

**SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SAN FRANCISCO**

**ELON MUSK, *Plaintiff***

**v.**

**SAMUEL ALTMAN, GREGORY BROCKMAN, OPENAI Entities, *Defendants***

**AUTO GENERATED SUMMARY OF COMPLAINT**

**TABLE OF CONTENTS**

SYNOPSIS ..... 2

NARRATIVE SUMMARY ..... 3

TIMELINE..... 14

PEOPLE &ENTITIES MENTIONED..... 16

SELECT COMMUNICATIONS ..... 19

POSSIBLE DEFENSES ..... 23

**Approximate Efficiencies Produced:**

Original Complaint: Approx. 17,000 words (35 text pages)

Synopsis ~300 words

Narrative Summary: ~3.900 words

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**SYNOPSIS**

Plaintiff Elon Musk has filed a lawsuit against several parties, including Samuel Altman, Gregory Brockman, and various entities associated with OpenAI (OpenAI, Inc., OpenAI, L.P., OpenAI, L.L.C., etc.). The complaint alleges breaches of contract, promissory estoppel, breach of fiduciary duty, unfair competition under California business laws, and seeks an accounting. Musk accuses the defendants of violating the founding principles agreed upon for OpenAI, particularly its non-profit, open-source mission aimed at developing artificial general intelligence (AGI) for the benefit of humanity. Specifically, Musk criticizes the exclusive licensing of OpenAI's technologies, like GPT-4, to Microsoft, arguing this contravenes OpenAI's commitment to openness and public benefit. The complaint outlines how OpenAI has shifted from its original mission by partnering with Microsoft in ways that Musk believes prioritize profit over public benefit, challenging the purpose for which he contributed significant funding and support to OpenAI.

The lawsuit seeks to enforce the original agreement and principles, including making OpenAI's technologies open and freely available to the public, and ensuring that OpenAI operates for the public good rather than for private profit. He alleges that the defendants' actions have contravened these principles, justifying the legal remedies sought, including a demand for a jury trial. The complaint seeks legal redress through specific performance, monetary damages, and injunctive relief to realign OpenAI with its original non-profit, humanity-benefitting commitments.

Samuel Altman and Gregory Brockman are significant in this matter because they have played crucial roles in the establishment and strategic direction of OpenAI. Allegations against them include misleading Musk and the public about OpenAI's direction and purpose, particularly concerning the development and licensing of AGI technologies. The lawsuit details how OpenAI has supposedly strayed from its founding mission under their leadership, especially after Altman's brief removal and subsequent reinstatement as CEO, a move purportedly influenced by Microsoft, a major investor in OpenAI.

**SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO**

**ELON MUSK,  
Plaintiff**

**V.**

**OPENAI, INC., OPENAI, L.P., OPENAI,  
L.L.C., OPENAI GP, L.L.C., OPENAI OPCO,  
LLC, OPENAI GLOBAL, LLC, OAI  
CORPORATION, LLC, OPENAI HOLDINGS,  
LLC,  
Defendants**

**NARRATIVE SUMMARY**

***PARTIES***

The plaintiff, previously an individual resident of California before 2019, has been a resident of Texas since 2019. Samuel Altman and Gregory Brockman, based on the plaintiff's information, are residents of San Francisco, CA. OpenAI, Inc. was incorporated in Delaware in 2015, registered as a foreign corporation in California with its main office located at 3180 18th Street, San Francisco. Also registered in California, OpenAI, L.P., was formed in Delaware in 2018 as SummerSafe, L.P., maintaining the same primary place of business as OpenAI, Inc.

OpenAI, L.L.C. and OpenAI GP, L.L.C., both formed in Delaware in 2020 and 2018 respectively, maintain their principal places of business in California. The former is registered in the state of California, while the latter's registration status isn't mentioned. OpenAI OpCo, LLC, and OpenAI Global, LLC, both formed in Delaware in 2018 and 2022 respectively, and OpenAI Holdings, LLC, formed in 2023, are registered as out-of-state limited liability company with California Secretary of State, all with primary places of businesses at 1960 Bryant Street, San Francisco. OAI Corporation, LLC, formed in Delaware, also with a primary place of business in California, does not have a mentioned registration status in California.

In this context, "OpenAI, Inc." refers solely to the non-profit entity while "OpenAI" generally refers to OpenAI, Inc., OpenAI, L.P., OpenAI, L.L.C., OpenAI GP, L.L.C., OpenAI OpCo, LLC, OpenAI Global, LLC, OAI Corporation, LLC, and/or OpenAI Holdings, LLC. The plaintiff is additionally unaware of the names and identities of Doe 1 through Doe 100.

## ***JURISDICTION AND VENUE***

The Plaintiff alleges that a large portion of the incidents, assertions, and events at the crux of this case occurred in San Francisco County, California. This location is significant as it's where most of the Defendants reside or conduct their main business operations. Additionally, the majority of related happenings and representations also transpired within the California state boundaries.

### ***GENERAL ALLEGATIONS***

#### **Overview Of The Case**

##### ***A. The Risk Of Artificial General Intelligence***

Throughout the 20th century, the U.S. economy transitioned from labor-based to knowledge-based, and further underwent a shift towards artificial intelligence (AI) value creation. Early AI, such as those designed for routing a network of roads or IBM's Deep Blue chess-playing algorithm, excelled at specific tasks but had limited general intelligence.

During the late 2000s and early 2010s, "deep learning" algorithms became implementable on inexpensive hardware, leading to a rapid advancement in AI performance across numerous projects. These algorithms, capable of speech to text translations, language translations, and image recognition, differed from predecessors in their ability to self-program, making them more versatile.

Eminent AI researchers started focusing on Artificial General Intelligence (AGI) - a concept of a general-purpose AI system mimicking the wide-ranging intelligence of humans. Elon Musk echoed Stephen Hawking's and Sun Microsystem founder Bill Joy's warnings about AGI as a severe existential threat to mankind since strong AGI has potential economic usefulness exceeding human capabilities.

