

## EXHIBIT 3

Elon Musk v.  
Samuel Altman

FINAL  
[CONFIDENTIAL]

September 26, 2025  
Elon Musk

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

-----  
ELON MUSK, et al.,  
Plaintiffs,

v.

SAMUEL ALTMAN, et al.,  
Defendants.

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

VIDEO DEPOSITION OF  
Elon Musk  
September 26, 2025  
San Francisco, California  
LEAD: William Savitt, Esquire  
FIRM: Wachtell Lipton Rosen & Katz

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1 Friday, September 26, 2025

2 San Francisco, California

3 - - -

4 THE VIDEOGRAPHER: This is the start of  
5 Media Number 1 in the deposition of Elon Musk in  
6 the matter of Elon Musk v. Samuel Altman in the  
7 court of the United States District Court for the  
8 Northern District of California; Case Number  
9 4:24-cv-04722-YGR.

10 This deposition is being taken at 755  
11 Sansome Street in San Francisco, California, on  
12 September 26th, 2025, at approximately 9:53 a.m.

13 My name is Jason Butko with Jane Rose  
14 Reporting, here with our court reporter,  
15 Gail Inghram, with Jane Rose Reporting.

16 Counsel can you please identify yourself  
17 and who you represent, starting with the  
18 questioning attorney.

19 ATTORNEY SAVITT: William Savitt,  
20 Wachtell Lipton Rosen & Katz, for the OpenAI  
21 defendants. With me are my colleagues Sarah Eddy,  
22 Ionnis Drivas, and Nate Cullerton.

23 ATTORNEY COHEN: Good morning. Russell  
24 Cohen for Microsoft. With me is Jay Jurata from  
25 the Dechert LLP firm.

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1                   ATTORNEY FRENTZEN: Morning. William  
2                   Frentzen here for the OpenAI defendants.

3                   ATTORNEY MOLO: Steven Molo from  
4                   MoloLamken on behalf of Mr. Musk and the  
5                   plaintiffs.

6                   ATTORNEY TOBEROFF: Marc Toberoff,  
7                   Toberoff & Associates, on behalf of Mr. Musk, the  
8                   plaintiff.

9                   ATTORNEY KRY: Robert Kry from  
10                  MoloLamken on behalf of Mr. Musk.

11                  ATTORNEY HAWES: Walter Hawes from  
12                  MoloLamken on behalf of Mr. Musk.

13                  ATTORNEY PARKKINEN: Jaymie Parkkinen,  
14                  Toberoff & Associates, on behalf of Mr. Musk.

15                  THE VIDEOGRAPHER: Will the court  
16                  reporter please swear in the witness.

17

18                  WHEREUPON,

19

                  ELON MUSK,

20                  being first duly sworn or affirmed to testify to the  
21                  truth, the whole truth, and nothing but the truth,  
22                  was examined and testified as follows:

23                  ///

24                  ///

25                  ///

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1 time in that circumstance?

2 A. If that were to happen, I would spend  
3 more time, yes.

4 Q. Because up until, then you hadn't been  
5 spending that much time; right?

6 A. There were -- the time allocation to  
7 OpenAI varied from heavy to light, depending on  
8 the needs of the company.

9 Q. Do you recall that in 2016 you  
10 committed to providing quarterly grants of  
11 \$5 million to OpenAI?

12 A. I do vaguely recall that, yeah.

13 Q. And you remember that you covered the  
14 rent and related expenses for OpenAI's use of the  
15 Pioneer Building?

16 A. Yes.

17 Q. And in the midst of these discussions  
18 about the creation of a for-profit in 2017, you  
19 suspended your \$5 million quarterly grant, didn't  
20 you?

21 A. Yes, I -- I think at that point I became  
22 concerned that OpenAI veering from its mission.

23 Q. Is that why you suspended the quarterly  
24 grant?

25 A. I -- I felt I couldn't trust Sam and

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1 discussions about a for-profit pivot in 2017;  
2 right?

3 A. Yes.

4 Q. Sticking for just a second with the  
5 document we were just looking at, if I could ask  
6 you to look at the first page of it, Mr. Musk.

7 And you see four paragraphs in,  
8 Mr. Karpathy writes:

9 "A for-profit pivot might create a  
10 more sustainable revenue stream over  
11 time."

