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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 ELON MUSK, et al.,

14 Plaintiffs,

15 v.

16 SAMUEL ALTMAN, et al.,

17 Defendants.
18

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

**PLAINTIFF’S REPLY REGARDING
AMENDED NOTICE OF REMEDIES
(DKT. 459)**

19 OpenAI’s Response to Plaintiff’s Amended Notice of Remedies misstates the record and
20 makes premature arguments over the scope of injunctive and other equitable relief that are more
21 appropriately addressed after trial. Dkt. 460. Plaintiff has consistently sought such equitable relief
22 throughout this case. The original Complaint, First Amended Complaint, and operative Second
23 Amended Complaint all demanded broad equitable relief. *See, e.g.*, Dkt. 170 ¶¶ 280, 299, 315, 404,
24 417 & prayer ¶5. Plaintiff’s January 16, 2026 Notice of Remedies expressly advised Defendants
25 of Plaintiff’s intent to seek “appropriate equitable relief from the Court, including an injunction,”
26 after trial. Dkt. 392 at 4. Restoring the OpenAI charity to its rightful role and ensuring that its
27 governance is never again corrupted are not novel requests in this case, and Plaintiff’s reiteration of
28 those requests in his Amended Notice is not prejudicial to anyone. Defendants saw those requests

1 in the Complaint; they confronted them in the preliminary injunction motion. Defendants cannot
2 reasonably fault Plaintiff’s voluntary specification – weeks before trial begins – of the details of the
3 injunctive relief he will seek after trial.

4 The immediate occasion for Plaintiff’s Amended Notice of Remedies, to which Defendants
5 take such objection in their late-night Friday filing, is this Court’s recent rulings on pretrial disputes.
6 At the pretrial conference, the Court framed the parties’ dispute as follows: “Plaintiff argues that
7 their remedy that they seek is a legal remedy. The defense argues that it’s not legal. It’s equitable.”
8 Dkt. 445 at 13. In its subsequent Pretrial Order No. 3, issued less than two weeks ago, the Court
9 ruled that the disgorgement remedy Plaintiff seeks is in fact equitable. Dkt. 456 at 1-3. Under that
10 ruling, the case now sounds fundamentally in equity: An advisory jury will decide the facts before
11 the Court fashions appropriate equitable relief.

12 Consistent with that development, Musk filed the Amended Notice of Remedies to specify
13 the injunctive and other equitable relief he seeks while keeping the focus of the case on those central
14 equitable remedies by making the OpenAI charity the beneficiary of his monetary claims. Yet
15 Defendants, having successfully insisted that Musk’s remedies are equitable, now cry foul when
16 Musk details the contours of the equitable relief he has always sought. That is the central absurdity
17 of Defendants’ position: After successfully advocating for an equitable framework, they profess
18 shock when Plaintiff files a notice that they previously demanded setting out the details of the
19 equitable relief that Plaintiff seeks.

20 Worse still, the charity’s fiduciaries now argue that Musk’s only permissible remedy is
21 *against the charity*, not them. The conflict of interest inherent in that agenda is glaring. Anyone
22 outside OpenAI’s boardroom and cap table can see that OpenAI’s use of a publicly subsidized
23 charity to lay the groundwork for a trillion-dollar IPO is wrong and must not be permitted to proceed.
24 That is precisely the subordination of OpenAI’s public mission that Plaintiff’s requests for equitable
25 relief seek to prevent. Plaintiff has been pressing those remedies throughout the case. Defendants
26 show no basis for avoiding them now.

