the
 21 deposition subpoena via FedEx overnight delivery. One went to Residence Two, and the other to
 22 Thinking Machines Lab's office, with delivery confirmed on October 1. Parkkinen Decl., Ex. 9.

23 **II. Argument**

24 a. **Plaintiff's Efforts Constitute Adequate Service**

25 Under Rule 45, service of a deposition subpoena is accomplished by "delivering a copy to
 26 the named person." Fed. R. Civ. P. 45(b)(1). While personal service is often considered the default,
 27 "effective service under Rule 45 is not limited to personal service." *Green v. Baca*, No. 02-cv-
 28 204744, 2005 WL 283361, at *1 n.1 (C.D. Cal. Jan. 31, 2005). Especially where good-faith efforts

1 at personal service have been made, courts routinely find that alternative methods of service satisfy
 2 Rule 45. *E.g., Toni Brattin & Co. v. Mosaic Int'l, LLC*, No. 15-mc-80090, 2015 WL 1844056, at *4
 3 (N.D. Cal. Apr. 9, 2015); *Green*, 2005 WL 283361, at *1 n.1 (collecting cases); *Sanchez v. Am.*
 4 *Media, Inc.*, No. 20-cv-2924, 2022 WL 22879634, at *2 (C.D. Cal. July 14, 2022) (collecting
 5 cases). Adequate service, those courts find, is not defined by physically catching an elusive witness.
 6 It turns instead on whether the method used is “reasonably calculated under the circumstances to
 7 provide . . . both notice and an opportunity to present objections.” *Toni Brattin*, 2015 WL 1844056,
 8 at *4; *Green*, 2005 WL 283361, at *1 n.1.

9 Plaintiff’s attempts to serve Murati easily satisfy that standard. At considerable expense,
 10 Plaintiff has engaged registered process servers and investigators to attempt personal service of
 11 Murati’s deposition subpoena at least **eight** times at Murati’s confirmed workplace and **three** times
 12 at her confirmed personal residence. Not only were those efforts “reasonably calculated” to provide
 13 notice, they appear to have **actually** provided notice to Murati. The drastic switch in attitude
 14 towards Plaintiff’s process server at Thinking Machines Lab—with security representing that it
 15 could accept service one day to stonewalling the next—suggests information about the subpoena
 16 did, in fact, reach Murati. And Murati’s security team’s conduct at her residence all but confirms
 17 the point. Little else could explain her security guard’s statements that she “know[s] what the
 18 documents are” and, as a result, would not accept them. Conner Decl. ¶7. Given that it is likely
 19 Murati is actually “aware of and [has] received the Rule 45 subpoena,” compelling attendance at her
 20 deposition is warranted. *Chambers v. Whirlpool Corp.*, No. 11-cv-1733, 2016 WL 9451361, at *3
 21 (C.D. Cal. Aug. 12, 2016) (compelling attendance at deposition notwithstanding lack of personal
 22 service where court was “satisfied” witness was aware of subpoena).

23 Even without actual notice, Plaintiff’s efforts satisfy Rule 45. Plaintiff’s sustained attempts
 24 far exceed what this court and others typically require before authorizing service through the mail.
 25 See *Toni Brattin*, 2015 WL 1844056, at *4 (authorizing service via certified mail after two attempts
 26 at witness’s workplace and four at her residence); *Chambers*, 2016 WL 9451361, at *3 (ordering
 27 attendance at deposition where “process server attempted personal service at least three times”).
 28 Plaintiff’s efforts have been specifically tailored to where Murati is likely to be. And the responses

1 Plaintiff's process servers have received at both Murati's workplace and her residence confirm that
 2 she does, in fact, work and reside at those locations. Pp. 2-3, *supra*. Unlike an ordinary employee,
 3 Murati is the founder of Thinking Machines Lab, with the authority to direct security there. Unlike
 4 an ordinary citizen, she has private security to answer—or blockade—her door. Those with
 5 resources sufficient “to insulate themselves from the public,” can render personal service “almost a
 6 practical impossibility.” *Sanchez*, 2022 WL 22879634, at *3. But that does not justify avoiding
 7 ordinary court procedures, especially where alternative forms of service are reasonably calculated to
 8 provide notice and the opportunity to object. *Id.* (authorizing service by mail). Here, the record
 9 shows the service materials were repeatedly delivered to Murati's actual workplace and residence.
 10 Parkkinen Decl., Exs. 4-10; Conner Decl. ¶¶ 5-15. Rule 45 requires nothing further.

11 Murati's testimony is non-duplicative and highly relevant. [REDACTED]

12 [REDACTED], McCauley Tr.
 13 138:3-139:6, 221:25-225:14, and the extent to which Altman was sidelining safety procedures in the
 14 pursuit of commercial interests is crucial to this case. [REDACTED]

15 [REDACTED], McCauley Tr. 272:3-4, 101:6-14, which is another critical
 16 aspect of Plaintiff's claims. Precluding Plaintiff from exploring Murati's potentially unique
 17 knowledge on those issues risks prejudicing Plaintiff. In light of Defendants' naturally superior
 18 knowledge of Murati's conduct at OpenAI, allowing Murati to avoid a deposition also threatens to
 19 disadvantage Plaintiff at trial.

20 **b. Alternatively, the Court Should Extend Plaintiff's Time to Serve Murati**

21 In the event the Court disagrees that Plaintiff's efforts constitute adequate service under
 22 Rule 45, Plaintiff respectfully requests the Court grant an extension of time in which Plaintiff is
 23 authorized to serve Murati using any alternative measures the Court considers appropriate.

24 **III. Conclusion**

25 Plaintiff respectfully requests the Court authorize alternative service of a deposition subpoena
 26 on nonparty Ermira Murati, find that Murati has been adequately served, and order Murati to comply
 27 with the subpoena. Alternatively, Plaintiff respectfully requests an extension of time in which to serve
 28 Murati using any alternative measures the Court considers appropriate.

1 DATED: October 7, 2025

Respectfully submitted,

2 TOBEROFF & ASSOCIATES, P.C.

3 /s/ Jaymie Parkkinen

4 Jaymie Parkkinen

5 *Attorneys for Plaintiff Elon Musk*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28