12 Do you see that?

13 A. Yeah.

14 Q. And then he writes:

15 "The most promising option I can  
16 think of, as I mentioned here, would be  
17 for OpenAI to attach to Tesla as its  
18 cash cow."

19 Do you see that?

20 ATTORNEY MOLO: I'm sorry. Where is  
21 that? That's the next paragraph?

22 ATTORNEY SAVITT: Yes, thank you,  
23 Mr. Molo.

24 A. Yeah, I see he writes that.

25 ///

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1 BY ATTORNEY SAVITT:

2 Q. And you respond that Mr. Karpathy is  
3 exactly right, don't you?

4 A. Yes.

5 Q. You say.

6 "We may wish it otherwise, but in  
7 my and Andrej's opinion, Tesla is the  
8 only path that could even hope to hold a  
9 candle to Google. Even then the  
10 probability of being a counterweight to  
11 Google is small; it's just not zero --  
12 It just isn't zero."

13 That's what you said; right?

14 A. That's what I thought in this email,  
15 yes.

16 Q. So the probability that you assigned  
17 for OpenAI to hold a candle to Google without  
18 Tesla was zero; right?

19 A. I guess, in that moment, I did, yes.

20 Q. And you agreed with Mr. Karpathy that  
21 OpenAI needed to attach to Tesla to have any  
22 chance of being a counterweight to Google;  
23 correct?

24 A. In that moment, yes.

25 Q. And, now, on the scenario where OpenAI

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1 resigning.

2 BY ATTORNEY SAVITT:

3 Q. So you tweeted on February 17th,  
4 2019:

5 "To clarify, I've not been involved  
6 closely with OpenAI for over a year and  
7 don't have management or board  
8 oversight."

9 A. Okay.

10 Q. Is that true?

11 A. I guess so.

12 Q. You have no ownership or control of  
13 OpenAI; correct?

14 A. Yes.

15 Q. You gave up all your governance rights  
16 in OpenAI when you left the board; right?

17 A. Yes.

18 Q. After you resigned from the board, did  
19 you provide -- strike that question.

20 You were aware, weren't you, Mr. Musk,  
21 that in 2018 OpenAI began considering the  
22 formation of a capped-profit subsidiary?

23 A. I don't recall.

24 Q. You don't remember whether you came to  
25 be aware of that in 2018; is that right?

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1 BY ATTORNEY SAVITT:

2 Q. You can answer.

3 A. Yeah, I mean, I was -- I was  
4 uncomfortable with a for-profit entity, but that  
5 discomfort was by mitigated by the profit cap.

6 Q. Well, Mr. Molo wants me to ask you  
7 questions; I'll ask you questions. Let's see if  
8 I can get an answer.

9 ATTORNEY MOLO: We really don't need  
10 that.

11 ATTORNEY SAVITT: Mr. Molo, you --

12 ATTORNEY MOLO: We really do not need  
13 the external comments.

14 ATTORNEY SAVITT: Your objection --

15 ATTORNEY MOLO: Ask your question.

16 BY ATTORNEY SAVITT:

17 Q. When you learned that OpenAI had formed  
18 a capped-profit subsidiary, did you believe that  
19 that breached a commitment owed to you by OpenAI  
20 or Altman?

21 A. I was uncomfortable with that, but it  
22 didn't seem like a showstopper, because the profit  
23 was capped.

24 BY ATTORNEY SAVITT:

25 Q. And when you say it wasn't a

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1 showstopper, do you mean that that structure, at  
2 least, didn't seem to you to constitute an  
3 abrogation of a commitment or agreement that had  
4 been made to you?

5 A. It felt like a step in the wrong  
6 direction; but because it was mitigated by the  
7 profit cap, it made me uncomfortable, but not --  
8 it wasn't a showstopper at that time.

9 Q. And Altman sent you a term sheet in  
10 connection with the proposed capped-profit  
11 restructuring, didn't he?

12 A. I don't recall.

13 ATTORNEY SAVITT: Let's take a look at  
14 Exhibit 8.

15 (Whereupon, Musk Exhibit Number 8 was  
16 marked for identification and is  
17 attached hereto.)

18 (Incidental comments made off the  
19 stenographic record.)

20 A. Yes.

21 BY ATTORNEY SAVITT:

22 Q. So you see that this document was sent  
23 to you on August 31st, Mr. Musk?

24 A. Yes.

25 Q. Of 2018?

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1 THE VIDEOGRAPHER: This is beginning  
2 Media Number 5. We're back on the record at  
3 2:37 p.m.

