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GLOBAL LLC, OAI CORPORATION, LLC, AND
14 OPENAI HOLDINGS LLC

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN FRANCISCO
17

18 ELON MUSK, an individual,
19 Plaintiff,
20 v.
21 SAMUEL ALTMAN, an individual, GREGORY
BROCKMAN, an individual, OPENAI, INC., a
22 corporation, OPENAI, L.P., a limited partnership,
OPENAI, L.L.C., a limited liability company,
23 OPENAI GP, L.L.C., a limited liability company,
OPENAI OPCO, LLC, a limited liability
24 company, OPENAI GLOBAL, LLC, a limited
liability company, OAI CORPORATION, LLC,
25 a limited liability company, OPENAI
HOLDINGS, LLC, a limited liability company,
26 and DOES 1 through 100, inclusive,
27 Defendants.

Case No.: CGC-24-612746
**DEFENDANTS' APPLICATION
FOR COMPLEX DESIGNATION**
Date Action Filed: February 29, 2024
Trial Date: None Set

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
03/06/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

1 Defendants Samuel Altman, Gregory Brockman, OpenAI, Inc., and affiliated OpenAI
2 entities (collectively, “Defendants”) respectfully submit that this action warrants dedicated judicial
3 management and for that reason request an order designating the action “complex” pursuant to
4 California Rule of Court 3.400.

5 **I. INTRODUCTION AND BACKGROUND**

6 Though an early supporter and board member of OpenAI, Inc. (together with its affiliates,
7 “OpenAI”), Plaintiff Elon Musk quit the company years ago and started his own for-profit AI
8 business. Were this case to proceed to discovery, the evidence would show that Musk supported a
9 for-profit structure for OpenAI, to be controlled by Musk himself, and dropped the project when
10 his wishes were not followed. Seeing the remarkable technological advances OpenAI has achieved,
11 Musk now wants that success for himself. So he brings this action accusing Defendants of
12 breaching a contract that never existed and duties Musk was never owed, demanding relief
13 calculated to benefit a competitor to OpenAI. Musk purports to bring this suit for humanity, Compl.
14 ¶ 33, when the truth—evident even from the face of Musk’s contradictory pleading—is that he
15 brings it to advance his own commercial interests.

16 According to the complaint, all Defendants entered a “Founding Agreement” with Musk,
17 Compl. ¶ 24, promising him OpenAI would never operate for profit and would release all its AI
18 publicly—promises all Defendants purportedly breached by, among other things, licensing
19 OpenAI’s core GPT-4 technology. *Id.* ¶¶ 123-25. Musk further claims that all Defendants breached
20 fiduciary duties and engaged in unfair business practices by using early contributions Musk made
21 to OpenAI for purposes supposedly inconsistent with this alleged “Founding Agreement.”
22 *Id.* ¶¶ 133-44.

23 There is no Founding Agreement, or any agreement at all with Musk, as the complaint itself
24 makes clear. The Founding Agreement is instead a fiction Musk has conjured to lay unearned claim
25 to the fruits of an enterprise he initially supported, then abandoned, then watched succeed without
26 him. The documents Musk cites as purportedly memorializing a binding contract with him—
27 OpenAI’s certificate of incorporation and a few emails—on their face show no promises to Musk.

28

1 *See id.* ¶¶ 23-28, 50-57, 124. The pleading nowhere alleges that Musk’s early donations were
2 conditioned on Defendants following a specific business plan, nor could it.

3 The relief Musk seeks is as extraordinary as his claims are contrived. Musk requests an
4 order compelling OpenAI to reorganize and distribute its technology in accordance with the terms
5 of his fictitious contract. And he wants a “judicial determination”—with an accompanying
6 mandatory injunction—that certain OpenAI technology “constitutes Artificial General
7 Intelligence,” *i.e.*, “having intelligence for a wide variety of tasks like a human” (when it does not).
8 Compl. at p. 34; *id.* ¶ 17.

9 Frivolous though Musk’s legal claims are, “exceptional judicial management” is warranted
10 to ensure that this case is litigated efficiently, expeditiously, and fairly. *See* Cal. R. Ct. 3.400(a).
11 Pretrial motion practice will be intensive; the facts Musk purports to put at issue are complicated,
12 highly technical, and span nearly a decade; and the relief Musk seeks is extraordinary and if granted
13 would require ongoing supervision. These factors weigh decisively in favor of a “complex”
14 designation and assignment for all purposes to this Court’s Complex Civil Litigation Department
15 pursuant to California Rule of Court 3.400.