In 2014, Google acquired DeepMind, a research group specializing in deep learning. Subsequent developments included AlphaZero, an advanced chess-playing algorithm which utilized "reinforcement learning" to refine its strategies. Within 24 hours, AlphaZero accomplished a superhuman level of play in not only chess, but also in shogi and Go, beating world-champion programs.

With the acquisition of DeepMind, Google became a frontrunner in the AGI race, which disturbed Musk. He forewarned that AGI in the hands of a profit-driven company like Google can present a particularly potent danger to humanity. Effectively, AGI could render competition with Google almost impossible.

### ***B. The Founding Agreement Of OpenAI, Inc.***

Mr. Altman, acknowledging the potential harm of superhuman machine intelligence (SMI) to humanity, proposed handling this issue to Mr. Musk in 2015. They, with Mr. Brockman, agreed to establish a non-profit AI lab--OpenAI. This lab, in contrast to Google, would work towards creating AGI for humanity's advantage while being an open source, refraining from secrecy for commercial reasons. This is based on the Founding Agreement which is also recorded in OpenAI's December 8, 2015, Certificate of Incorporation.

OpenAI, largely created through Mr. Musk's influence and financial support, also benefitted from the recruitment of world-class scientists and engineers, such as Chief Scientist Ilya Sutskever. Mr. Musk consistently supported OpenAI till September 14, 2020. OpenAI's preliminary research, which often involved open source communities to enhance its models, was made openly accessible.

Mr. Altman assumed OpenAI's CEO position in 2019. A year later, OpenAI permitted exclusive licensing of its GPT-3 language model to Microsoft. However, OpenAI released a detailed paper on GPT-3, allowing the community to generate similar models. Furthermore, Microsoft was granted rights only to pre-AGI technology, with the achievement of AGI remaining under OpenAI's non-profit Board's decision.

### ***C. The 2023 Breach Of The Founding Agreement***

In 2023, Defendants Mr. Altman, Mr. Brockman, and OpenAI allegedly violated the Founding Agreement. In March of the same year, OpenAI introduced its most potent language model, GPT-4, outperforming average humans on multiple standardized tests. Subsequently, Mr. Altman reportedly steered OpenAI away from its customary public disclosure of technological advancements, choosing to keep GPT-4's design confidential. This, reportedly a commercial move, made GPT-4 essentially a Microsoft proprietary algorithm, integrated into its Office suite.

Moreover, GPT-4 is believed to be an AGI algorithm and outside the scope of Microsoft's exclusive license with OpenAI from September 2020. OpenAI is also reportedly developing a more advanced model, Q\*. However, the determination of AGI attainment, which affects Microsoft's license scope, lies with OpenAI's Board.

A board coup in November 2023 dethroned Mr. Altman, reinstated him as CEO a few days later, and saw a majority of the board members resign. The new board, reportedly handpicked by Mr. Altman and approved by Microsoft, allegedly lacks significant AI expertise. As such, they're believed to be unqualified to independently determine AGI attainment.

These 2023 events reportedly breached the Founding Agreement, where OpenAI was to ensure AGI "benefits all of humanity". In contrast, OpenAI seems to function as a subsidiary to Microsoft, focused on profits instead of humanity's benefits. The company's technology serves mostly Microsoft's interests.

As Microsoft's CEO claimed, Microsoft possesses all necessary resources, even if OpenAI disappeared. This lawsuit is filed to force OpenAI to comply with the Founding Agreement and revert to developing AGI for humanity's benefit rather than for individuals or the world's largest technology company.

### *Detailed Allegations*

#### *A. Mr. Musk's Concerns Over AGI Falling Into The Wrong Hands*

Elon Musk encountered DeepMind co-founder Demis Hassabis in 2012, where discussions about the grave threats Artificial Intelligence (AI) could pose to society occurred. As a result, Musk grew deeply wary of AI potential to supersede human intelligence and endanger humanity. Even after his attempts to express these concerns with Larry Page, then-CEO of Google's parent company, he was met with indifference.

In 2013, Musk became aware of Google's intention to acquire DeepMind, a leading AI company, leading him and PayPal co-founder Luke Nosek to try to procure funds to acquire DeepMind themselves. Ultimately, they were unsuccessful, and Google acquired DeepMind in 2014.

Despite this, Musk continued to advocate for AI safety measures, engaging in dinner discussions, and reaching out to President Barack Obama on the matter. However, despite understanding from President Obama, regulation remained elusive.

In 2015, Musk met another advocate for AI safety, Sam Altman, who shared his concerns and pointed out the menacing potential of unchecked AI development. Mr. Altman had previously argued publicly for government regulation for AI safety.

In 2015, Sam Altman and Elon Musk began drafting an open letter regarding AI to the United States Government. Upon hearing rumors of this letter, Demis Hassabis reached out to Musk. Five days later, Hassabis announced the first meeting of the Google DeepMind AI Ethics Board.

The Open Letter was eventually published on October 28, 2015, and was signed by over eleven thousand individuals including Mr. Musk, physicist Stephen Hawking, and Apple co-founder Steve Wozniak.

#### *B. OpenAI, Inc.'s Founding Agreement*

On May 25, 2015, Mr. Altman emailed Mr. Musk about creating a “Manhattan Project” for Artificial Intelligence (AI) under the umbrella of Y Combinator. Mr. Altman’s email suggested the technology resulting from this project should belong to the world through a nonprofit organization. He proposed to structure the project such that the developers would receive startup-like compensation. Mr. Musk replied positively to his idea.

On June 24, 2015, Mr. Altman shared a detailed proposal with Mr. Musk concerning their AI lab concept. The mission of the proposed lab was to create the first general AI for individual empowerment and, eventually, for the good of the world. Mr. Musk expressed agreement with this proposal.

Mr. Altman succeeded in recruiting Gregory Brockman to help with the project and established a communication link between Mr. Brockman and Mr. Musk by November 2015. Mr. Brockman expressed his vision for the project as a neutral group aiming to collaborate widely, with the project's focus being on the betterment of humanity rather than any specific group or company's profit. Mr. Musk committed to funding this endeavor.