4 ATTORNEY SAVITT: Thank you.

5 BY ATTORNEY SAVITT:

6 Mr. Musk, in 2019, you learned that  
7 Microsoft had made a \$1 billion investment in  
8 OpenAI's for-profit entity; correct?

9 A. Yes.

10 Q. Did you review the announcement that  
11 made public the \$1 billion investment?

12 A. I read the news.

13 Q. You didn't read the announcement before  
14 it was made?

15 A. I don't recall.

16 Q. Did you think that the deal was  
17 impressive?

18 A. I don't recall.

19 ATTORNEY SAVITT: Let's take a look at  
20 Exhibit 20.

21 (Whereupon, Musk Exhibit Number 20  
22 was marked for identification and is  
23 attached hereto.)

24 BY ATTORNEY SAVITT:

25 Q. Exhibit 20 is a text message exchange

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1 communication -- of text and voice.

2 Q. Did you discuss the Microsoft deal  
3 before it was announced with Mr. Altman?

4 A. I don't recall.

5 Q. Do you recall raising any concerns with  
6 Mr. Altman when the deal was announced with it?

7 A. I don't recall.

8 Q. Do you recall, at the time you learned  
9 of the Microsoft deal in 2019, telling anyone  
10 that it broke a promise that had been made to you  
11 by OpenAI?

12 A. I don't recall. No, I don't think so.

13 Q. And at the time you learned of the 2019  
14 Microsoft deal, did you believe that it did  
15 violate a commitment that had been made to you by  
16 OpenAI?

17 A. What I do recall, just the best of my  
18 recollection, the -- I felt uneasy about the deal;  
19 but I think the -- you know, the capped profit and  
20 that kind of thing, it seemed like this was  
21 simply -- that, ultimately, things would revert to  
22 the nonprofit. So -- you know, as long as things  
23 reverted to the nonprofit that would be okay.

24 Q. And I think I know what you mean,  
25 Mr. Altman -- Mr. Musk, I'm sorry. But I want to

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1 make sure I do.

2 When you say "revert to the nonprofit,"  
3 do you mean that once the caps were satisfied, the  
4 residual profits would flow to the nonprofit? Is  
5 that what you mean by that?

6 A. Yeah.

7 Q. Thank you -- excuse me.

8 Did you have an understanding as to what  
9 Microsoft would be investing its capital in?

10 A. My rough impression -- I wouldn't say  
11 it's detailed understanding -- was that Microsoft  
12 would be providing server resources like GPU  
13 resources.

14 Q. To OpenAI?

15 A. Yeah.

16 Q. And did you have any understanding as  
17 to what entity -- what the -- what the assets of  
18 the entity that Microsoft was investing in would  
19 be?

20 A. No.

21 Q. You didn't have any knowledge of that?

22 A. No.

23 Q. All right. Since the Microsoft  
24 transaction was announced in 2019, have you  
25 learned anything about it that causes you to

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1 believe that it broke a promise that was made to  
2 you by OpenAI or by Mr. Altman?

3 A. Sorry. You're referring to that  
4 specific deal or any deal?

5 Q. I'll try again because last thing I  
6 want to be is confusing.

7 Since the Microsoft deal was made  
8 apparent to you in 2019, have you learned anything  
9 about it, the Microsoft deal, that caused you to  
10 believe that it constituted a broken promise to  
11 you by OpenAI or Mr. Altman?

12 A. No, I don't think so. Well, like I  
13 said, I felt uneasy about it. But so long as  
14 there was a profit cap in place and the -- you  
15 know, the -- in a reasonable period of time, the  
16 profits would return to the -- basically, the  
17 nonprofit would -- any sort of financial benefits  
18 would accrue to the nonprofit, I think that's sort  
19 of uneasy. But it seems like, okay, ultimately,  
20 things will revert to the nonprofit so that's  
21 probably okay. Albeit it makes me uneasy.

22 Q. Was it your understanding that the  
23 revenue would revert to the nonprofit even if the  
24 nonprofit didn't exceed the ability to satisfy  
25 the capped return?

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1           A.    My understanding of the deal is very  
2 proximate. I didn't, you know, study the minutia  
3 of the deal. So I can't say that I -- I can't  
4 speak with certainty here. But, broadly, so long  
5 as the things ended up back at the nonprofit, I  
6 would be uneasy but probably ultimately okay with  
7 that as long as the nonprofit benefited in the  
8 long term.