16 **II. DISCUSSION**

17 Under the California Rules of Court, a “complex case” is one that “requires exceptional
18 judicial management to avoid placing unnecessary burdens on the court or the litigants and to
19 expedite the case, keep costs reasonable, and promote effective decision making by the court, the
20 parties, and counsel.” Cal. R. Ct. 3.400(a).

21 In assessing whether a case merits “complex” treatment, courts consider a non-exhaustive
22 list of factors, including whether it will likely involve:

23 (1) Numerous pretrial motions raising difficult or novel legal issues that will be
24 time-consuming to resolve;

25 (2) Management of a large number of witnesses or a substantial amount of documentary
evidence;

26 (3) Management of a large number of separately represented parties;

27 (4) Coordination with related actions pending in one or more courts in other counties,
28 states, or countries, or in a federal court; or

1 (5) Substantial postjudgment judicial supervision.

2 Cal. R. Ct. 3.400(b).

3 This case warrants “complex” designation under this framework. Defendants’ application
4 should accordingly be granted.

5 **A. This case will involve substantial pretrial motion practice.**

6 Pretrial motion practice will likely be substantial and involved. Defendants intend to
7 challenge the numerous fatal procedural and substantive defects apparent on the face of the
8 complaint. Though Defendants believe early and swift dismissal is warranted, adjudication of a
9 dispositive motion will entail significant judicial resources and would benefit from assignment to
10 a dedicated judge in the Complex Department. *See People v. Superior Ct. (Lavi)*, 4 Cal. 4th 1164,
11 1179 (1993) (“[A]ll purpose assignment . . . to a specific judge” can “permit the efficient disposition
12 of complex matters.”). Musk’s claims rest on convoluted—often incoherent—factual premises.
13 To take just one example, Musk says his Founding Agreement was “memorialized,” but any actual
14 agreement is conspicuously missing from the pleading. Compl. ¶ 25. Musk instead serves up
15 internally contradictory accounts of what documents constitute this “memorialization.” *See id.*
16 ¶¶ 23-28, 124. Musk’s factual allegations span nearly a decade and are asserted against multiple
17 parties. Sifting through the complaint’s sprawling allegations and mapping them onto the
18 applicable legal principles will require time-consuming focus.

19 Were this case to move beyond the pleading stage, further motion practice—including for
20 summary judgment—likewise would be substantial.

21 **B. This case will likely present significant discovery disputes.**

22 Complex designation is also appropriate given the high likelihood of serious and
23 consequential discovery disputes in the event this case proceeds beyond the pleading stage. Musk
24 competes directly with OpenAI. Were discovery to commence, Musk would use this suit to seek
25 access to OpenAI’s proprietary records and technology and to press for broad merits discovery.
26 Those demands would need to be carefully policed, including through resolution of discovery
27 motions. Given the technical facts Musk purports to put at issue, expert discovery
28 and attendant disputes would be expected as well. Assigning this case to the Complex

1 Department would afford the Court significant power to actively manage discovery in the fair,
2 efficient, and expeditious manner necessary to safeguard OpenAI’s competitive interests against
3 Musk’s tactical discovery demands. *See Hernandez v. Superior Ct.*, 112 Cal. App. 4th 285, 295
4 (2003) (“The trial court has broad discretion to fashion suitable methods of practice in order to
5 manage complex litigation.”); *First State Ins. Co. v. Superior Ct.*, 79 Cal. App. 4th 324, 331-32
6 (2000) (“In complex litigation, judicial management should begin early and be applied
7 continuously and actively, based on knowledge of the circumstances of each case.” (citations and
8 alterations omitted)).

9 **C. Musk seeks extraordinary injunctive relief implicating complex facts.**

10 Finally, Musk’s request for extraordinary relief entailing “[s]ubstantial postjudgment
11 judicial supervision,” Cal. R. Ct. 3.400(b)(5), counsels in favor of complex designation. The
12 complaint requests a suite of truly extraordinary measures calculated to benefit Musk, whose own
13 for-profit AI concern has not met with success in the marketplace. Musk asks for an order of
14 “specific performance” compelling OpenAI to operate and disclose its technology in accordance
15 with the terms Musk has conjured; “a judicial determination that GPT-4 constitutes Artificial
16 General Intelligence”; and other forms of atypical mandatory injunctive relief. Compl. at p. 34.
17 Were this case to move beyond the pleadings, and Musk to prevail on any of his claims, none of
18 the relief sought would be proper or warranted. But navigating the issues raised by the prayer for
19 relief in this case would benefit from the careful attention of a dedicated judge.

20 **III. CONCLUSION**

21 For the foregoing reasons, Defendants’ application should be granted.
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1 Date: March 6, 2024

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