

REFINITIV

DELTA REPORT

10-Q

TESLA, INC.

10-Q - JUNE 30, 2024 COMPARED TO 10-Q - MARCH 31, 2024

The following comparison report has been automatically generated

TOTAL DELTAS 1225

■ CHANGES	198
■ DELETIONS	145
■ ADDITIONS	882

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**
FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **March 31, 2024** **June 30, 2024**
OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission File Number: 001-34756

Tesla, Inc.

(Exact name of registrant as specified in its charter)

Delaware Texas

(State or other jurisdiction of incorporation or organization)

91-2197729

(I.R.S. Employer
Identification No.)

1 Tesla Road
Austin, Texas

78725

(Address of principal executive offices)

(Zip Code)

(512) 516-8177

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock	TSLA	The Nasdaq Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes x No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	x	Accelerated filer	o
Non-accelerated filer	o	Smaller reporting company	o
Emerging growth company	o		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No x

As of **April 18, 2024** **July 18, 2024**, there were **3,189,196,167** **3,194,640,415** shares of the registrant's common stock outstanding.

TESLA, INC.

FORM 10-Q FOR THE QUARTER ENDED **MARCH 31, JUNE 30, 2024**

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Forward-Looking Statements

The discussions in this Quarterly Report on Form 10-Q contain forward-looking statements reflecting our current expectations that involve risks and uncertainties. These forward-looking statements include, but are not limited to, statements concerning supply chain constraints, our strategy, competition, future operations and production capacity, future financial position, future revenues, projected costs, profitability, expected cost reductions, capital adequacy, expectations regarding demand and acceptance for our technologies, growth opportunities and trends in the markets in which we operate, prospects and plans and objectives of management. The words "anticipates," "believes," "could," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. These forward-looking statements involve risks and uncertainties that could cause our actual results to differ materially from those in the forward-looking statements, including, without limitation, the risks set forth in Part I, Item 1A, "Risk Factors" of the Annual Report on Form 10-K for the fiscal year ended December 31, 2023 and that are otherwise described or updated from time to time in our other filings with the Securities and Exchange Commission (the "SEC"). The discussion of such risks is not an indication that any such risks have occurred at the time of this filing. We do not assume any obligation to update any forward-looking statements.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

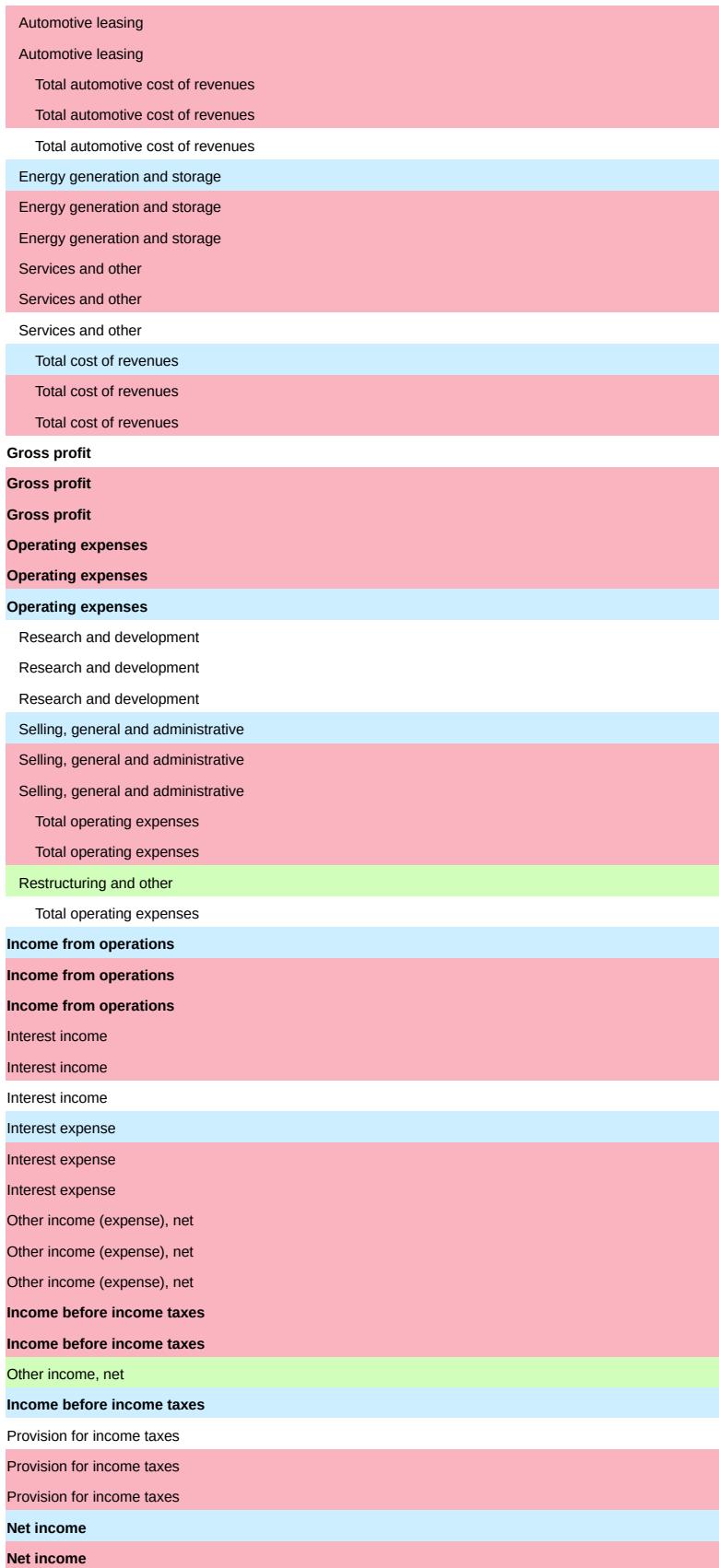
Tesla, Inc.
Consolidated Balance Sheets
(in millions, except per share data)
(unaudited)

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
Assets		
Current assets		
Current assets		
Current assets		
Cash and cash equivalents		
Cash and cash equivalents		
Cash and cash equivalents		
Short-term investments		
Accounts receivable, net		
Inventory		
Prepaid expenses and other current assets		
Total current assets		
Operating lease vehicles, net		
Solar energy systems, net		
Property, plant and equipment, net		
Operating lease right-of-use assets		
Digital assets, net		
Intangible assets, net		
Goodwill		
Deferred tax assets		
Other non-current assets		
Total assets		
Liabilities		
Current liabilities		
Current liabilities		
Current liabilities		
Accounts payable		
Accounts payable		
Accounts payable		
Accrued liabilities and other		
Deferred revenue		
Current portion of debt and finance leases		
Total current liabilities		
Debt and finance leases, net of current portion		
Deferred revenue, net of current portion		
Other long-term liabilities		
Total liabilities		
Commitments and contingencies (Note 10)	Commitments and contingencies (Note 10)	Commitments and contingencies (Note 10)
Redeemable noncontrolling interests in subsidiaries		
Equity		
Stockholders' equity		
Stockholders' equity		
Stockholders' equity		
Preferred stock; \$0.001 par value; 100 shares authorized; no shares issued and outstanding		
Preferred stock; \$0.001 par value; 100 shares authorized; no shares issued and outstanding		
Preferred stock; \$0.001 par value; 100 shares authorized; no shares issued and outstanding		

Common stock; \$0.001 par value; 6,000 shares authorized; 3,189 and 3,185 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively
Common stock; \$0.001 par value; 6,000 shares authorized; 3,194 and 3,185 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively
Additional paid-in capital
Accumulated other comprehensive loss
Retained earnings
Total stockholders' equity
Noncontrolling interests in subsidiaries
Total liabilities and equity