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1 **I. PLAINTIFF HAS CONSISTENTLY SOUGHT EQUITABLE REMEDIES**

2 Plaintiff has made clear throughout this litigation that he plans to seek injunctive and other
 3 equitable relief from the Court after trial. The original Complaint, First Amended Complaint, and
 4 Second Amended Complaint all include broad demands for injunctive relief. Dkt. 1; Dkt. 32; Dkt.
 5 170 ¶¶280, 299, 315, 404, 417 & prayer ¶5. Consistent with those demands, Plaintiff’s January 16,
 6 2026 Notice of Remedies expressly stated that, “[i]f the jury finds [a] Defendant liable, Plaintiff
 7 plans to seek appropriate equitable relief from the Court, *including an injunction*,” and that “[t]hose
 8 equitable remedies would be addressed by the Court after trial.” Dkt. 392 at 4 (emphasis added).
 9 Defendants’ purported shock at the Amended Notice thus rings hollow. Plaintiff has been seeking
 10 injunctive and other equitable remedies throughout the case.

11 Defendants complain that the Amended Notice’s specification of the details of that
 12 injunctive relief has thrown a wrench into their preparations for trial. But Plaintiff does not plan to
 13 seek injunctive relief *at trial*. He plans to seek that relief *after trial*. See Dkt. 459 at 3 (“*If the*
 14 *Defendants are found [liable]*, Plaintiff will seek five forms of *post-trial equitable relief* from the
 15 Court.” (emphasis added)). Defendants can submit whatever evidence and argument they consider
 16 relevant in those post-trial proceedings. Defendants never explain how Plaintiff’s mere
 17 specification of the details of the injunctive relief he plans to seek in post-trial proceedings could
 18 prejudice their ability to prepare for the distinct issues set for trial.

19 Defendants have been well aware of Plaintiff’s post-trial plans throughout the case. In
 20 response to Plaintiff’s January 16 Notice of Remedies, OpenAI demanded that Plaintiff disclose the
 21 “‘other monetary remedies’ (in addition to punitive damages) that Plaintiff intends to seek” and “all
 22 of the ‘equitable relief’ (*in addition to an injunction*) that Plaintiff intends to seek.” Dkt. 460-2 at
 23 2 (emphasis added). That phrasing by its terms shows that OpenAI knew that Plaintiff was seeking
 24 “an injunction” and other “equitable relief.” *Id.* Plaintiff responded that “[w]e did not understand
 25 [the Court’s instructions] to be ordering us to file a binding statement of all legal and equitable relief
 26 we might seek at trial, *or to specify the precise contours of all equitable relief we might seek from*
 27 *the court after trial.*” *Id.* at 1 (emphasis added). That response confirmed that Plaintiff planned to
 28 seek “equitable relief . . . after trial,” as is the norm. *Id.* OpenAI never sought clarification from

1 the Court about its instructions and never asked the Court to impose a timetable for disclosure of
2 anticipated post-trial requests for injunctive or other equitable relief.

3 OpenAI points to Plaintiff’s statement in that email exchange that “[w]e will be including
4 remedy instructions in our proposed jury instructions” and that, “[i]f those don’t address your
5 concerns, let’s plan to discuss at the meet and confer.” Dkt. 460-2 at 1. But that statement obviously
6 referred to remedies that would be submitted *to the jury*, not requests for injunctive or other
7 equitable relief that Plaintiff would submit to the Court after trial. In any event, OpenAI received
8 Plaintiff’s proposed jury instructions, and those instructions did not include any proposed post-trial
9 requests for equitable relief. OpenAI never objected to that omission and never renewed its demand
10 for disclosure of anticipated post-trial requests, despite Plaintiff’s invitation to meet and confer. *Id.*
11 Instead, OpenAI simply let the matter drop and never raised it again for three months. OpenAI
12 complains only now, when – weeks before trial – Plaintiff specified the very details regarding post-
13 trial equitable relief that OpenAI said it wanted.¹

14 Microsoft’s suggestion (by joinder) that it was somehow blindsided by Plaintiff’s disclosure
15 is even more groundless. Dkt. 461. Microsoft identified an employee on its witness list, Yina
16 Arenas, for the *sole purpose* of calling her during post-trial proceedings on equitable remedies. *See*
17 Dk. 431 at 19 (“Microsoft would only call Ms. Arenas for any post-trial remedy proceeding.”).
18 Microsoft thus fully appreciated that there would be post-trial proceedings on equitable relief and
19 was already mapping out its evidentiary strategy for those proceedings.