9           Q.    And when you say "things returned to  
10 the nonprofit," Mr. Musk, do you mean the revenue  
11 that exceeded the capped profit returns?

12          A.    The revenue and then ownership of the  
13 AI, like the control of the AI would be with the  
14 nonprofit. Not the for-profit.

15                And the for-profit -- my  
16 understanding -- my understanding, very broad  
17 understanding, like not a precise understanding,  
18 is that, effectively, the for-profit would --  
19 perhaps my understanding is wrong.

20                But that the for-profit would revert --  
21 that the for-profit would effectively dissolve  
22 past a certain profit number; and then we'd be  
23 back to just having the nonprofit.

24          Q.    So your understanding was that the --  
25 or you're -- recognizing that you've made caveats

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1 about the degree of your understanding, your  
2 understanding was that after the capped profits  
3 were satisfied, the for-profit entity would  
4 essentially go away and everything that it owned  
5 would revert to the not-for-profit. Is that your  
6 understanding?

7 A. Yes. Essentially, control of the AI  
8 would -- and the revenue would revert to the  
9 nonprofit.

10 Q. And by control of the AI, you mean the  
11 intellectual property associated with the --

12 A. Not just the intellectual property, but  
13 who is in charge of the AI. Like who decides what  
14 the AI does or doesn't do.

15 Q. And given that structure, while you  
16 were somewhat uncomfortable with it, it seemed  
17 like it was not so bad. Is that fair?

18 ATTORNEY MOLO: Objection to the form of  
19 the question.

20 A. Can you say that again?

21 BY ATTORNEY SAVITT:

22 Q. Yeah. I said given that structure,  
23 even though you had some discomfort with it, the  
24 arrangement didn't seem that bad to you at the  
25 time?

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1           A.    I was uneasy, it made me a little  
2           uncomfortable. But it sounded like that it would  
3           be, ultimately, a happy ending with the control  
4           and the cash flow reverting to the nonprofit.  
5           That's -- the profit cap thing.

6           Q.    Was it critical to you that,  
7           ultimately, control would -- ultimately, it would  
8           rest with the not-for-profit? Was that  
9           critically important to you?

10          A.    Yeah, it was one of the major factors,  
11          sure.

12          Q.    Did you become aware in 2020 or earlier  
13          that Microsoft had obtained an exclusive license  
14          to GPT-3?

15          A.    What time? What date?

16          Q.    By 2020.

17          A.    Well, it I can't be exclusive -- I guess  
18          as -- because OpenAI would -- both OpenAI and  
19          Microsoft would have it.

20          Q.    Yes. I'm sorry. Yes.

21          A.    So I don't recall it being exclusive,  
22          but -- yeah.

23          Q.    Do you recall around this time tweeting  
24          that the arrangement in 2020 seemed like the  
25          opposite of open?

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1 Q. Well, let's --

2 A. That's what I read.

3 Q. Let's talk about private gain for a  
4 moment.

5 Do you believe that it's wrong for  
6 Microsoft to earn Azure fees for providing  
7 services?

8 A. No.

9 Q. Okay. Do you believe that it's --

10 A. Yeah, yeah.

11 Q. Do you have anything more to say?

12 A. I think I made the original call to ask  
13 if Satya, if he would donate some Azure credits to  
14 OpenAI.

15 Q. Right. And your preference was to deal  
16 with Microsoft rather than Amazon at the time;  
17 right?

18 A. Well, I didn't call Jeff, because, you  
19 know, he's a bit of a -- I'm not sure he's likes  
20 me to be favorable because he's got a rocket  
21 company that competes with mine.

22 Q. And I think the word you used at the  
23 time was Jeff was a tool.

24 A. Yeah. He can be, you know.

25 Q. Now --

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1 A. There's a redemption arc for all of us.

2 Q. You said earlier that nonprofits can  
3 contract with other companies for services;  
4 right?

5 A. Yes.

6 Q. And I take it the flip side is true,  
7 that for-profits can contract with nonprofits for  
8 services as well?

9 A. Yes.

10 Q. And do you understand what services  
11 Microsoft provided to OpenAI after 2019?

12 A. I don't know all of the services, but,  
13 primarily, it was GPUs.

14 Q. You have a general understanding of  
15 what it costs to provide the kinds of GPUs that  
16 are needed to train the kinds of models that  
17 OpenAI was training; right?