Mr. Musk suggested the name “Open AI Institute,” or simply, "OpenAI," which reflected the essence of their Founding Agreement: openness. Mr. Musk, Mr. Altman, and Mr. Brockman formalized and launched the project, with Mr. Musk advising on employee compensation packages and talent retention strategies.

The incorporation of OpenAI, Inc. occurred on December 8, 2015, confirming its nonprofit status with its mission dedicated to the benefit of the public. On December 11, 2015, the formation of OpenAI was publicly announced, naming Mr. Musk and Mr. Altman as co-chairs and Mr. Brockman as the CTO. The announcement made clear that OpenAI was a nonprofit aimed at benefiting humanity without a need for financial return.

### ***C. Mr. Musk’s Crucial Role In Getting OpenAI, Inc. Off The Ground***

On the day of OpenAI, Inc.'s public announcement, Mr. Musk stressed the importance of recruiting the best people, acknowledging in an email that despite being outmanned by competitors, they had "right on our side." As an Elon Musk supported initiative, his involvement was vital for OpenAI, Inc.'s recruitment attempts, particularly against Google/DeepMind's counter-recruitment efforts. His backing and resources were crucial for OpenAI, Inc.'s foundation.

A significant early hire was Dr. Sutskever, formerly a research scientist at Google, as Chief Scientist. After vacillating between leaving Google, a call from Mr. Musk on the announcement

day convinced him to join OpenAI, Inc. Mr. Musk then spearheaded recruitment efforts over ensuing months amid Google/DeepMind's escalating counter-offer attempts. In February, he urged Mr. Brockman and Mr. Altman to increase their recruitment offers, stressing the need to secure top talent regardless of the financial cost.

In 2016 and 2017, Mr. Musk donated over \$15 million and nearly \$20 million, respectively, to OpenAI, Inc., surpassing other donors. He was essentially funding these inflated offers to entice the best talent to join OpenAI, Inc. In total, between 2016 and September 2020, Mr. Musk contributed more than \$44 million to OpenAI, Inc.

Also, through Musk Industries LLC, Mr. Musk provided initial office space in San Francisco's Pioneer Building and covered the rental expenses for OpenAI, Inc.. He visited the firm regularly, partaking in key company events, such as the donation of the first DGX-1 AI supercomputer in 2016. He kept updated with the company's progress, and frequently offered his feedback and advice.

#### ***D. Mr. Altman And Mr. Brockman Repeatedly Reaffirm The Founding Agreement***

In 2017, Mr. Brockman and team suggested making OpenAI, Inc. a for-profit company. Mr. Musk encouraged them to either do something independent or continue with OpenAI as a nonprofit. He stated he would halt funding until they had made a definite decision. In response, Mr. Altman, Mr. Brockman, and Dr. Sutskever decided to continue as a nonprofit and committed to fundraise to support it.

On February 21, 2018, despite stepping down as a co-chair, Mr. Musk continued to contribute to OpenAI, Inc., fulfilling the Founding Agreement. For instance, he donated around \$3.5 million in 2018 and still received updates about OpenAI, Inc. In April, Mr. Altman presented a draft OpenAI Charter to Mr. Musk which outlined OpenAI's mission to ensure AGI benefits all of humanity, and pledged to use any potential influence over it for the benefit of all.

On March 11, 2019, OpenAI, Inc. announced the establishment of a for-profit subsidiary, OpenAI, L.P. Investors were informed that its primary duty was to advance the mission of the non-profit entity. Following this, Mr. Musk asked Mr. Altman to confirm he had no financial stake in the for-profit branch while he continued to financially support OpenAI, Inc. with additional donations.

On September 22, 2020, OpenAI declared its exclusive license of certain pre-AGI technology to Microsoft. OpenAI's site asserts that while AGI is excluded from IP licenses and commercial agreements with Microsoft, it is solely the OpenAI's Board who determines when AGI has been achieved.



### ***E. OpenAI's Shifting Corporate Structure***

Since OpenAI, L.P.'s introduction, OpenAI's corporate structure has increasingly complicated. OpenAI, L.L.C. was established in Delaware on September 17, 2020, with its sole member being OpenAI OpCo, LLC. On September 19, 2018, OpenAI OpCo, LLC was formed with OpenAI Global, LLC being its only member. OpenAI Global, LLC was established in Delaware on December 28, 2022 and is, based on the given information, a capped for-profit entity like OpenAI, L.P. Its two members are Microsoft Corporation and OAI Corporation, LLC.

OAI Corporation, LLC is a Delaware-formed limited liability company with OpenAI Holdings, LLC as its sole member. On March 17, 2023, OpenAI Holdings, LLC was formed and includes multiple members, such as OpenAI, Inc., Aestas, LLC, and numerous individual members. As per available information, OpenAI GP, L.L.C., registered in Delaware on September 19, 2018, allows OpenAI, Inc. to manage OpenAI, L.P. and OpenAI Global, LLC. It is fully owned by the non-profit, OpenAI, Inc. and is overseen by the non-profit's Board of Directors, prioritizing humanity over shareholders in accordance with OpenAI's charter.

It is believed that at least OpenAI, L.P. and OpenAI GP LLC were initially created to enable and finance OpenAI, Inc.'s non-profit mission as outlined in the Founding Agreement.

### ***F. The Development Of OpenAI's Technology—From AI To AGI***

OpenAI initially used reinforcement learning for gaming, successfully creating a model to beat the world champion team in Dota 2, demonstrating the potential of this technology. Meanwhile, Google created a large-language model algorithm, the Transformer, which effectively translated text by forming connections between words in different languages.

OpenAI advanced this, proving that a deep neural network could be trained on large text corpora to generate new text. OpenAI's resultant Generative Pre-Trained Transformer (GPT) and its successor GPT-2 were noteworthy in their ability to perform various tasks, moving away from the task-specific training paradigm of previous AIs. OpenAI's GPT-2 raised concerns regarding its misuse, as it could generate convincingly human-like text. However, its release was beneficial for the broader AI community with new models subsequently developed.

OpenAI's third version, GPT-3, used 175 billion parameters, a notable increase from previous models. Subsequent developments, such as Google's chain-of-thought prompting, further enhanced the models' complex reasoning capabilities.