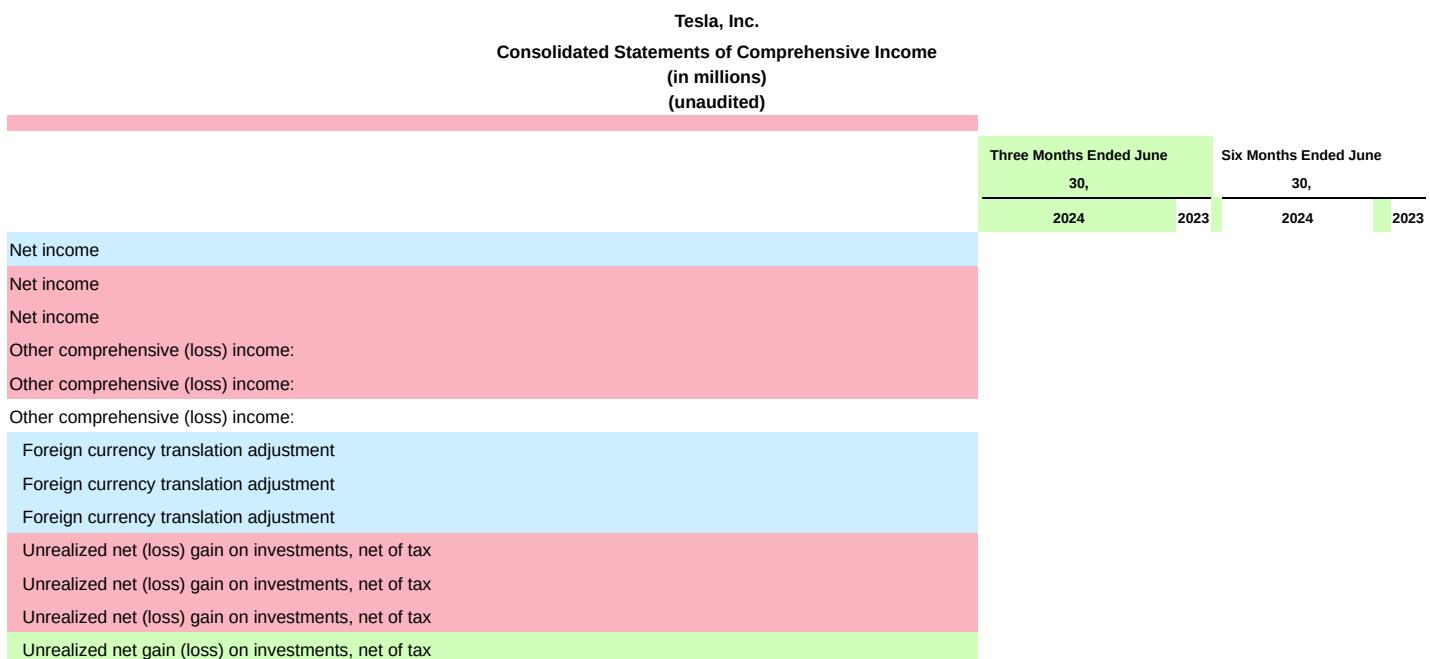
The accompanying notes are an integral part of these consolidated financial statements.

	Tesla, Inc.			
	Consolidated Statements of Operations			
	(in millions, except per share data)			
	(unaudited)		Three Months Ended June	Six Months Ended June
	30,	2024	30,	2024
		2023		2023
Revenues				
Revenues				
Revenues				
Automotive sales				
Automotive sales				
Automotive sales				
Automotive regulatory credits				
Automotive regulatory credits				
Automotive regulatory credits				
Automotive leasing				
Automotive leasing				
Automotive leasing				
Total automotive revenues				
Total automotive revenues				
Total automotive revenues				
Energy generation and storage				
Energy generation and storage				
Energy generation and storage				
Services and other				
Services and other				
Services and other				
Total revenues				
Total revenues				
Total revenues				
Cost of revenues				
Cost of revenues				
Cost of revenues				
Automotive sales				
Automotive sales				
Automotive sales				
Automotive leasing				





The accompanying notes are an integral part of these consolidated financial statements.



Net loss realized and included in net income
Comprehensive income
Comprehensive income
Comprehensive income
Less: Comprehensive income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries
Less: Comprehensive income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries
Less: Comprehensive income attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries
Less: Comprehensive income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests in subsidiaries
Comprehensive income attributable to common stockholders
Comprehensive income attributable to common stockholders
Comprehensive income attributable to common stockholders

The accompanying notes are an integral part of these consolidated financial statements.

Tesla, Inc.								
Consolidated Statements of Redeemable Noncontrolling Interests and Equity								
(in millions)								
(unaudited)								
Three Months Ended March 31, 2024	Redeemable Noncontrolling Interests	Common Stock Shares	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
Balance as of December 31, 2023								
Three Months Ended June 30, 2024	Redeemable Noncontrolling Interests	Common Stock Shares	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
Balance as of March 31, 2024								
Issuance of common stock for equity incentive awards								
Stock-based compensation								
Distributions to noncontrolling interests								
Buy-outs of noncontrolling interests								
Net income								
Net income								
Net income								
Other comprehensive loss								
Balance as of March 31, 2024								
Balance as of June 30, 2024								
Three Months Ended March 31, 2023	Redeemable Noncontrolling Interests	Common Stock Shares	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
Balance as of December 31, 2022								
Six Months Ended June 30, 2024	Redeemable Noncontrolling Interests	Common Stock Shares	Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity
Balance as of December 31, 2023								
Issuance of common stock for equity incentive awards								
Stock-based compensation								
Distributions to noncontrolling interests								
Buy-outs of noncontrolling interests								

Net income
Other comprehensive income
Balance as of March 31, 2023
Other comprehensive loss
Balance as of June 30, 2024

Three Months Ended June 30, 2023	Redeemable Noncontrolling Interests	Accumulated Other Comprehensive Loss							Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity			
		Common Stock		Additional Paid-In Capital	Retained Earnings	Total Stockholders' Equity								
		Shares	Amount											
Balance as of March 31, 2023	\$ 407	3,169	\$ 3	\$ 32,878	\$ (225)	\$ 15,398	\$ 48,054	\$ 774	\$ 48,828					
Issuance of common stock for equity														
incentive awards	—	5	—	63	—	—	63	—	—	63				
Stock-based compensation	—	—	—	495	—	—	495	—	—	495				
Distributions to noncontrolling interests	(9)	—	—	—	—	—	—	(28)	(28)					
Buy-outs of noncontrolling interests	(3)	—	—	—	—	—	—	—	—					
Net income	(107)	—	—	—	—	2,703	2,703	18	2,721					
Other comprehensive income	—	—	—	(185)	—	(185)	—	—	(185)					
Balance as of June 30, 2023	\$ 288	3,174	\$ 3	\$ 33,436	\$ (410)	\$ 18,101	\$ 51,130	\$ 764	\$ 51,894					

Six Months Ended June 30, 2023	Redeemable Noncontrolling Interests	Accumulated Other Comprehensive Loss							Total Stockholders' Equity	Noncontrolling Interests in Subsidiaries	Total Equity			
		Common Stock		Additional Paid-In Capital	Retained Earnings	Total Stockholders' Equity								
		Shares	Amount											
Balance as of December 31, 2022	\$ 409	3,164	\$ 3	\$ 32,177	\$ (361)	\$ 12,885	\$ 44,704	\$ 785	\$ 45,489					
Issuance of common stock for equity														
incentive awards	—	10	—	294	—	—	294	—	—	294				
Stock-based compensation	—	—	—	960	—	—	960	—	—	960				
Distributions to noncontrolling interests	(14)	—	—	—	—	—	—	(50)	(50)					
Buy-outs of noncontrolling interests	(3)	—	—	5	—	—	5	(12)	(12)	(7)				
Net income	(104)	—	—	—	—	5,216	5,216	41	5,257					
Other comprehensive income	—	—	—	(49)	—	(49)	—	—	(49)					
Balance as of June 30, 2023	\$ 288	3,174	\$ 3	\$ 33,436	\$ (410)	\$ 18,101	\$ 51,130	\$ 764	\$ 51,894					

The accompanying notes are an integral part of these consolidated financial statements.

	Tesla, Inc.				
	Consolidated Statements of Cash Flows				
	(in millions)				
	(unaudited)				
	Three Months Ended March 31,		Six Months Ended June 30,		
	2024	2023	2024	2023	
Cash Flows from Operating Activities					
Net income					
Net income					
Net income					
Adjustments to reconcile net income to net cash provided by operating activities:					
Depreciation, amortization and impairment					
Depreciation, amortization and impairment					
Depreciation, amortization and impairment					
Stock-based compensation					

Inventory and purchase commitments write-downs
Foreign currency transaction net unrealized gain
Deferred income taxes
Non-cash interest and other operating activities
Changes in operating assets and liabilities:
Accounts receivable
Accounts receivable
Accounts receivable
Inventory
Operating lease vehicles
Prepaid expenses and other assets
Accounts payable, accrued and other liabilities
Deferred revenue
Net cash provided by operating activities
Cash Flows from Investing Activities
Purchases of property and equipment excluding finance leases, net of sales
Purchases of property and equipment excluding finance leases, net of sales
Purchases of property and equipment excluding finance leases, net of sales
Purchases of solar energy systems, net of sales
Purchases of investments
Purchases of investments
Purchases of investments
Proceeds from maturities of investments
Proceeds from sales of investments
Business combinations, net of cash acquired
Net cash used in investing activities
Cash Flows from Financing Activities
Proceeds from issuances of debt
Proceeds from issuances of debt
Proceeds from issuances of debt
Repayments of debt
Proceeds from exercises of stock options and other stock issuances
Principal payments on finance leases
Debt issuance costs
Distributions paid to noncontrolling interests in subsidiaries
Payments for buy-outs of noncontrolling interests in subsidiaries
Net cash provided by (used in) financing activities
Effect of exchange rate changes on cash and cash equivalents and restricted cash
Net decrease in cash and cash equivalents and restricted cash
Cash and cash equivalents and restricted cash, beginning of period
Cash and cash equivalents and restricted cash, end of period
Supplemental Non-Cash Investing and Financing Activities
Acquisitions of property and equipment included in liabilities
Acquisitions of property and equipment included in liabilities
Acquisitions of property and equipment included in liabilities
Leased assets obtained in exchange for finance lease liabilities
Leased assets obtained in exchange for operating lease liabilities

The accompanying notes are an integral part of these consolidated financial statements.