20 **II. OPENAI AND MICROSOFT ARE NOT PREJUDICED BY DIRECTING**
21 **MONETARY RELIEF TO THE OPENAI CHARITY**

22 Beyond fleshing out the details of anticipated post-trial requests for equitable relief, the
23 Amended Notice also explains that – consistent with the now fundamentally equitable character of
24 this case – any monetary relief should go to the OpenAI charity. The Amended Notice does not
25 seek disgorgement from any new party or expand the relief sought against anyone. Instead, it merely

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27 ¹ Plaintiff’s counsel’s confirmation at the pretrial conference that “the remedy that [we] are
28 seeking is identical in all four claims” did not somehow waive Plaintiff’s right to seek equitable
relief after trial. Dkt. 445 at 20. Plaintiff seeks the same injunctive and other equitable relief on all
four claims and has never suggested otherwise.

1 specifies *the party to whom the disgorgement will be paid*: Rather than going to Musk, the funds
2 will go to the OpenAI nonprofit.

3 That approach promotes the fundamental remedial goal of California law to advance the
4 interests of *charities* rather than the particular plaintiff bringing a charitable trust claim (whether a
5 director, officer, donor, or the Attorney General). Cal. Corp. Code § 5142(a). The statute’s broad
6 grant of authority to “otherwise remedy” breaches of charitable trust surely includes the power to
7 return funds to the very charity from which they were stolen. *Id.* Plaintiff’s approach also keeps
8 this case focused where it should be: on Defendants’ egregious looting of a public charity that was
9 set up to develop safety-first open source AI for the benefit of all humanity. Defendants may be
10 unhappy about losing their opportunity to argue that the jury should rule in their favor to avoid
11 giving Musk a windfall. But they cannot seriously expect this Court to order that the richest man in
12 the world *must* receive Defendants’ ill-gotten gains, rather than the charity they looted.

13 Defendants’ efforts to rebut the claim that “Musk has been seeking only charity-directed
14 relief all along” attack a strawman. Dkt. 460 at 6. The only even arguable change the Amended
15 Notice of Remedies makes is to the party that would receive the proceeds of any disgorgement. The
16 relevant question is not whether there was a change in that beneficiary, but whether Defendants
17 would be prejudiced by it. Plainly, they would not. It is inconceivable that Defendants could be
18 prejudiced by directing any monetary recovery to *their own nonprofit* – a charity to which Altman,
19 at least, owes fiduciary duties – rather than to the plaintiff bringing the suit.

20 Nor is there any merit to Defendants’ argument that Plaintiff is asserting new claims against
21 new parties. The Amended Notice’s fourth request for relief seeks “an order requiring disgorgement
22 of all ill-gotten gains flowing from OpenAI’s unauthorized for-profit conversion and operations –
23 not limited to Altman and Brockman’s personal equity, but extending to all financial interests
24 improperly diverted from the charity,” including “assets obtained through transactions that
25 subordinated the nonprofit’s charitable purposes to the financial interests of private investors and
26 for-profit partners such as Microsoft.” Dkt. 459 at 4. That is not a new claim. The Second Amended
27 Complaint expressly sought disgorgement from Altman, Brockman, Microsoft, and the OpenAI for-
28 profit entities. Dkt. 170 ¶¶ 279, 298, 314, 402, 416 & p. 51 n.13. Plaintiff has pursued his

1 disgorgement claim against Microsoft throughout the case. Dkt. 393-2 (Wazzan Rep.) ¶¶ 102-106.
 2 Plaintiff set out the details of his disgorgement claims against Altman and Brockman months ago.
 3 Dkt. 427 at 38-39 (pretrial conference statement). And Plaintiff’s unjust enrichment claim against
 4 the OpenAI for-profit entities has been front and center recently because, at the Court’s direction,
 5 the parties substituted the new OpenAI for-profit entity (OpenAI Group PBC) for the existing web
 6 of OpenAI for-profit entities on that claim. Dkt. 446 at 2 ¶9(a); Dkt. 448 (stipulation). None of
 7 these claims is new.