By March 2023, OpenAI released GPT-4, proficient at reasoning and scoring highly on various tests. It displayed superior intelligence to humans on numerous economically valuable tasks, outperforming prior models like ChatGPT on novel and difficult tasks across an array of fields. Superiority was shown in Microsoft's study where, GPT-4 excelled at mathematical problems. These developments led to the suggestion that GPT-4 embody the early stages of an artificial general intelligence system.

### ***G. The Founding Agreement Is Breached In 2023***

Upon achieving AGI, contrary to the Founding Agreement's purpose of developing it for humanity's benefit, Defendants have deviated from their mission. GPT-4, which OpenAI developed, is entirely closed with limited access to information about its internal design, available only to OpenAI and Microsoft. In violation of the Founding Agreement, OpenAI and Microsoft plan to commercially exploit GPT-4 rather than making it freely available to the public. The operations of OpenAI are now veiled in secrecy, with only hints given out about future developments.

OpenAI is reportedly developing a secretive algorithm called "Q\*." According to Reuters, several OpenAI staff members have warned about Q\*'s potential power. As an AGI, it is supposedly outside OpenAI's license scope with Microsoft and must be made available for public benefit.

In November 2023, shocking events took place. Mr. Altman, OpenAI's CEO, was fired, with the board claiming a lack of transparent communication being the cause. Gaining control back, Altman reinstated himself, forcing out board members with deep technical and policy expertise in AI, replacing them with people with profit-oriented backgrounds.

Microsoft played a significant role in these developments, holding substantial leverage over OpenAI, Inc. and its Board, and demanding a board seat. OpenAI's critical non-profit mission of developing AGI for humanity's benefit collapsed overnight, replaced by a profit-driven approach.

This situation could have enormous implications for Silicon Valley, potentially setting a precedent for non-profits to be exploited for commercial gains after achieving their development milestones. OpenAI's conduct leads to a grossly unfair investment scenario significantly benefiting those exploiting this new business model.

Since these transitions, OpenAI has abandoned its initial transparency, limiting access to its key documents, thus keeping the public in obscurity about internal developments. OpenAI, once an advocate for responsible AGI development, has now become a secretive, profit-driven entity

with a potentially detrimental impact on humanity. This outcome is a stark betrayal of the Founding Agreement made when Mr. Musk co-founded and funded OpenAI.

**FIRST CAUSE OF ACTION**  
**Breach of Contract Against All Defendants**

Plaintiff made significant financial contributions, advice, and talent recruitment to OpenAI, Inc. since its establishment in 2015 through September 2020 under the Founding Agreement. This agreement clearly states that OpenAI, Inc. would operate as a non-profit committed to the development of AGI for humanitarian purposes without seeking shareholder profit maximizations and maintain an open-source technology withholding proprietary rights only for safety reasons. Documents testifying this include OpenAI, Inc.'s founding Articles of Incorporation and multiple communiques between Plaintiff and Defendants. For example, the corporation's stated purpose of funding AI technology research and Mr. Altman's assurance that the developed technology will be owned by the foundation solely for world betterment, which the Plaintiff agreed on unequivocally.

The Plaintiff accuses Defendants of violating the Founding Agreement through multiple actions like licensing GPT-4, being interpreted as a potential AGI by Microsoft's scientists, exclusively to Microsoft contrary to the humanitarian requirement of AGI development. He also alleges non-disclosure about GPT-4's technical aspects and erecting a paywall for the public access to GPT-4 prioritizing Defendants and Microsoft's private business interests over the open-source agreement. Furthermore, he accuses the Defendants of allowing Microsoft to occupy a seat on OpenAI, Inc.'s Board of Directors, thereby influencing OpenAI's non-profit activities.

The Plaintiff claims to have incurred damages, exceeding \$35,000 due to these breaches, the exact amount of which will be disclosed at trial. Additionally, he seeks specific performance of Defendant's contractual responsibilities.

**SECOND CAUSE OF ACTION**  
**Promissory Estoppel Against All Defendants**

The Plaintiff revisits and includes by reference necessary elements of this Complaint for his Promissory Estoppel claim against all Defendants. It's alleged that the Defendants continually promised that OpenAI, Inc., in order to persuade the Plaintiff to invest time and millions of dollars, would be a non-profit organization developing Artificial General Intelligence (AGI) for humanity's advantage and not for shareholder gains. Defendants also vowed that OpenAI would operate on an open-source basis, striking a balance with safety, and wouldn't privately and commercially withhold its technology. Defendants expected the Plaintiff to trust their assurances, in turn, providing funding and resources to OpenAI, Inc.

The Plaintiff stated that he relied on the false promises of the Defendants to his disadvantage: donating his time, resources and millions of dollars to OpenAI under the premise that it would endure as a non-profit entity committed to developing open-source, secure AGI for public enrichment. However, OpenAI reneged on this "irrevocable" vow, withholding pivotal information from the public and licensing its AGI algorithms to the largest profit-driven company contrary to the assertions made to the Plaintiff.

To prevent injustice, the Plaintiff insists the Defendants' repeated pledges should be enforced. If enforcement is not feasible, the Plaintiff requests the Defendants reimburse at least an amount equal to the misused funds and to offset the third-party beneficiaries' damage from the Founding Agreement. This amount is unknown and if required, will be determined in court but is thought to be well over the court's jurisdictional minimum of \$35,000.

### **THIRD CAUSE OF ACTION**

#### **Breach of Fiduciary Duty Against All Defendants**

The plaintiff is incorporating by reference portions of the complaint to assert a breach of fiduciary duty claim against all defendants, based on California law. The defendants' duties include using contributions for their intended purposes (Cal. Bus. & Prof. Code § 17510.8).