Tesla, Inc.

Notes to Consolidated Financial Statements
(unaudited)

Note 1 – Overview & Summary of Significant Accounting Policies

Unaudited Interim Financial Statements Overview

The consolidated financial statements of Tesla, Inc. ("Tesla", the "Company", "we", "us" or "our"), was incorporated in the State of Delaware on July 1, 2003 and converted to a Texas corporation on June 13, 2024.

Unaudited Interim Financial Statements

The consolidated financial statements, including the consolidated balance sheet as of **March 31, 2024** **June 30, 2024**, the consolidated statements of operations, the consolidated statements of comprehensive income, the consolidated statements of redeemable noncontrolling interests and equity for the three and six months ended **June 30, 2024** and **2023**, and the consolidated statements of cash flows for the **three** **six** months ended **March 31, 2024** **June 30, 2024** and **2023**, as well as other information disclosed in the accompanying notes, are unaudited. The consolidated balance sheet as of December 31, 2023 was derived from the audited consolidated financial statements as of that date. The interim consolidated financial statements and the accompanying notes should be read in conjunction with the annual consolidated financial statements and the accompanying notes contained in our Annual Report on Form 10-K for the year ended December 31, 2023.

The interim consolidated financial statements and the accompanying notes have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for a fair statement of the results of operations for the periods presented. The consolidated results of operations for any interim period are not necessarily indicative of the results to be expected for the full year or for any other future years or interim periods.

Reclassifications

Certain prior period balances have been reclassified to conform to the current period presentation in the consolidated financial statements and the accompanying notes.

Revenue Recognition

Revenue by source

The following table disaggregates our revenue by major source (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Automotive sales				
Automotive sales				
Automotive sales				
Automotive regulatory credits				
Automotive regulatory credits				
Automotive regulatory credits				
Energy generation and storage sales				
Energy generation and storage sales				
Energy generation and storage sales				
Services and other				
Services and other				
Services and other				
Total revenues from sales and services				
Total revenues from sales and services				
Total revenues from sales and services				
Automotive leasing				
Automotive leasing				
Automotive leasing				
Energy generation and storage leasing				
Energy generation and storage leasing				
Energy generation and storage leasing				
Total revenues				
Total revenues				
Total revenues				

Automotive Segment

Automotive Sales

Deferred revenue related to the access to our Full Self Driving (Supervised) ("FSD") Capability features and their ongoing maintenance, internet connectivity, free Supercharging programs and over-the-air software updates primarily on automotive sales amounted to \$3.50 billion \$3.66 billion and \$3.54 billion as of March 31, 2024 June 30, 2024 and December 31, 2023, respectively.

Deferred revenue is equivalent to the total transaction price allocated to the performance obligations that are unsatisfied, or partially unsatisfied, as of the balance sheet date. Revenue recognized from the deferred revenue balances as of December 31, 2023 and 2022 was \$281 million \$482 million and \$134 million \$256 million for the three six months ended March 31, 2024 June 30, 2024 and 2023, respectively. Of the total deferred revenue balance as of March 31, 2024 June 30, 2024, we expect to recognize \$848 million \$940 million of revenue in the next 12 months. The remaining balance will be recognized at the time of transfer of control of the product or over the performance period.

We have financing receivables on our consolidated balance sheets related to loans we provide for financing our automotive deliveries. As of March 31, 2024 June 30, 2024 and December 31, 2023, we have current net financing receivables of \$241 million \$244 million and \$242 million, respectively, in Accounts receivable, net, and \$971 million \$919 million and \$1.04 billion, respectively, in Other non-current assets for the long-term portion.

We offer resale value guarantees to our commercial banking partners in connection with certain vehicle leasing programs. Under these programs, we originate the lease with our end customer and immediately transfer the lease and the underlying vehicle to our commercial banking partner, with the transaction being accounted for as a sale under ASC 606, *Revenue from Contracts with Customers*. We estimate a guarantee liability in accordance with ASC 460, *Guarantees* and record it within other liabilities on our consolidated balance sheet. On a quarterly basis, we assess the estimated market value of vehicles sold under this program to determine whether there have been changes to the amount of expected resale value guarantee payments. The total recorded guarantee liabilities on vehicles sold under this program were immaterial as of June 30, 2024 and December 31, 2023. Our maximum exposure on the guarantees we provide if they are unable to sell the vehicle at or above the vehicle's contractual residual value at the end of the lease term was \$807 million and \$166 million as of June 30, 2024 and December 31, 2023, respectively.

Automotive Regulatory Credits

As of June 30, 2024, total transaction price allocated to performance obligations that were unsatisfied or partially unsatisfied for contracts with an original expected length of more than one year was \$4.90 billion. Of this amount, we expect to recognize \$459 million in the next 12 months and the rest over the remaining performance obligation period. Additionally, changes in regulations on automotive regulatory credits may significantly impact our remaining performance obligations and revenue to be recognized under these contracts.

Automotive Leasing Revenue

Direct Sales-Type Leasing Program

Lease receivables relating to sales-type leases are presented on the consolidated balance sheets as follows (in millions):

	March 31, 2024	December 31, 2023	June 30, 2024	December 31, 2023
Gross lease receivables				
Unearned interest income				
Allowance for expected credit losses				
Net investment in sales-type leases				
Reported as:				
Reported as:				
Reported as:				
Prepaid expenses and other current assets				
Prepaid expenses and other current assets				
Prepaid expenses and other current assets				
Other non-current assets				
Net investment in sales-type leases				

Energy Generation and Storage Segment

Energy Generation and Storage Sales

We record as deferred revenue any non-refundable amounts that are collected from customers related to prepayments, which is recognized as revenue ratably over the respective customer contract term. As of March 31, 2024 June 30, 2024 and December 31, 2023, deferred revenue related to such customer payments amounted to \$1.78 billion \$1.49 billion and \$1.60 billion, respectively, mainly due to contractual payment terms. Revenue recognized from the deferred revenue balances as of December 31, 2023 and 2022 was \$417 million \$873 million and \$230 million \$329 million for the three six months ended March 31, 2024 June 30, 2024 and 2023, respectively. As of March 31, 2024 June

30, 2024, total transaction price allocated to performance obligations that were unsatisfied or partially unsatisfied for contracts with an original expected length of more than one year was **\$3.86 billion** **\$5.71 billion**. Of this amount, we expect to recognize **\$1.00 billion** **\$2.56 billion** in the next 12 months and the rest over the remaining performance obligation period.

We have financing receivables on our consolidated balance sheets related to loans we provide for financing our energy products. As of **March 31, 2024** **June 30, 2024** and December 31, 2023, we have current net financing receivables of **\$32 million** **\$28 million** and \$31 million, respectively, in Accounts receivable, net, and **\$608 million** **\$626 million** and \$578 million, respectively, in Other non-current assets for the long-term portion.

Income Taxes

We are subject to income taxes in the U.S. and in many foreign jurisdictions. Significant judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and any valuation allowance recorded against our net deferred tax assets that are not more likely than not to be realized. We monitor the realizability of our deferred tax assets taking into account all relevant factors at each reporting period. In completing our assessment of realizability of our deferred tax assets, we consider our history of income (loss) measured at pre-tax income (loss) adjusted for permanent book-tax differences on a jurisdictional basis, volatility in actual earnings, excess tax benefits related to stock-based compensation in recent prior years and impacts of the timing of reversal of existing temporary differences. We also rely on our assessment of the Company's projected future results of business operations, including uncertainty in future operating results relative to historical results, volatility in the market price of our common stock and its performance over time, variable macroeconomic conditions impacting our ability to forecast future taxable income, and changes in business that may affect the existence and magnitude of future taxable income. Our valuation allowance assessment is based on our best estimate of future results considering all available information.

Our provision for or benefit from income taxes for interim periods is determined using an estimate of our annual effective tax rate, adjusted for discrete items, if any, that are taken into account in the relevant period. Each quarter, we update our estimate of the annual effective tax rate, and if our estimated tax rate changes, we make a cumulative adjustment.