8 OpenAI argues that, by seeking an order directing any proceeds to the OpenAI charity, Musk
 9 somehow transformed his claims into derivative ones. But Musk seeks disgorgement for the
 10 unauthorized use of *his own* charitable contributions. He is not suing on behalf of all donors or the
 11 charity as a whole. His claims are therefore direct, not derivative. *See Turner v. Victoria*, 15 Cal.
 12 5th 99, 108, 113, 124-28 (2023) (charitable trust enforcement suit under Cal. Corp. Code § 5142 not
 13 derivative); *Grosset v. Wenaas*, 42 Cal. 4th 1100, 1108 (2008) (claim is derivative where “the
 14 gravamen of the complaint is injury to the corporation, or to the whole body of its stock and
 15 property”); *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1035 (Del. 2004) (similar).
 16 Courts have broad equitable authority to order the transfer of charitable assets to advance a charity’s
 17 public mission. *See, e.g., In re Veterans’ Indus., Inc.*, 8 Cal. App. 3d 902, 918-19, 925-26 (1970)
 18 (recognizing authority to direct that trust assets “be transferred to another corporation, organization,
 19 society, or trust so that the original trust purposes can be carried out”); Restatement (Third) of Trusts
 20 § 67 (2003). Exercising that authority here does not make the suit derivative merely because
 21 charitable assets are being transferred back to the charity itself.²

22 OpenAI also incorrectly argues that Dr. Wazzan’s expert analysis supports an award only
 23 against the OpenAI nonprofit, not the OpenAI for-profit. That is not true. Dr. Wazzan’s three-step
 24 analysis determines the portion of the OpenAI *for-profit’s* (then) \$500 billion valuation that is
 25 attributable to Musk’s contributions. Dkt. 393-2 ¶¶ 8, 29, 99. Nowhere in his report does Dr.

26 _____
 27 ² The Court’s prior rulings that Musk lacked standing to bring certain *concededly* derivative
 28 claims under provisions with specific statutory criteria for derivative standing are beside the point.
 Dkt. 121 at 16 n.13; Dkt. 163 at 8. Those rulings did not address claims like the ones here that are
 based solely on Musk’s *own* contributions.

1 Wazzan say that his opinion is valid only if that amount is disgorged from the nonprofit rather than
 2 the for-profit. Why would he? If \$65 billion of the for-profit’s \$500 billion value is attributable to
 3 Musk’s unlawfully repurposed contributions, that misconduct could be remedied *either* by
 4 disgorging \$65 billion from the for-profit *or* \$65 billion from the nonprofit’s stake in the for-profit.
 5 That is an equitable question about how to implement a disgorgement order against multiple
 6 defendants, not a question about the amount of OpenAI’s wrongful gains.

7 OpenAI quotes Dr. Wazzan’s statement that “Mr. Musk is entitled to recover the wrongful
 8 gains that *OpenAI* and Microsoft obtained by misusing the charitable contributions he made to
 9 *OpenAI Nonprofit*.” Dkt. 393-2 ¶29 (emphasis added). That phrasing supports Plaintiff, not
 10 OpenAI: Dr. Wazzan recognized that Musk made his contributions to “OpenAI Nonprofit,” but his
 11 report takes no view on which “OpenAI” entity should disgorge the wrongful gains.³

12 OpenAI filed a lengthy *Daubert* motion challenging Dr. Wazzan’s opinions on numerous
 13 grounds. Dkt. 393. It also disputed whether Dr. Wazzan’s analysis supports a disgorgement claim
 14 against Altman or Brockman. Dkt. 427 at 36-38. OpenAI should not be permitted to take a third
 15 swing at Dr. Wazzan’s analysis. OpenAI has known throughout the case that Plaintiff is seeking
 16 disgorgement against the for-profit. *See, e.g.*, Dkt. 170 ¶279 & p. 51 n.13. Yet it never challenged
 17 the adequacy of Dr. Wazzan’s analysis to support that claim before now.