Breaches include: a) the defendants' utilization of the plaintiff's funds and intellectual property for profit-driven purposes, in direct opposition to the contract's provisions and the intention of benefiting the public. An instance of this is the exclusive licensing of GPT-4 to Microsoft. This product, as per Microsoft's scientists, could be an early version of an artificial general intelligence system, but this goes against OpenAI's irrevocable non-profit mission for humanity's benefit; b) the defendants' failure to disclose specifics about GPT-4 and the requirement for per-token payment for usage, despite an agreement that OpenAI's technology would be open-source, balancing only countervailing safety considerations; c) allowing Microsoft to hold a place on OpenAI's Board of Directors, exerting disproportionate control over its non-profit activities, including the decision on making the technology freely accessible to the public.

These breaches of fiduciary duty have caused damages exceeding \$35,000 to the plaintiff and third-party beneficiaries, with the exact amount to be determined in trial. The plaintiff is seeking specific performance of the defendants' contractual obligations as a remedy.

**FOURTH CAUSE OF ACTION**  
**Unfair Business Practices - Cal. Bus. & Prof. Code §§ 17200 et seq.**  
**Against All Defendants**

Unfair business practices committed by defendants are cited under Cal. Bus. & Prof. Code § 17200. Plaintiff incorporates relevant claim paragraphs and underlines the defendants' engagement in deceptive tactics like soliciting donations under false pretenses, violating the Founding Agreement's fundamental purposes. This unfair competition and mischief led Plaintiff to uninformed contributions to OpenAI, Inc., thereby deceiving him and potentially, other public members. Such competition is alleged to breach Cal. Bus. & Prof Code § 17510.8. The ill-acts resulted in Plaintiff's damage and paved the path for their entitlement to recover received proceeds. Defendant's shady practices resulted in a need for restitution and disgorgement, creating a demand for prejudgment interest as per Business & Professions Code § 17200. The plaintiff also seeks an injunction to halt future similar activities and an order compelling specific performance.

**FIFTH CAUSE OF ACTION**  
**Accounting Against All Defendants**

The plaintiff reasserts and refers by reference only parts of this Complaint necessary for his claim for accounting. As previously mentioned, over multiple years, the defendants solicited millions of dollars in donations from the plaintiff with promises that OpenAI, Inc. would permanently remain a nonprofit dedicated to making safe AGI for the public good. They assured that all donated funds would be used in line with this "irrevocable" mandate. The defendants are believed to have solicited millions of dollars in donations from others based on these same promises.

However, in violation of the intended purpose of the plaintiff's contributions, the defendants used the funds received from the plaintiff, including intellectual property and derivative works funded by these funds, for profit-making purposes. This includes use for the benefit of private individuals and likely the individual defendants themselves, which directly breaches both the substance and the express intent of the parties' agreement.

Defendants hold the financial information regarding the use of the charitable contributions made by the plaintiff and others to OpenAI, Inc., including the intellectual property and derivative works funded by these funds. The plaintiff is currently unable to determine his interest in or the usage, allocation, or distribution of assets without an accounting. Therefore, the plaintiff is entitled to an accounting.

**TIMELINE**

This timeline highlights the evolution of OpenAI from its altruistic, open-source origins to a more privatized entity, underlined by its complex relationship and agreements with Microsoft, culminating in significant organizational changes in 2023, including Altman's brief ouster and reappointment. The timeline reflects a story of ambition, contention, and the significant influence of corporate interests on the development and deployment of AI technology.

2012

- Elon Musk discusses AI dangers with Demis Hassabis of DeepMind.

2013

- Discussions between Musk and Larry Page about AI risks.
- Google announces intent to acquire DeepMind.

2014

- Musk and Luke Nosek attempt to purchase DeepMind to prevent the Google acquisition.

2015

- January: DeepMind acquisition by Google finalized.
- May 25: Sam Altman emails Musk about starting an AI non-profit.
- June 24: Altman sends Musk a detailed proposal for the AI lab.
- June-November: Altman, Musk, and Gregory Brockman discuss and develop the concept for OpenAI.
- November 2015: Discussions include setting up a neutral AI research group.
- December 8: OpenAI, Inc. is officially incorporated.
- December 11: OpenAI's formation is publicly announced, with Musk, Altman, and Brockman highlighted as key figures.

2016-2020

- Musk actively recruits and funds OpenAI, contributing more than \$44 million.

September 19, 2018

- Formation of OpenAI, L.P., and related entities.

September 17, 2020

- Formation of OpenAI, L.L.C.

## 2020

- September 22: OpenAI enters into an agreement with Microsoft, licensing Generative Pre-Trained Transformer (GPT)-3 language model.

## 2022

- December 28: Formation of OpenAI Global, LLC.

## 2023

- March: Release of GPT-4.

- Throughout 2023: Significant development in AI, including GPT-4 achieving high scores on various exams.

- March 17: Formation of OpenAI Holdings, LLC.

- November 17: OpenAI, Inc.'s Board initially fires Sam Altman.

- November 21: Altman is reinstated as CEO after a series of dramatic events, including pressure from Microsoft and other shareholders.

## 2024

- February 28: Commentary on Microsoft's substantial market cap and implications for OpenAI.

- February 29: The date the document alleging these events was filed.

**PEOPLE MENTIONED**

Elon Musk	Adam D'Angelo	Larry Page
Samuel Altman	Tasha McCauley	Luke Nosek
Gregory Brockman	Microsoft Corporation	Barack Obama
Ilya Sutskever	Gary Kasparov	Bret Taylor
Kevin Dougherty	Stephen Hawking	Larry Summers
Satya Nadella	Bill Joy	Jonathan Levy
Helen Toner	Demis Hassabis	

**Elon Musk (Plaintiff)**

Alleged to be a founding figure behind OpenAI, Inc., contributing substantial funds and resources under the belief OpenAI would remain a non-profit entity aimed at developing Artificial General Intelligence (AGI) for the benefit of humanity. He accuses the defendants of breaching the founding agreement, thereby repurposing OpenAI towards profit-driven motives contrary to the initial commitments.