Net Income per Share of Common Stock Attributable to Common Stockholders

The following table presents the reconciliation of net income attributable to common stockholders to net income used in computing basic and diluted net income per share of common stock (in millions):

	Three Months Ended March 31, 2024	Three Months Ended March 31, 2024	Three Months Ended March 31, 2024	Three Months Ended June 30, 2024	Three Months Ended June 30, 2024	Six Months Ended June 30, 2024	Six Months Ended June 30, 2024	Six Months Ended June 30, 2023
Net income attributable to common stockholders								
Net income attributable to common stockholders								
Net income attributable to common stockholders								
Less: Buy-out of noncontrolling interest								
Less: Buy-out of noncontrolling interest								
Less: Buy-out of noncontrolling interest								
Net income used in computing basic and diluted net income per share of common stock								
Net income used in computing basic and diluted net income per share of common stock								
Net income used in computing basic and diluted net income per share of common stock								

The following table presents the reconciliation of basic to diluted weighted average shares used in computing net income per share of common stock attributable to common stockholders (in millions):

	Three Months Ended March 31, 2024	Three Months Ended March 31, 2024	Three Months Ended March 31, 2024	Three Months Ended June 30, 2024	Three Months Ended June 30, 2024	Six Months Ended June 30, 2024	Six Months Ended June 30, 2024	Six Months Ended June 30, 2023

Weighted average shares used in computing net income per share of common stock, basic	Weighted average shares used in computing net income per share of common stock, basic	3,191	3,171	3,189	3,168
Weighted average shares used in computing net income per share of common stock, basic					
Weighted average shares used in computing net income per share of common stock, basic					
Add:					
Add:					
Add:					
Stock-based awards					
Stock-based awards					
Stock-based awards		278	294	282	292
Convertible senior notes	Convertible senior notes	1	2	1	2
Convertible senior notes					
Convertible senior notes					
Warrants					
Warrants					
Warrants	Warrants	11			11
Weighted average shares used in computing net income per share of common stock, diluted	Weighted average shares used in computing net income per share of common stock, diluted	3,481	3,478	3,483	3,473
Weighted average shares used in computing net income per share of common stock, diluted					
Weighted average shares used in computing net income per share of common stock, diluted					

The following table presents the potentially dilutive shares that were excluded from the computation of diluted net income per share of common stock attributable to common stockholders, because their effect was anti-dilutive (in millions):

	Three Months Ended March 31,			Three Months Ended June 30,			Six Months Ended June 30,		
	2024			2024			2024		
	Stock-based awards	Stock-based awards	25	Stock-based awards	Stock-based awards	15	Stock-based awards	Stock-based awards	24
Stock-based awards									17
Stock-based awards									
Stock-based awards									

Restricted Cash

Our total cash and cash equivalents and restricted cash, as presented in the consolidated statements of cash flows, was as follows (in millions):

	March 31, 2024	December 31, 2023	March 31, 2023	December 31, 2022	June 30, 2024	December 31, 2023	June 30, 2023	December 31, 2022
Cash and cash equivalents								
Restricted cash included in prepaid expenses and other current assets								
Restricted cash included in other non-current assets								
Total as presented in the consolidated statements of cash flows								

Accounts Receivable and Allowance for Doubtful Accounts

Depending on the day of the week on which the end of a fiscal quarter falls, our accounts receivable balance may fluctuate as we are waiting for certain customer payments to clear through our banking institutions and receipts of payments from our financing partners, which can take up to approximately two weeks based on the contractual payment terms with such partners. Our accounts receivable balances associated with sales of energy storage products are dependent on billing milestones and payment terms negotiated for each contract, and our accounts receivable balances associated with our sales of regulatory credits are dependent on contractual payment terms. Additionally, government rebates can take up to a year or more to be collected depending on the customary processing timelines of the specific jurisdictions issuing them. These various factors may have a significant impact on our accounts receivable balance from period to period. As of **March 31, 2024** **June 30, 2024** and December 31, 2023, government rebates receivable was **\$572**

million \$419 million and \$378 million, respectively, in Accounts receivable, net for the current portion and \$45 million \$44 million and \$207 million, respectively, in Other non-current assets for the long-term portion in our consolidated balance sheets.

Financing Receivables

As of **March 31, 2024** **June 30, 2024** and December 31, 2023, the vast majority of our financing receivables were at current status with an immaterial balance being past due. As of **March 31, 2024** **June 30, 2024** and December 31, 2023, the majority of our financing receivables, excluding MyPower notes receivable, were originated in 2023 and 2022.

As of **March 31, 2024** **June 30, 2024** and December 31, 2023, the total outstanding balance of MyPower customer notes receivable, net of allowance for expected credit losses, was \$263 million \$256 million and \$266 million, respectively, of which \$5 million was due in the next 12 months. As of **March 31, 2024** **June 30, 2024** and December 31, 2023, the allowance for expected credit losses was \$36 million.

Concentration of Risk

Credit Risk

Financial instruments that potentially subject us to a concentration of credit risk consist of cash, cash equivalents, investments, restricted cash, accounts receivable and other finance receivables. Our cash and investments balances are primarily on deposit at high credit quality financial institutions or invested in **U.S. government securities, commercial paper, corporate debt securities and money market funds, highly rated, investment-grade securities**. These deposits are typically in excess of insured limits. As of **March 31, 2024** **June 30, 2024** and December 31, 2023, no entity represented 10% or more of our total receivables balance.

Supply Risk

We are dependent on our suppliers, including single source suppliers, and the inability of these suppliers to deliver necessary components of our products in a timely manner at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components from these suppliers, could have a material adverse effect on our business, prospects, financial condition and operating results.

Warranties

Accrued warranty activity consisted of the following (in millions):

	Three Months Ended March 31,		Six Months Ended June 30,	
	2024	2023	2024	2023
Accrued warranty—beginning of period				
Accrued warranty—beginning of period				
Accrued warranty—beginning of period				
Warranty costs incurred				
Warranty costs incurred				
Warranty costs incurred				
Net changes in liability for pre-existing warranties, including expirations and foreign exchange impact				
Net changes in liability for pre-existing warranties, including expirations and foreign exchange impact				
Net changes in liability for pre-existing warranties, including expirations and foreign exchange impact				
Provision for warranty				
Provision for warranty				
Provision for warranty				
Accrued warranty—end of period				
Accrued warranty—end of period				
Accrued warranty—end of period				

Recent Accounting Pronouncements

Recently issued accounting pronouncements not yet adopted

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-07, Improvements to Reportable Segment Disclosures (Topic 280). This ASU updates reportable segment disclosure requirements by requiring disclosures of significant reportable segment expenses that are regularly provided to the Chief Operating Decision Maker ("CODM") and included within each reported measure of a segment's profit or loss. This ASU also requires disclosure of the title and position of the individual identified as the CODM and an explanation of how the CODM uses the reported measures of a segment's profit or loss in assessing segment performance and deciding how to allocate resources. The ASU is effective for annual periods beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Adoption of the ASU should be applied retrospectively to all prior periods presented in the financial statements. Early adoption is also permitted. This ASU will likely result in us including the additional required disclosures when adopted. We are currently evaluating the provisions of this ASU and expect to adopt them for the year ending December 31, 2024.

In December 2023, the FASB issued ASU No. 2023-08, Accounting for and Disclosure of Crypto Assets (Subtopic 350-60). This ASU requires certain crypto assets to be measured at fair value separately on the balance sheet **and with changes reported** in the income statement each reporting period. This ASU also enhances the other intangible asset disclosure requirements by requiring the name, cost basis, fair value, and number of units for each significant crypto asset holding. The ASU is effective for annual periods beginning after December 15, 2024, including interim periods within those fiscal years. Adoption of the ASU requires a cumulative-effect adjustment to the opening balance of retained earnings as of the beginning of the annual reporting period in which an entity adopts the amendments. Early adoption is also permitted, including adoption in an interim period. However, if the ASU is early adopted in an interim period, an entity must adopt the ASU as of the beginning of the fiscal year that includes the interim period. This ASU will result in gains and losses recorded in the consolidated financial statements of operations and additional disclosures when adopted. We are currently evaluating the adoption of this ASU and it could materially affect the carrying value of our crypto assets held and the gains and losses relating thereto, depending on the fair value at adoption.

In December 2023, the FASB issued ASU No. 2023-09, Improvements to Income Tax Disclosures (Topic 740). The ASU requires disaggregated information about a reporting entity's effective tax rate reconciliation as well as additional information on income taxes paid. The ASU is effective on a prospective basis for annual periods beginning after December 15, 2024. Early adoption is also permitted for annual financial statements that have not yet been issued or made available for issuance. This ASU will likely result in the required additional disclosures being included in our consolidated financial statements, once adopted.

Note 2 – Fair Value of Financial Instruments

ASC 820, *Fair Value Measurements* ("ASC 820") states that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. The three-tiered fair value hierarchy, which prioritizes which inputs should be used in measuring fair value, is comprised of: (Level I) observable inputs such as quoted prices in active markets; (Level II) inputs other than quoted prices in active markets that are observable either directly or indirectly and (Level III) unobservable inputs for which there is little or no market data. The fair value hierarchy requires the use of observable market data when available in determining fair value. Our assets and liabilities that were measured at fair value on a recurring basis were as follows (in millions):

	March 31, 2024			December 31, 2023			June 30, 2024			December 31, 2023		
	Fair Value	Level I	Level II	Level III	Fair Value	Level I	Level II	Level III	Fair Value	Level I	Level II	Level III
Money market funds												
Certificates of deposit and time deposits												
Commercial paper												
U.S. government securities												
Corporate debt securities												
Certificates of deposit and time deposits												
Commercial paper												
Money market funds												
Total												

All of our money market funds were classified within Level I of the fair value hierarchy because they were valued using quoted prices in active markets. Our U.S. government securities, certificates of deposit, commercial paper, time deposits and corporate debt securities are classified within Level II of the fair value hierarchy and the market approach was used to determine fair value of these investments.