18 A. Yeah, it's very expensive.

19 Q. Right. I mean as the CEO of xAI,  
20 you've built Colossus. You understand the costs  
21 that's associated with that?

22 A. Yes.

23 Q. And do you have any understanding of  
24 exactly how much that cost was for Microsoft?  
25 What its investment was?

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1 speculation.

2 Q. I mean, you recognized in 2016 that  
3 Microsoft required Azure in order to continue --  
4 that OpenAI required Azure in order to continue  
5 to improve its models; correct?

6 A. 2016?

7 Q. Yes, in 2016.

8 A. I don't recall exactly which year that  
9 was.

10 Q. Do you recall Mr. Altman negotiating an  
11 agreement -- do you recall Mr. Altman negotiating  
12 an agreement for discount compute for Microsoft  
13 in September of 2016?

14 A. I don't recall.

15 Q. Do you recall going to Microsoft to  
16 obtain more compute in 2017 as you were working  
17 on the Dota 1v1 project?

18 A. I don't think -- I vaguely recall that.

19 Q. And do you recall Mr. Altman seeking to  
20 get more compute from Microsoft in 2018 as OpenAI  
21 was working on the Dota 5v5 project?

22 A. I do vaguely recall that, yeah.

23 Q. And so you understand that by the time  
24 you get to 2018 and then to 2019, the appetite  
25 for compute was increasing significantly?

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1 A. Right now, you know, it's just a little  
2 nibble, but I think that the teeth will get bigger  
3 over time.

4 Q. I want to show you another one of your  
5 posts on X. Maybe it was a tweet on Twitter at  
6 the time.

7 ATTORNEY COHEN: It is Tab 16, which I  
8 think is Exhibit 24.

9 (Whereupon, Musk Exhibit Number 24  
10 was marked for identification and is  
11 attached hereto.)

12 BY ATTORNEY COHEN:

13 Q. I think Mr. Savitt asked you about  
14 this.

15 Do you see that?

16 And why are you laughing, Mr. Musk?

17 A. Just somebody replies "Exclusive  
18 license," in quotes. "Might as well have renamed  
19 it closed AI."

20 That wasn't me. It was somebody else.

21 Q. Right. So the initial post was an  
22 article that reported that Microsoft gets  
23 exclusive license for OpenAI's GPT-3 language  
24 model; is that correct?

25 A. Yeah.

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1 Q. And that was September 24th, 2020?

2 A. Yeah.

3 Q. Somebody tagged you. And what they  
4 wrote was: "I thought OpenAI was supposed to  
5 democratize this tech, not give Microsoft an  
6 exclusive license; correct?

7 A. Yeah.

8 Q. And when you saw that, did you believe  
9 that it was inconsistent with the commitment to  
10 open source?

11 A. I mean, it did sort of ring some alarm  
12 bells.

13 Q. Right. And in response, you posted:  
14 "This does seem like the opposite of open.  
15 OpenAI is essentially captured by Microsoft."  
16 Right?

17 A. That's what I posted.

18 Q. So on September 24th, 2020, you  
19 thought Microsoft had captured OpenAI; right?

20 A. That's what it seemed like.

21 But, yeah, I do predict the tables will  
22 turn and ultimately --

23 ATTORNEY MOLO: Wait until he asks you a  
24 question.

25 A. Yeah. Sorry. Fair enough.

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1 CERTIFICATE OF SHORTHAND REPORTER

2  
3 I, Gail Inghram, Registered Diplomate  
4 Reporter, Certified Realtime Reporter,  
5 CA-Certified Shorthand Reporter Number 8635, and  
6 Notary Public, the officer before whom the  
7 foregoing proceedings were taken, do hereby  
8 certify that the foregoing transcript is a true  
9 and correct record of the proceedings; that said  
10 proceedings were taken by me stenographically and  
11 thereafter reduced to typewriting under my  
12 supervision; and that I am neither counsel for,  
13 related to, nor employed by any of the parties to  
14 this case and have no interest, financial or  
15 otherwise, in its outcome.

16  
17  
18  
19 \_\_\_\_\_  
Gail Inghram, RDR, CRR, CSR  
20 CA-CSR No. 8635  
21  
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