**Samuel Altman**

Alleged to be a central figure in OpenAI, initially sharing concerns over AGI with Musk and purportedly agreeing to the non-profit and open-source nature of OpenAI, termed as part of the "Founding Agreement." Altman is accused of later pivoting OpenAI towards profit-driven objectives, especially in partnership with Microsoft, and of being reinstated as CEO under controversial circumstances opposed to the Foundation Agreement. The Complaint details Altman's early conversations with Elon Musk, in which he expressed concerns about artificial intelligence (AI) and its potential dangers to humanity. He proposed the creation of a non-profit AI lab that would develop AI for the benefit of humanity rather than for profit. Altman became CEO of OpenAI, Inc. in 2019 and is implicated in the alleged departure from OpenAI's founding principles and commitments by, among other things, licensing GPT-3 technology exclusively to Microsoft without making it fully open-source according to the original mission (paragraphs 16, 23, 24, 28).

**Gregory Brockman**

Along with Altman and Musk, he is alleged to be part of the founding trio behind OpenAI, agreeing to the non-profit and humanity-benefitting ethos of the organization but later implicated in the shifts towards profit orientation. He was involved in the initial email exchanges leading to the establishment of OpenAI and its commitment to open-source AI development for public benefit (paragraphs 23, 53, 54).



### Ilya Sutskever

Alleged to have been recruited to OpenAI as Chief Scientist as part of its founding actions, with his recruitment cited as a significant early milestone for the organization. Cited as one of the world's leading scientists and engineers recruited to work at OpenAI, Inc. Tesla continued to support the non-profit under the conditions that it adhered to the founding agreement, which included Sutskever's participation (paragraphs 23, 59).

### Satya Nadella (Indirectly Involved)

The CEO of Microsoft, cited indirectly in the complaint for his alleged involvement in exerting pressure and influence over OpenAI's operational direction and for Microsoft's potential benefits from OpenAI's technologies. He is alleged to have been furious upon learning of Altman's firing. He reportedly made efforts to ensure Altman's reinstatement at OpenAI. Nadella's statements are cited to demonstrate Microsoft's intertwined relationship with OpenAI and its strategic leveraging of IP rights through their partnership (paragraphs 100, 102, 107).

### Helen Toner, Adam D'Angelo, Tasha McCauley

Former members of OpenAI, Inc.'s Board, purportedly ousted in the alleged board coup to reinstate Samuel Altman and redirect OpenAI towards profit-driven activities. They are cited in the context of demonstrating changes in OpenAI's governance structure which diverged from its founding principles and aligned more closely with commercial interests (paragraphs 96, 97, 110).

### Microsoft Corporation

Implicated as a significant for-profit partner and purported beneficiary of OpenAI's shift from its founding non-profit principles towards proprietary, profit-driven operations, including exclusive licenses. Microsoft is extensively referenced throughout the Complaint, especially concerning its strategic partnership with OpenAI. It is alleged that Microsoft benefited directly from the developments and decisions at OpenAI that deviated from the original open-source and public benefit mission, particularly in relation to GPT-3 and GPT-4 technologies.

### OpenAI

The various OpenAI entities mentioned (OpenAI, Inc., OpenAI, L.P., etc.) represent the complex organizational structure of OpenAI that has evolved over time. These entities are alleged to have been used to facilitate the transition of OpenAI from a non-profit entity dedicated to open-source development and the broad benefit of humanity to what Musk perceives as a for-profit entity closely aligned with Microsoft, thereby violating the foundational commitment made when OpenAI was established.

#### Gary Kasparov

Mentioned in the context of historical advancements in AI, specifically the event in 1996 when IBM's Deep Blue AI program defeated Kasparov, who was then the world chess champion. This is used to illustrate the evolving capabilities of AI systems.

#### Stephen Hawking

Referenced along with Bill Joy as having previously raised concerns about the existential threats posed by Artificial General Intelligence (AGI), which aligns with Musk's concerns and motivations for engaging with OpenAI.

#### Bill Joy

Cited similarly to Stephen Hawking, as someone who had earlier voiced apprehensions regarding the dangers of AGI to humanity.

Mentioned in the narrative outlining Elon Musk's interactions and efforts to advocate for or against certain developments in the AI space. These mentions primarily serve to provide context to Musk's motivations, actions, and the formation of OpenAI:

#### Bret Taylor and Larry Summers

Identified as part of the new board of OpenAI post-November 2023 events described in the complaint.

#### Jonathan Levy

Listed as the incorporator of OpenAI, Inc., in the certificate of incorporation attached as Exhibit 1 to the complaint.

#### Demis Hassabis

Discussed regarding Musk's meeting concerning the threats of AI and Google's acquisition of DeepMind.

#### Larry Page

Mentioned in conversations with Musk about AI risks.

#### Luke Nosek

Noted as trying with Musk to fund DeepMind to preempt its acquisition by Google.

#### Barack Obama

Referenced as someone Musk reached out to for discussing AI safety.

**SELECT COMMUNICATIONS CITED**

(With paragraph references)

23. "[d]evelopment of superhuman machine intelligence (SMI) is probably the greatest threat to the continued existence of humanity. There are other threats that I think are more certain to happen . . . but are unlikely to destroy every human in the universe in the way that SMI could." - This is a direct quotation, presumably from Mr. Altman, communicating his perspective on the threat of superhuman machine intelligence (SMI).

32. "If OpenAI disappeared tomorrow.", "We have all the IP rights and all the capability.", "We have the people, we have the compute, we have the data, we have everything.", "We are below them, above them, around them."

34. Conversation: Elon Musk and Demis Hassabis discussed the greatest threats facing society, with Mr. Hassabis emphasizing the potential dangers of AI's advancement.

35. Conversation/Quotation: Following their conversation, an unidentified investor reportedly remarked after meeting with Mr. Hassabis and investors, "the best thing he could have done for the human race was shoot Mr. Hassabis then and there."

36. Conversation/Quotation: Mr. Musk and Larry Page discussed AI dangers. In particular, Mr. Musk warned that "artificial intelligence-systems might replace humans, making our species irrelevant or even extinct." Larry's response was that this would be "the next stage of evolution" and called Musk "specist"—favoring humans over machines. Mr. Musk replied, "Well, yes, I am pro-human."

38. Conversation/Quotation: Mr. Musk and Luke Nosek attempted to persuade Mr. Hassabis not to sell DeepMind to Google; Mr. Musk stated, "[t]he future of AI should not be controlled by Larry [Page]."