Our cash, cash equivalents and investments classified by security type as of **March 31, 2024** **June 30, 2024** and **December 31, 2023** consisted of the following (in millions):

March 31, 2024	June 30, 2024
----------------	---------------

	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments
Cash												
Money market funds												
Certificates of deposit and time deposits												
Commercial paper												
U.S. government securities												
Corporate debt securities												
Certificates of deposit and time deposits												
Commercial paper												
Money market funds												
Total cash, cash equivalents and short-term investments												

	December 31, 2023						December 31, 2023					
	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short-Term Investments
Cash												
Money market funds												
Certificates of deposit and time deposits												
U.S. government securities												
Corporate debt securities												
Certificates of deposit and time deposits												
Commercial paper												
Money market funds												
Total cash, cash equivalents and short-term investments												

We record gross realized gains, losses and credit losses as a component of Other income, (expense), net in the consolidated statements of operations. For the three and six months ended **March 31, 2024** **June 30, 2024** and 2023, we did not recognize any material gross realized gains, losses or credit losses. The ending allowance balances for credit losses were immaterial as of **March 31, 2024** **June 30, 2024** and December 31, 2023. We have determined that the gross unrealized losses on our investments as of **March 31, 2024** **June 30, 2024** and December 31, 2023 were temporary in nature.

The following table summarizes the fair value of our investments by stated contractual maturities as of **March 31, 2024** **June 30, 2024** (in millions):

Due in 1 year or less	\$ 14,805	15,832
Due in 1 year through 5 years		231 234
Due in 5 years through 10 years		2219
Total	\$ 15,058	16,085

Disclosure of Fair Values

Our financial instruments that are not re-measured at fair value include accounts receivable, financing receivables, other receivables, digital assets, accounts payable, accrued liabilities, customer deposits and debt. The carrying values of these financial instruments materially approximate their fair values, other than our 2.00% Convertible Senior Notes due in 2024 ("2024 Notes"), which matured in the second quarter of 2024, and digital assets.

We estimated the fair value of the 2024 Notes using commonly accepted valuation methodologies and market-based risk measurements that are indirectly observable, such as credit risk (Level II). In addition, we estimate the fair values of our digital assets based on quoted prices in active markets (Level I). The following table presents the estimated fair values and the carrying values (in millions):

	March 31, 2024		December 31, 2023		June 30, 2024		December 31, 2023	
	Carrying Value	Fair Value	Carrying Value	Fair Value	Carrying Value	Fair Value	Carrying Value	Fair Value
2024 Notes								

Digital assets, net

Note 3 – Inventory

Our inventory consisted of the following (in millions):

	March 31, 2024	December 31, 2023	June 30, 2024	December 31, 2023
Raw materials				
Work in process				
Finished goods (1)				
Service parts				
Total				

(1) Finished goods inventory includes products-in-transit to fulfill customer orders, new vehicles, available for sale, used vehicles and energy products available for sale.

We write-down inventory for any excess or obsolete inventory or when we believe that the net realizable value of inventory is less than the carrying value. During the three and six months ended March 31, 2024 and 2023, June 30, 2024, we recorded write-downs of \$39 million \$29 million and \$68 million, respectively, in Cost of revenues in the consolidated statements of operations. During the three and six months ended June 30, 2023, we recorded write-downs of \$66 million and \$105 million, respectively, in Cost of revenues in the consolidated statements of operations.

Note 4 – Property, Plant and Equipment, Net

Our property, plant and equipment, net, consisted of the following (in millions):

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
Machinery, equipment, vehicles and office furniture		
Land and buildings		
Leasehold improvements		
Tooling		
Leasehold improvements		
Land and buildings		
Computer equipment, hardware and software		
AI infrastructure		
Computer equipment, hardware and software		
Construction in progress		
Less: Accumulated depreciation		
Total		

Construction in progress is primarily comprised of ongoing construction and expansion of our facilities, equipment and tooling related to the manufacturing of our products as well as construction related to our AI infrastructure. AI-related assets which have not yet been placed in service.

Depreciation expense during the three and six months ended March 31, 2024 June 30, 2024 was \$981 million and 2023 \$1.91 billion, respectively. Depreciation expense during the three and six months ended June 30, 2023 was \$929 million \$816 million and \$722 million \$1.54 billion, respectively.

Note 5 – Accrued Liabilities and Other

Our accrued liabilities and other current liabilities consisted of the following (in millions):

	March 31, 2024	December 31, 2023

	June 30, 2024	December 31, 2023
Accrued purchases (1)		
Accrued warranty reserve, current portion		
Payroll and related costs		
Taxes payable (2)		
Customer deposits		
Operating lease liabilities, current portion		
Sales return reserve, current portion		
Other current liabilities		
Total		

(1) Accrued purchases primarily reflects receipts of goods and services for which we had not yet been invoiced. As we are invoiced for these goods and services, this balance will reduce and accounts payable will increase.

(2) Taxes payable **primarily** includes value added tax, income tax, sales tax, property tax and use tax payables.

Note 6 – Other Long-Term Liabilities

Our other long-term liabilities consisted of the following (in millions):

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
Operating lease liabilities		
Accrued warranty reserve		
Other non-current liabilities		
Total other long-term liabilities		

Note 7 – Debt

The following is a summary of our debt and finance leases as of **March 31, 2024** **June 30, 2024** (in millions):

	Net Carrying Value	Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates	Contractual Maturity Date	Net Carrying Value	Unpaid Principal Balance	Unused Committed Amount (1)	Contractual Interest Rates
Recourse debt:									
Recourse debt:									
Recourse debt:									
2024 Notes	\$ 21	\$ —	\$ 21	\$—	2.00 %	May 2024			
RCF Credit Agreement	\$ 21	\$ —	\$ 21	\$—	2.00 %	May 2024	\$ 21	\$ —	\$ 21
RCF Credit Agreement	\$ 21	\$ —	\$ 21	\$—	2.00 %	May 2024	\$ 21	\$ —	\$ 21
RCF Credit Agreement	\$ 21	\$ —	\$ 21	\$—	2.00 %	May 2024	\$ 21	\$ —	\$ 21
RCF Credit Agreement	\$ 21	\$ —	\$ 21	\$—	2.00 %	May 2024	\$ 21	\$ —	\$ 21
Solar Bonds	1	6	7	—	4.70- 5.75%	March 2025- January 2031			
Other	26	—	26	26	—	5.20	5.20	%	5.20
Total recourse debt	\$ 26	\$ —	\$ 26	\$—	2.00 %	May 2024	\$ 26	\$ —	\$ 26
Non-recourse debt:									
Non-recourse debt:									
Non-recourse debt:									
Automotive Asset-backed Notes									
Automotive Asset-backed Notes									

Automotive Asset-backed Notes	2,054	2,405	2,405	4,475	4,475	—	—	0.60-6.57%	0.60-6.57%	December 2024-May 2031	1,987	2,261	2,261	4,263	4,263	—
China Working Capital Facility																
Cash Equity Debt	29	317	355	—	—	—	—	5.25-5.81%	5.25-5.81%	April 2025 (2) July 2033-January 2035	—	—	—	—	—	
Solar Asset-backed Notes	Solar Asset-backed Notes	4	7	7	12	12	—	—	4.80	4.80 %	December 2026 Notes	4	6	6	11	11
Cash Equity Debt	29	321	359	—	—	—	—	5.25-5.81%	5.25-5.81%	July 2033-January 2035	—	—	—	—	—	
Total non-recourse debt	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Total debt	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Total debt	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Finance leases	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Finance leases	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Finance leases	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Total debt and finance leases	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Total debt and finance leases	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Total debt and finance leases	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	

The following is a summary of our debt and finance leases as of December 31, 2023 (in millions):

	Net Carrying Value	Net Carrying Value	Unpaid Principal	Unused Committed	Contractual Interest	Contractual Maturity	Net Carrying Value	Unpaid Principal	Balance
	Current		Balance	Amount (1)	Rates	Date			Balance
Recourse debt:									
Recourse debt:									
Recourse debt:									
2024 Notes	2024 Notes	\$ 37	\$ —	\$ —	\$ 37	\$ —	2.00	2.00 %	2024 May 2024 Notes
RCF Credit Agreement	RCF Credit Agreement	—	—	—	—	5,000	5,000	Not applicable	January 2028 RCF Credit Agreement
Solar Bonds	—	7	7	—	—	—	4.70-5.75%	Not applicable	March 2025-January 2031
Other	Other	—	—	—	—	28	28	Not applicable	December 2026 Other
Total recourse debt	—	—	—	—	—	—	—	—	—
Non-recourse debt:									
Non-recourse debt:									
Non-recourse debt:									
Automotive Asset-backed Notes	—	—	—	—	—	—	—	—	—



- There are no restrictions on draw-down or use for general corporate purposes with respect to any available committed funds under our RCF Credit Agreement, except certain specified conditions prior to draw-down. Refer to the notes to the consolidated financial statements included in our reporting on Form 10-K for the year ended December 31, 2023 for the terms of the facility.
- The contractual maturity date of the China Working Capital Facility is April 2025, renewable until March 2026 at our discretion. As we have the intent and ability to refinance the loan on a long-term basis, we recorded it in Debt and finance leases, net of current portion in the consolidated balance sheet.