18 Those points apply even more forcefully to Microsoft. There is no conceivable reason why
 19 Dr. Wazzan’s analysis of *Microsoft’s* wrongful gains would depend on whether Microsoft must pay
 20 the OpenAI charity rather than Musk. Microsoft never explains why it would, and instead simply
 21 “joins” OpenAI’s response, which does not address that issue. Dkt. 461. Microsoft has now brought
 22 *two* unsuccessful challenges to Dr. Wazzan’s opinions. Dkts. 393, 415. The Court should not give
 23

24 ³ OpenAI points to one muddled exchange at Dr. Wazzan’s deposition where OpenAI asked
 25 whether Dr. Wazzan had computed wrongful gains for Altman, Brockman, “the employee vehicle,
 26 Aestas,” or “any other OpenAI defendant.” Dkt. 393-5 at 181:11-183:7. Plaintiff’s counsel objected
 27 to those questions for not specifying whether they included the OpenAI for-profit or not. *Id.* at
 28 181:18-24 (“MR. KRY: Objection. . . . Are you including the OpenAI for-profit in that question?”);
id. at 183:6 (same objection). OpenAI’s counsel refused to clarify. *Id.* at 181:25 (“I’m asking him
 a question.”). Dr. Wazzan never gave a clear response. *Id.* at 182:1 (“Yeah, I don’t follow.”); *id.*
 at 182:17 (“I’m sorry. I just don’t follow the question.”); *id.* at 183:7 (“Not specifically.”).

1 Microsoft yet another bite at the apple.

2

3 **III. OPENAI’S ARGUMENTS ON THE MERITS OF PLAINTIFF’S CLAIMS FOR**
 4 **EQUITABLE RELIEF ARE PREMATURE**

5 OpenAI’s remaining arguments focus on the *merits* of the injunctive relief Musk seeks.
 6 Those arguments are as meritless as they are premature. If the jury finds Defendants liable at trial,
 7 there will be time enough in post-trial proceedings to make submissions over what the Court should
 8 order. There is no reason to address those issues now. But if the Court is nonetheless inclined to
 9 do so, it should have no difficulty rejecting all of OpenAI’s arguments.

10 **Prohibitory Injunction.** OpenAI urges that an injunction requiring it to comply with its
 11 charitable obligations would be “exorbitant” because it would require the Court to monitor
 12 compliance on an ongoing basis. But California law expressly contemplates such remedies by
 13 authorizing courts to “enjoin” breaches of charitable trust. Cal. Corp. Code § 5142(a). Oversight
 14 mechanisms to ensure a charity complies with its obligations are thus routine features of charitable
 15 trust litigation. *See, e.g., People v. Wounded Warriors Support Grp.*, No. RG-17-856929, 2018 WL
 16 6581211, at *1-2 (Cal. Super. Ct. Nov. 6, 2018) (ordering “[a]ppointment of a receiver to manage
 17 the affairs of [defendant charities]”); *L.B. Rsch. & Educ. Found. v. UCLA Found.*, 130 Cal. App.
 18 4th 171, 176 (2005) (seeking specific performance of charitable endowment); *Smithers v. St. Luke’s-*
 19 *Roosevelt Hosp. Ctr.*, 281 A.D.2d 127, 133 (N.Y. App. Div. 2001) (same); *cf. Melendres v. Skinner*,
 20 113 F.4th 1126, 1136 (9th Cir. 2024). The Court will presumably wait until post-trial proceedings
 21 to fashion appropriate relief that ensures that OpenAI complies with its charitable obligations
 22 without entangling itself in OpenAI’s operations. But the suggestion that a court of equity *lacks*
 23 *power* to compel a charity to do what it promised has no support in the law.