40. Conversation: Mr. Musk and President Obama met in 2015 to discuss AI and its potential dangers.

44. Quotation: On February 25, 2015, Mr. Altman expressed his concern about "superhuman machine intelligence" and criticized dismissive attitudes towards it.\*\*\*B. OpenAI, Inc.'s Founding Agreement\*\*\*

46-47. Conversation/Email: In April 2015, Mr. Hassabis and Mr. Musk exchanged messages regarding an open letter addressed to the President calling for AI regulation. Mr. Musk justified his stance, stating: "If done well, it may very well accelerate AI in the long term. Without the

public comfort that regulatory oversight provides, there could be a situation where an AI causes great harm and thereafter AI research is banned as dangerous to public safety.”

50. Email from Mr. Altman to Mr. Musk on May 25, 2015: “[b]een thinking a lot about whether it’s possible to stop humanity from developing AI. I think the answer is almost definitely not. If it’s going to happen, it seems like it would be good for someone other than Google to do it first.” He proposes a "Manhattan Project" for AI. Mr. Musk responded, “Probably worth a conversation.”

51. Email from Mr. Altman to Mr. Musk on June 24, 2015. He proposes a detailed plan for a new AI lab, stating: “The mission would be to create the first general AI and use it for individual empowerment—ie, the distributed version of the future that seems the safest. More generally, safety should be a first-class requirement.” “The technology would be owned by the foundation and used ‘for the good of the world’[.]” He proposed a governance structure. Mr. Musk responded, “Agree on all.”

53. Email from Mr. Brockman to Mr. Musk in November 2015. Mr. Brockman expresses his hopes for the project, saying: “I hope for us to enter the field as a neutral group looking to collaborate widely and shift the dialog towards being about humanity winning rather than any particular group or company. (I think that’s the best way to bootstrap ourselves into being a leading research institution.)” Mr. Musk’s response to Mr. Brockman was to commit funding.

57. The public announcement of OpenAI, Inc. on December 11, 2015. It mentions that Mr. Musk and Mr. Altman were named as co-chairs and Mr. Brockman as the CTO. It also features this quotation around its mission: “Our goal is to advance digital intelligence in the way that is most likely to benefit humanity as a whole, unconstrained by a need to generate financial return. Since our research is free from financial obligations, we can better focus on a positive human impact.” No explicit emails are mentioned.\*\*\*C. Mr. Musk’s Crucial Role In Getting OpenAI, Inc. Off The Ground\*\*\*

58. Mr. Musk: “[o]ur most important consideration is recruitment of the best people.”, helping with the recruiting effort would be his “absolute top priority 24/7.”, “[w]e are outmanned and outgunned by a ridiculous margin by organizations you know well, but we have right on our side and that counts for a lot. I like the odds.”

60. Email from Mr. Musk to Mr. Brockman and Mr. Altman: “[w]e need to do what it takes to get the top talent. Let’s go higher. If, at some point, we need to revisit what existing people are getting paid, that’s fine. Either we get the best people in the world or we will get whipped by Deepmind. Whatever it takes to bring on ace talent is fin[e] by me. Deepmind is causing me extreme mental stress. If they win, it will be really bad news with their one mind to rule the world philosophy. They are obviously making major progress and well they should, given the talent level over there.”

61. Comment from Mr. Musk: When he told Mr. Brockman and Mr. Altman to go “higher” in their offers and “do what it takes to get the top talent,” he was the one funding those higher offers.

63. Mr. Musk told Mr. Brockman, Dr. Sutskever, and Mr. Altman “[e]ither go do something on your own or continue with OpenAI as a nonprofit. I will no longer fund OpenAI until you have made a firm commitment to stay or I’m just being a fool who is essentially providing free funding to a startup. Discussions are over.”

64. Mr. Altman told Mr. Musk “[I] remain enthusiastic about the non-profit structure!”

66. The draft charter described OpenAI’s mission as to ensure that AGI “benefits all of humanity.” It stated, “We commit to use any influence we obtain over AGI’s deployment to ensure it is used for the benefit of all, and to avoid enabling uses of AI or AGI that harm humanity or unduly concentrate power. Our primary fiduciary duty is to humanity. We anticipate needing to marshal substantial resources to fulfill our mission, but will always assiduously act to minimize conflicts of interest . . . that could compromise broad benefit.”

67. Prospective investors were notified of an “important warning” at the top of the summary term sheet that the for-profit entity “exists to advance OpenAI Inc.’s [the non-profit’s] mission of ensuring that safe artificial general intelligence is developed and benefits all of humanity. The General Partner’s duty to this mission and the principles advanced in the OpenAI Inc. Charter take precedence over any obligation to generate a profit.”

68. Mr. Musk reached out to Mr. Altman asking him to “be explicit that I have no financial interest in the for-profit arm of OpenAI.”

124. “The specific purpose of this corporation is to provide funding for research, development and distribution of technology related to artificial intelligence. The resulting technology will benefit the public and the corporation will seek to open source technology for the public benefit when applicable. The corporation is not organized for the private gain of any person.” (Ex. 1 at 1)

Mr. Altman stated: “The mission would be to create the first general AI and use it for individual empowerment—ie, the distributed version of the future that seems the safest. More generally, safety should be a first-class requirement. . . . The technology would be owned by the foundation and used ‘for the good of the world’[.]” Plaintiff replied: “Agree on all.” (Ex. 2 at 1)

133. Restates previous allegations and general statement for breach of fiduciary duty claim.

134. States the defendants' alleged violation of their fiduciary duties, discussing misuse of funds and intellectual property, lack of public disclosure, and permitting undue influence from Microsoft.

135. Addresses the impact of the defendants' alleged breach, stating unnamed damages exceeding the court's jurisdictional minimum.