Recourse debt refers to debt that is recourse to our general assets. Non-recourse debt refers to debt that is recourse to only assets of our subsidiaries. The differences between the unpaid principal balances and the net carrying values are due to debt discounts or deferred issuance costs. As of **March 31, 2024** **June 30, 2024**, we were in material compliance with all financial debt covenants.

2024 Notes

As of the second quarter of **March 31, 2024**, holders of **2024**, the 2024 Notes have the option to convert **reached maturity** and the 2024 Notes are set to mature in **May 2024**, were fully settled.

Automotive Asset-backed Notes

In the first **quarter** and second **quarters** of 2024, we transferred beneficial interests related to certain leased vehicles and financing receivables into a special purpose entity **entities** and issued **\$750 million** **\$1.10 billion** in aggregate principal amount of Automotive Asset-backed Notes, with terms similar to our other previously issued Automotive Asset-backed Notes.

China Working Capital Facility

In April 2024, one of our subsidiaries entered into a loan agreement (the "China Working Capital Facility") with lenders in China for an unsecured revolving facility of up to RMB 20.00 billion to be used for certain production expenditures as well as repayment of certain finance facilities. Borrowed funds bear interest at a rate equal to the Loan Prime Rate published by the People's Bank of China minus 1.18%. The proceeds from the issuance, net of debt issuance costs, were **\$747 million**. China Working Capital Facility is non-recourse to our assets.

Note 8 – Equity Incentive Plans

Other Performance-Based Grants

From time to time, the Compensation Committee of our Board of Directors grants certain employees performance-based restricted stock units and stock options.

As of **March 31, 2024** **June 30, 2024**, we had unrecognized stock-based compensation expense of **\$613 million** **\$506 million** under these grants to purchase or receive an aggregate **5.0 million** **4.2 million** shares of our common stock. For awards probable of achievement, we estimate the unrecognized stock-based compensation expense of **\$104 million** **\$80 million** will be recognized over a weighted-average period of **4.8** **4.0** years.

For the three and six months ended **March 31, 2024** **June 30, 2024** and 2023, stock-based compensation expense related to these grants, net of forfeitures, were immaterial.

Summary Stock-Based Compensation Information

The following table summarizes our stock-based compensation expense by line item in the consolidated statements of operations (in millions):

	Three Months Ended March 31,			Six Months Ended June 30,		
	2024		2024		2023	
	2024	2024	2024	2024	2023	2023
Cost of revenues						
Cost of revenues						
Cost of revenues						
Research and development						
Research and development						
Research and development						
Selling, general and administrative						
Selling, general and administrative						
Selling, general and administrative						
Restructuring and other						
Total						
Total						
Total						

Note 9 – Income Taxes

Our effective tax rate was 26% percent 21% and 23% for the three and six months ended **March 31, 2024** **June 30, 2024**, respectively, compared to 9% 11% and 10% for the three and six months ended **March 31, 2023** **June 30, 2023**, respectively. The increase in our effective tax rate is primarily due to the impact of releasing the valuation allowance on our U.S. deferred tax assets in the fourth quarter of 2023 and changes in the mix of our jurisdictional earnings.

Our effective tax rates for the first three and six months of 2024 and 2023 differed from as compared to the U.S. federal statutory rate of 21% were primarily due to impacted by the mix of our jurisdictional earnings subject to different tax rates, impact of valuation allowances on our deferred tax assets, as well as and benefits from our U.S. tax credits and the Inflation Reduction Act of 2022 ("IRA") manufacturing credits.

We are subject to tax examinations in the U.S. federal, state, and foreign jurisdictions. Given the uncertainty in timing and outcome of our tax examinations, an estimate of the range of the reasonably possible change in gross unrecognized tax benefits within twelve months cannot be made at this time.

Note 10 – Commitments and Contingencies

Operating Lease Arrangements in Buffalo, New York and Shanghai, China

For a description of our operating lease arrangements in Buffalo, New York, and Shanghai, China, refer to Note 15, *Commitments and Contingencies*, in our Annual Report on Form 10-K for the year ended December 31, 2023. As of **March 31, 2024** **June 30, 2024**, we expect to meet the requirements under these arrangements, as may be modified from time to time, based on our current and anticipated level of operations.

Legal Proceedings

Litigation Relating to 2018 CEO Performance Award

On June 4, 2018, a purported Tesla stockholder filed a putative class and derivative action in the Delaware Court of Chancery against Elon Musk and the members of Tesla's board of directors as then constituted, alleging corporate waste, unjust enrichment and that such board members breached their fiduciary duties by approving the stock-based compensation plan awarded to Elon Musk in 2018 (the "2018 CEO Performance Award"). Trial was held November 14-18, 2022. Post-trial briefing and argument are now complete. On January 30, 2024, the Court issued an opinion ordering rescission of Mr. Musk's finding that the 2018 compensation plan. CEO Performance Award should be rescinded. Plaintiff's

counsel have filed a brief seeking a fee award of 29,402,900 Tesla shares, plus expenses of \$1,120,115.50. Tesla's opposition to Tesla opposed the fee request is due on June 7, 2024, and a hearing is scheduled for was held on July 8, 2024. On April 17, 2024, At Tesla's 2024 Annual Meeting of Stockholders, 72% of the disinterested voting shares of Tesla, filed a preliminary proxy statement which included a number of proposals, including a proposal excluding shares owned by Mr. Musk and Kimbal Musk, voted to ratify the 2018 CEO Performance Award. On June 28, 2024, because Tesla's disinterested stockholders voted to ratify the 2018 CEO Performance Award, Mr. Musk and the other director defendants, joined by Tesla, filed a brief seeking to revise the Court's January 30, 2024 opinion, and a hearing is scheduled for August 2, 2024.

Litigation Related to Directors' Compensation

On June 17, 2020, a purported Tesla stockholder filed a derivative action in the Delaware Court of Chancery, purportedly on behalf of Tesla, against certain of Tesla's current and former directors regarding compensation awards granted to Tesla's directors, other than Elon Musk, between 2017 and 2020. The suit asserts claims for breach of fiduciary duty and unjust enrichment and seeks declaratory and injunctive relief, unspecified damages and other relief. Defendants filed their answer on September 17, 2020.

On July 14, 2023, the parties filed a Stipulation and Agreement of Compromise and Settlement, which does not involve an admission of any wrongdoing by any party. If the settlement is approved by the Court, this action will be fully settled and dismissed with prejudice. Pursuant to the terms of the agreement, Tesla provided notice of the proposed settlement to stockholders of record as of July 14, 2023. The Court held a hearing regarding the settlement on October 13, 2023, after which it took the settlement and plaintiff counsels' fee request under advisement. The settlement is not expected to have an adverse impact on our results of operations, cash flows or financial position.

Litigation Relating to Potential Going Private Transaction

Between August 10, 2018 and September 6, 2018, nine purported stockholder class actions were filed against Tesla and Elon Musk in connection with Mr. Musk's August 7, 2018 Twitter post that he was considering taking Tesla private. On January 16, 2019, Plaintiffs filed their consolidated complaint in the United States District Court for the Northern District of California and added as defendants the members of Tesla's board of directors. The consolidated complaint asserts claims for violations of the federal securities laws and seeks unspecified damages and other relief. The parties stipulated to certification of a class of stockholders, which the court granted on November 25, 2020. Trial started on January 17, 2023, and on February 3, 2023, a jury rendered a verdict in favor of the defendants on all counts. After trial, plaintiffs filed a motion for judgment as a matter of law and a motion for new trial, which the Court denied and judgement was entered in favor of defendants on July 11, 2023. On July 14, 2023, plaintiffs filed a notice of appeal. The appeal, which is pending in the United States Court of Appeals for the Ninth Circuit, has been fully briefed by the parties.

Between October 17, 2018 and March 8, 2021, seven derivative lawsuits were filed in the Delaware Court of Chancery, purportedly on behalf of Tesla, against Mr. Musk and the members of Tesla's board of directors, as constituted at relevant times, in relation to statements made and actions connected to a potential going private transaction, with certain of the lawsuits challenging additional Twitter posts by Mr. Musk, among other things. Five of those actions were consolidated, and all seven actions have been stayed pending resolution of the appeal in the above-referenced consolidated purported stockholder class action. In addition to these cases, two derivative lawsuits were filed on October 25, 2018 and February 11, 2019 in the U.S. District Court for the District of Delaware, purportedly on behalf of Tesla, against Mr. Musk and the members of the Tesla board of directors as then constituted. Those cases have also been consolidated and stayed pending resolution of the appeal in the above-referenced consolidated purported stockholder class action.

On October 21, 2022, a lawsuit was filed in the Delaware Court of Chancery by a purported shareholder of Tesla alleging, among other things, that board members breached their fiduciary duties in connection with their oversight of the Company's 2018 settlement with the SEC, as amended. Among other things, the plaintiff seeks reforms to the Company's corporate governance and internal procedures, unspecified damages, and attorneys' fees. The parties reached an agreement to stay the case until June 3, 2024 September 16, 2024.