24 **Removal from Office.** OpenAI argues that Plaintiff cannot seek Altman or Brockman’s
 25 removal from office because California Corporations Code § 5223 authorizes only directors,
 26 members, or the Attorney General to seek removal of a charity’s directors. But Plaintiff is not
 27 relying on that statute. Instead, Plaintiff invokes Section 5142, which grants the Court broad
 28 authority “to *enjoin, correct*, obtain damages for or to *otherwise remedy* a breach of a charitable
 trust.” Cal. Corp. Code § 5142(a) (emphasis added). OpenAI cites no authority holding that Section

1 5223 is the exclusive mechanism for removing a charity’s directors (much less an officer, which the
 2 statute does not even mention). Not every breach of charitable trust will justify removing an officer
 3 or director under Section 5142. But this one surely does, given Altman and Brockman’s egregious
 4 pattern of faithless behavior. After trial and full post-trial briefing, the Court may disagree. But the
 5 suggestion that the Court lacks even the *power* to order this remedy is meritless.

6 **Unwinding the PBC Conversion.** Finally, OpenAI argues that the Court should not unwind
 7 OpenAI’s 2025 conversion into a public benefit corporation because Plaintiff did not obtain a
 8 preliminary injunction stopping the conversion before it happened. Plaintiff’s Amended Notice
 9 cites several cases where courts ordered divestiture or other structural relief even after a transaction
 10 had closed. Dkt. 459 at 4-5. OpenAI has no response. Again, the Court can decide after trial, with
 11 the benefit of a full evidentiary record and post-trial submissions, whether Plaintiff has shown an
 12 entitlement to this relief.

13 OpenAI also accuses Plaintiff of downplaying the significance of the 2025 conversion. But
 14 Plaintiff’s nonprofit expert, Dean David Schizer, identified several negative consequences of that
 15 restructuring for OpenAI’s governance. *See* Dkt. 414-2 (Schizer Rep.) ¶¶263-268, 270-273, 275
 16 (citing two-thirds vote requirement to remove CEO and conflicting loyalties arising from PBC
 17 structure, among other defects). The one sentence of deposition testimony that OpenAI quotes –
 18 that Dean Schizer’s “concern is not this [2025] transaction itself” but rather “earlier” restructurings
 19 – was addressing only one specific issue, the nonprofit’s economic interests as against Microsoft;
 20 his point was simply that, having given up so much in the prior Microsoft deals, the nonprofit was
 21 stuck with the consequences. *See* Schizer Dep. 143:8-22; Schizer Rebuttal Rep. ¶148 (“[E]ven
 22 though OpenAI used a more robust process in connection with the 2025 restructuring, it was stuck
 23 with the unfavorable economic position it had already accepted in its prior deals with Microsoft.”).
 24 That statement in no way downplays the other objectionable features of OpenAI’s 2025 conversion.⁴

25 ⁴ Nor did Plaintiff’s counsel downplay the restructuring at the pretrial conference. The
 26 comment that “we are where we are with the status of OpenAI” and “[h]ow we got there and what
 27 the AGs have to do with it have nothing to do with the issues in the case” simply underscored that
 28 the AGs’ role in the restructuring *process* was irrelevant. Dkt. 445 at 77. And the statement that
 Plaintiff would not “get into a great deal of detail” was obviously not a disavowal of the opinions
 expressly set forth in Dean Schizer’s expert report. *Id.* at 82.

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CONCLUSION

The Court should proceed with a trial on liability and disgorgement of wrongful gains, with any proceeds going to the OpenAI nonprofit rather than to Musk himself. Plaintiff’s claims for injunctive and other equitable relief should be addressed in post-trial proceedings on a full evidentiary record. Plaintiff is submitting conforming amendments to his proposed jury instructions and verdict form to clarify that the Court will resolve the claims for injunctive and other equitable relief in separate proceedings after trial.

Dated: April 12, 2026

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By: /s/ Steven F. Molo
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SIGNATURE ATTESTATION

I hereby attest that the signatories listed above, on whose behalf this document is submitted, concur in the filing’s content and have authorized the filing.

Dated: April 12, 2026

/s/ Steven F. Molo
Steven F. Molo (*pro hac vice*)