136. Declaration of the plaintiff's intent to seek specific performance as a remedy for the defendants' alleged breaches.\*\*\*FOURTH CAUSE OF ACTION\*\*\*

## **POSSIBLE DEFENSES TO ALLEGATIONS OPEN SOURCE PROMISES BREACHED**

1. ***OpenAI's Founding Agreement and Principles***: The complaint details the Founding Agreement and emphasizes the initial commitment to developing AGI for the benefit of humanity, stating OpenAI's intention to balance open-source practices with safety considerations (Para 24, 25, 26). This shows that from its inception, OpenAI had a dual focus on benefiting humanity and considering safety, which can argue against allegations that it entirely broke its promise to open-source technology.

2. ***Public Releases and Efforts to Benefit the Public***: It's highlighted that initial research by OpenAI was performed openly, providing free and public access to designs, models, and code, fostering communities to enhance and extend the models released by OpenAI (Para 27). Furthermore, the announcement of creating a for-profit subsidiary explicitly stated that this entity "exists to advance OpenAI Inc.'s mission of ensuring that safe artificial general intelligence is developed and benefits all of humanity" (Para 67). This can be used to demonstrate OpenAI's commitment to balancing open-source practices with safeguarding against potential misuse of AI technologies.

3. ***Safety and Proprietary Considerations Leading to Restriction***: The document refers to the release of GPT-2 and the subsequent decision not to immediately release the model, citing concerns over its potential misuse. This decision reflects a shift towards prioritizing safety over open-source policies (Para 81). The distinction between pre-AGI technologies and AGI, with AGI being excluded from IP licenses or commercial terms with Microsoft (Para 69), indicates an ongoing effort to distinguish between technologies that can be safely shared and those that, due to their potential, might require more controlled handling. This can counter allegations by highlighting the balance OpenAI seeks between openness and safety concerns.

4. ***Allegations of Misrepresentation and Breach***: While the complaint focuses on allegations of breach of the Founding Agreement, the communications and intentions articulated by OpenAI concerning open source practices and safety considerations provide a basis to argue that OpenAI's actions were consistent with a nuanced approach to this commitment. Specifically, it illustrates a prioritization of global safety and ethical considerations over a rigid adherence to open-source in situations where such adherence might lead to broader societal risks.

5. ***\*\*License Agreement with Microsoft and AGI Exception\*\****: The nature of the exclusive licensing agreement with Microsoft did not apply to any AGI technology, only pre-AGI, establishing a safeguard to keep AGI developments for broader public benefit rather than proprietary advantage (Para 69, 89, 90). This element explicitly shows OpenAI's intention to protect its ultimate goal regarding AGI from becoming a commercial tool, which is in line with their initial commitment to benefit humanity.

By presenting these arguments, the objective would be to illustrate that OpenAI's commitments to open-source technology were significantly influenced and occasionally constrained by legitimate ethical, safety, and proprietary considerations. This nuanced approach demonstrates an intention to balance open innovation with the responsible development and deployment of potentially transformative and risky AI technologies, countering allegations of outright breaking promises regarding open sourcing.



## **POSSIBLE GENERAL DEFENSES**

Potential defenses that could be asserted by Defendants Altman, Brockman, and OpenAI:

***Compliance with Founding Agreement:*** They could claim that all of their actions complied with the founding agreement and other legal agreements, and did not divert from the mission focusing on public benefit.

***Non-Profit to For-Profit Transition Defense:*** They could argue that the transition from non-profit to for-profit was legal, done in good faith, and necessary for OpenAI's mission.

***No Misuse of Funds or Intellectual Property Defense:*** They could argue that all funding and intellectual property assets were managed appropriately.

***Proper Disclosure & Independence:*** They could argue that they maintained appropriate disclosure levels and that any partnerships were made independently, without undue influence.

***Advocate for Societal Benefits of AGI:*** Demonstrate intent to develop AGI responsibly for public good, emphasize the commitment to research and safety protocols, and emphasize public transparency and open collaboration.

***Emphasize AGI Distribution Risks and Innovation Rights:*** While demonstrating preventive measures against misuse, the defense could invoke the broader principle of the right to innovate and argue that AGI innovation should not be halted by unsubstantiated fears.

***Interpretation of Founding Agreement:*** They could argue that the agreement's language allows for flexibility as the AI landscape and the organization evolved.

***Funding Necessity:*** They could claim that seeking funding from external partners like Microsoft was necessary to marshal resources to fulfill the company's mission.

***Fiduciary Duty Compliance:*** They could argue that all actions taken were done professionally and in line with company's best interests.

***Role Relevance:*** They may underline their initial roles and the growth of the company beyond the reliance on any one individual's contributions.

***Legal Compliance:*** In case Mr. Musk raised concerns over the legality of their actions, the defense might provide evidence that all operations were within the bounds of relevant laws and regulations.

**Remediation Actions:** If the deviation is demonstrable, the defendants might offer remedial actions that would redirect OpenAI back towards its original mission.

**Board Decisions and Good Faith Actions:** The defendants may defend board changes as legitimate and lawful under their corporate governance, asserting that such actions taken were necessary for sound corporate management and that board members were selected for their ability to contribute towards the mission, and not necessarily for their level of AI expertise.

**Safety and Ethical Considerations:** This defense emphasizes that secrecy over the internal workings of OpenAI is driven by its commitment to ethics and safety.

**Recruitment and Salary Decisions Defense:** Evidence related to recruitment and offers could be presented in alignment with industry standards for securing top talent.

**Use of Funds Defense:** Counts on defending the proper use of expenditure on company's progression.

**Changes in Strategy and Company Structure:** Given company's best interest in mind, the shift in strategy aligning with proper managerial discretion is a solid defense.

**Benefit for Public:** The defendants could prove the benefits technology brought to the public, which, in turn, aligns with the company's mission.

**Denial of Allegations:** They could deny all allegations, arguing that the complaint mischaracterizes events or the intent behind their actions.

**Affirmative Defenses:** They could assert affirmative defenses, arguing that their actions were in compliance with agreements and the law.

**Lack of Standing:** They could argue that Musk does not have the legal standing to sue for breach of agreement or fiduciary duty.

**Statute of Limitations:** They could claim that the statute of limitations has expired for any alleged breaches.

**Counterclaim Against Musk:** They might include counterclaims against Elon Musk if there are grounds suggesting his actions caused harm to OpenAI or interfered with its operation.