On November 15, 2021, JPMorgan Chase Bank ("JP Morgan") filed a lawsuit against Tesla in the Southern District of New York alleging breach of a stock warrant agreement that was entered into as part of a convertible notes offering in 2014. In 2018, JP Morgan informed Tesla that it had adjusted the strike price based upon Mr. Musk's August 7, 2018 Twitter post that he was considering taking Tesla private. Tesla disputed JP Morgan's adjustment as a violation of the parties' agreement. In 2021, Tesla delivered shares to JP Morgan per the agreement, which they duly accepted. JP Morgan now alleges that it is owed approximately \$162 million as the value of additional shares that it claims should have been delivered as a result of the adjustment to the strike price in 2018. On January 24, 2022, Tesla filed multiple counterclaims as part of its answer to the underlying lawsuit, asserting among other points that JP Morgan should have terminated the stock warrant agreement in 2018 rather than make an adjustment to the strike price that it should have known would lead to a commercially unreasonable result. Tesla believes that the adjustments made by JP Morgan were neither proper nor commercially reasonable, as required under the stock warrant agreements. JP Morgan filed a motion for judgment on the pleadings, which Tesla opposed, and that motion is currently pending before the Court.

Certain Derivative Lawsuits in Delaware

Before converting from a Delaware to Texas corporation on June 13, 2024, three separate derivative actions brought by purported Tesla stockholders were filed in the Delaware Court of Chancery on May 24, June 10 and June 13, 2024, purportedly on behalf of Tesla, against current and former directors regarding topics involving Elon Musk and others, X Corp. (formerly Twitter) and x.AI. These suits assert various claims, including breach of fiduciary duty and breach of contract, and seek unspecified damages and other relief.

Litigation and Investigations Relating to Alleged Discrimination and Harassment

On October 4, 2021, in a case captioned Diaz v. Tesla, a jury in the Northern District of California returned a verdict against Tesla on claims by a former contingent worker that he was subjected to race discrimination while assigned to work at Tesla's Fremont Factory from 2015-2016. A retrial was held starting on March 27, 2023, after which a jury returned a verdict of \$3,175,000. As a result, the damages awarded against Tesla were reduced from an initial \$136.9 million (October 4, 2021) down to \$15 million (April 13, 2022), and then further down to \$3.175 million (April 3, 2023). On November 2, 2023, the plaintiff filed a notice of appeal, and on November 16, 2023, Tesla filed a notice of cross appeal. In March 2024, the parties reached a confidential settlement resolving all claims in this matter.

On February 9, 2022, shortly after the first Diaz jury verdict, the California Civil Rights Department ("CRD," formerly "DFEH") filed a civil complaint against Tesla in Alameda County, California Superior Court, alleging systemic race discrimination, hostile work environment and pay equity claims, among others. CRD's amended complaint seeks monetary damages and injunctive relief. On September 22, 2022, Tesla filed a cross complaint against CRD, alleging that it violated the Administrative Procedures Act by failing to follow statutory pre-requisites prior to filing suit and that cross complaint was subject to a sustained demurrer, which Tesla later amended and refiled. The case is currently in discovery. Trial is scheduled for October 14, 2024 September 15, 2025.

Additionally, on June 1, 2022 the Equal Employment Opportunity Commission ("EEOC") issued a cause finding against Tesla that closely parallels the CRD's allegations. On September 28, 2023, the EEOC filed a civil complaint against Tesla in the United States District Court for the Northern District of California asserting claims for race harassment and retaliation and seeking, among other things, monetary and injunctive relief. On December 18, 2023, Tesla filed a motion to stay the case. Separately, on December 26, 2023, Tesla filed a motion to dismiss the case. Both motions were subsequently denied.

On June 16, 2022, two Tesla stockholders filed separate derivative actions in the U.S. District Court for the Western District of Texas, purportedly on behalf of Tesla, against certain of Tesla's current and former directors. Both suits assert claims for breach of fiduciary duty, unjust enrichment, and violation of the federal securities laws in connection with alleged race and gender discrimination and sexual harassment. Among other things, plaintiffs seek declaratory and injunctive relief, unspecified damages payable to Tesla, and attorneys' fees. On July 22, 2022, the Court consolidated the two cases and on September 6, 2022, plaintiffs filed a consolidated complaint. On November 7, 2022, the defendants filed a motion to dismiss the case and on September 15, 2023, the Court dismissed the action but granted plaintiffs leave to file an amended complaint. On November 2, 2023, plaintiff filed an amended complaint purportedly on behalf of Tesla, against Elon Musk. On December 19, 2023, the defendants moved to dismiss the amended complaint, which the Court granted on April 12, 2024, with leave for the Plaintiffs plaintiffs to amend. On May 15, 2024, plaintiffs filed a second amended consolidated complaint purportedly on behalf of Tesla, against Mr. Musk. On July 1, 2024, the defendants moved to dismiss the second amended consolidated complaint.

Other Litigation Related to Our Products and Services

We are also subject to various lawsuits that seek monetary and other injunctive relief. These lawsuits include proposed class actions and other consumer claims that allege, among other things, purported defects and misrepresentations related to our products and services. For example, on September 14, 2022, a proposed class action was filed against Tesla, Inc. and related entities in the U.S. District Court for the Northern District of California, alleging various claims about the Company's driver assistance technology systems under state and federal law. This case was later consolidated with several other proposed class actions, and a Consolidated Amended Complaint was filed on October 28, 2022, which seeks damages and other relief on behalf of all persons who purchased or leased from Tesla between January 1, 2016, to the present. On October 5, 2022, a proposed class action complaint was filed in the U.S. District Court for the Eastern District of New York asserting similar state and federal law claims against the same defendants. On September 30, 2023, the Court dismissed this action with leave to amend the complaint. On November 20, 2023, the plaintiff moved to amend the complaint, which Tesla opposed. On March 22, 2023, the plaintiffs in the Northern District of California consolidated action filed a motion for a preliminary injunction to order Tesla to (1) cease using the term "Full Self-Driving Capability" (FSD Capability), (2) cease the sale and activation of FSD Capability and deactivate FSD Capability on Tesla vehicles, and (3) provide certain notices to consumers about proposed court-findings about the accuracy of the use of the terms Autopilot and FSD Capability. Tesla opposed the motion. On September 30, 2023, the Court denied the request for a preliminary injunction, compelled four of five plaintiffs to arbitration, and dismissed the claims of the fifth plaintiff with leave to amend the complaint. On October 31, 2023, the remaining plaintiff in the Northern District of California action filed an amended complaint, which Tesla has moved to dismiss, and on May 15, 2024, the Court granted in part and denied in part Tesla's motion. On October 2, 2023, a similar proposed class action was filed in San Diego County Superior Court in California. Tesla subsequently removed the San Diego County case to federal court and on January 8, 2024, the federal court granted Tesla's motion to transfer the case to the U.S. District Court for the Northern District of California. Tesla moved to compel arbitration, which the plaintiff did not oppose, and on June 27, 2024, the Court stayed the case pending arbitration.

On February 27, 2023, a proposed class action was filed in the U.S. District Court for the Northern District of California against Tesla, Inc., Elon Musk and certain current and former Company executives. The complaint alleges that the defendants made material misrepresentations and omissions about the Company's Autopilot and FSD Capability technologies and seeks money damages and other relief on behalf of persons who purchased Tesla stock between February 19, 2019, and February 17, 2023. An amended complaint was filed on September 5, 2023, naming only Tesla, Inc. and Elon Musk as defendants. On November 6, 2023, Tesla moved to dismiss the amended complaint.

On March 14, 2023, a proposed class action was filed against Tesla, Inc. in the U.S. District Court for the Northern District of California. Several similar complaints have been filed in the same court and these cases have now all been consolidated. These complaints allege that Tesla violates federal antitrust and warranty laws through its repair, service, and maintenance practices and seeks, among other relief, damages for persons who paid Tesla for repairs services or Tesla compatible replacement parts from March 2019 to March 2023. On July 17, 2023, these plaintiffs filed a consolidated amended complaint. On September 27, 2023, the court granted Tesla's motion to compel arbitration as to three of the plaintiffs, and on November 17, 2023, the court granted Tesla's motion to dismiss without prejudice. The plaintiffs filed a Consolidated Second Amended Complaint on December 12, 2023, which Tesla has moved to dismiss. Plaintiffs also appealed the court's arbitration order, which was denied. On June 17, 2024, the Court granted in part and denied in part Tesla's motion to dismiss the Consolidated Second Amended Complaint.

The Company intends to vigorously defend itself in these matters; however, we cannot predict the outcome or impact. We are unable to reasonably estimate the possible loss or range of loss, if any, associated with these claims, unless noted.

Certain Investigations and Other Matters

We regularly receive requests for information, including subpoenas, from regulators and governmental authorities such as the National Highway Traffic Safety Administration, the National Transportation Safety Board, the Securities and Exchange Commission ("SEC"), the Department of Justice ("DOJ"), and various local, state, federal, and international agencies. The ongoing requests for information include topics such as operations, technology (e.g., vehicle functionality, Autopilot and FSD Capability), compliance, finance, data

privacy, and other matters related to Tesla's business, its personnel, and related parties. We routinely cooperate with such formal and informal requests for information, investigations, and other inquiries. To our knowledge no government agency in any ongoing investigation has concluded that any wrongdoing occurred. We cannot predict the outcome or impact of any ongoing matters. Should the government decide to pursue an enforcement action, there exists the possibility of a material adverse impact on our business, results of operation, prospects, cash flows, financial position or brand.

We are also subject to various other legal proceedings, risks and claims that arise from the normal course of business activities. For example, during the second quarter of 2023, a foreign news outlet reported that it obtained certain misappropriated data including, purportedly non-public Tesla business and personal information. Tesla has made notifications to potentially affected individuals (current and former employees) and regulatory authorities and we are working with certain law enforcement and other authorities. On August 5, 2023, a putative class action was filed in the United States District Court for the Northern District of California, purportedly on behalf of all U.S. individuals impacted by the data incident, followed by several additional lawsuits, that each assert claims under various state laws and seeks monetary damages and other relief. If an unfavorable ruling or development were to occur in these or other possible legal proceedings, risks and claims, there exists the possibility of a material adverse impact on our business, results of operations, prospects, cash flows, financial position or brand.

Note 11 – Variable Interest Entity Arrangements

The aggregate carrying values of the variable interest entities' assets and liabilities, after elimination of any intercompany transactions and balances, in the consolidated balance sheets were as follows (in millions):

		March 31, 2024	December 31, 2023
		June 30, 2024	December 31, 2023
Assets	Assets	Assets	Assets
Current assets	Current assets	Current assets	Current assets
Cash and cash equivalents			
Accounts receivable, net			
Prepaid expenses and other current assets			
Total current assets			
Solar energy systems, net			
Other non-current assets			
Total assets			
Liabilities	Liabilities	Liabilities	Liabilities
Current liabilities	Current liabilities	Current liabilities	Current liabilities
Accrued liabilities and other			
Deferred revenue			
Current portion of debt and finance leases			
Total current liabilities			
Deferred revenue, net of current portion			
Debt and finance leases, net of current portion			
Total liabilities			

Note 12 – Segment Reporting and Information about Geographic Areas

We have two operating and reportable segments: (i) automotive and (ii) energy generation and storage. The following table presents revenues and gross profit by reportable segment (in millions):

	Three Months Ended March 31,			Six Months Ended June 30,		
	Three Months Ended March 31,		Six Months Ended June 30,			
	2024	2023	2024	2023	2024	2023
Automotive segment						

Automotive segment
Automotive segment
Revenues
Revenues
Revenues
Gross profit
Gross profit
Gross profit
Energy generation and storage segment
Energy generation and storage segment
Energy generation and storage segment
Revenues
Revenues
Revenues
Gross profit
Gross profit
Gross profit

The following table presents revenues by geographic area based on the sales location of our products (in millions):

	Three Months Ended March 31,			Three Months Ended June 30,			Six Months Ended June 30,			
	2024		2024	2024		2024	2023		2024	2023
United States										
United States										
United States										
China										
China										
China										
Other international										
Other international										
Other international										
Total										
Total										
Total										

The following table presents long-lived assets by geographic area (in millions):

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
United States		
Germany		
China		
Other international		
Other international		
Other international		

Total

The following table presents inventory by reportable segment (in millions):

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
Automotive		
Energy generation and storage		
Total		

Note 13 – Restructuring and Other

In April the second quarter of 2024, we initiated and substantially completed certain restructuring actions in order to reduce costs and improve efficiency. As a result, we expect to recognize in excess of \$583 million of \$350 million of costs primarily related to employee termination expenses in Restructuring and other in our consolidated income statement. These expenses were substantially paid during the second quarter with the remaining unpaid immaterial accrual recorded in Accrued liabilities and other in our consolidated balance sheet as of 2024, June 30, 2024.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the consolidated financial statements and the related notes included elsewhere in this Quarterly Report on Form 10-Q.

Overview

Our mission is to accelerate the world's transition to sustainable energy. We design, develop, manufacture, lease and sell high-performance fully electric vehicles, solar energy generation systems and energy storage products. We also offer maintenance, installation, operation, charging, insurance, financial and other services related to our products. Additionally, we are increasingly focused on products and services based on AI, robotics and automation.

In 2024, we produced approximately 433,000 844,000 consumer vehicles and delivered approximately 387,000 831,000 consumer vehicles through the first second quarter. We are focused on profitable growth, including by leveraging existing factories and production lines to introduce new and more affordable products, further improving and deploying our FSD capabilities, including through our planned robotaxi product, reducing costs, increasing vehicle production, utilized capacity and delivery capabilities, reducing costs, improving and developing our vehicles and battery technologies, vertically integrating and localizing our supply chain, further improving and deploying our FSD capabilities, including through our planned robotaxi product, and expanding our global infrastructure, including our service and charging infrastructure.

In 2024, we deployed 4.05 13.46 GWh of energy storage products through the first second quarter. We are focused on ramping the production and increasing the market penetration of our energy storage products.

During the three and six months ended March 31, 2024 June 30, 2024, we recognized total revenues of \$21.30 \$25.50 billion and \$46.80 billion, respectively, representing an increase of \$573 million and a decrease of \$2.03 \$1.46 billion, respectively, compared to the same periods in the prior year. During the three and six months ended March 31, 2024 June 30, 2024, our net income attributable to common stockholders was \$1.13 billion \$1.48 billion and \$2.61 billion, respectively, representing an unfavorable change decreases of \$1.38 billion \$1.23 billion and \$2.61 billion, respectively, compared to the same period periods in the prior year. We continue to ramp production and build and optimize our manufacturing capacity, expand our operations while focusing on further cost reductions and operational efficiencies to enable increased deliveries and deployments of our products, and invest in research and development to accelerate our AI, software, and fleet-based profits for further revenue growth.

We ended the first second quarter of 2024 with \$26.86 billion \$30.72 billion in cash and cash equivalents and investments, representing a decrease an increase of \$2.23 billion \$1.63 billion from the end of 2023. Our cash flows provided by operating activities were \$3.85 billion during the three six months ended March 31, 2024 and 2023 were \$242 million and \$2.51 billion June 30, 2024, respectively, compared to \$5.58 billion during the same period ended June 30, 2023, representing a decrease of \$2.27 billion \$1.72 billion. Capital expenditures amounted to \$2.77 billion \$5.04 billion during the three six months ended March 31, 2024 June 30, 2024, compared to \$2.07 billion \$4.13 billion during the same period ended March 31, 2023 June 30, 2023, representing an increase of \$701 million \$911 million. Overall growth has allowed our business to generally fund itself, and we will continue investing in a number of capital-intensive projects and research and development in upcoming periods.

Management Opportunities, Challenges and Uncertainties and 2024 Outlook

Automotive—Production

The following is a summary of the status of production of each of our announced vehicle models in production and under development, as of the date of this Quarterly Report on Form 10-Q:

Production Location	Vehicle Model(s)	Production Status
Fremont Factory	Model S / Model X	Active
	Model 3 / Model Y	Active
Gigafactory Shanghai	Model 3 / Model Y	Active
Gigafactory Berlin-Brandenburg	Model Y	Active
Gigafactory Texas	Model Y	Active
	Cybertruck	Active
Gigafactory Nevada	Tesla Semi	Pilot production
Various	Next Generation Platform	In development
TBD	Roadster	In development

We are focused on growing our manufacturing capacity, which includes capacity for manufacturing new vehicle models such as our Cybertruck, **Tesla Semi** and future vehicles utilizing aspects of our next generation platform, and ramping the production at our Gigafactories to their installed production capacities as well as increasing production rate and efficiency at our current factories. The next phase of production growth will depend on the continued ramp at our factories and be initiated by advances in autonomy and the introduction of new products, including those built on our next generation vehicle platform, as well as our ability to add to our available sources of battery cell supply by manufacturing our own cells that we are developing to have high-volume output, lower capital and production costs and longer range. Our goals are to improve vehicle performance, decrease production costs and increase affordability and customer awareness.

These plans are subject to uncertainties inherent in establishing and ramping manufacturing operations, which may be exacerbated by new product and manufacturing technologies we introduce, the number of concurrent international projects, any industry-wide component constraints, labor shortages and any future impact from events outside of our control. For example, during the first quarter of 2024, we experienced a sequential decline in production volumes partially caused by the early phase of the production ramp of the updated Model 3 at our Fremont factory, and factory shutdowns at Gigafactory Berlin-Brandenburg resulting from shipping diversions caused by the Red Sea conflict and an arson attack. Moreover, we have set ambitious technological targets with our plans for battery cells as well as for iterative manufacturing and design improvements for our vehicles with each new factory.

Automotive—Demand, Sales, Deliveries and Infrastructure

Our cost reduction efforts, cost innovation strategies, and additional localized procurement and manufacturing are key to our vehicles' affordability and have allowed us to competitively price our vehicles. We will also continue to generate demand by improving our vehicles' performance and functionality, including through product offerings and features based on artificial intelligence such as Autopilot, FSD (Supervised), and other software, and delivering new vehicles such as our Cybertruck and vehicle options. In addition, we have been increasing awareness, and expanding our vehicle financing programs, including attractive leasing terms for our customers. Moreover, we expect to continue to benefit from ongoing electrification of the automotive sector and increasing environmental regulations and initiatives.

However, we operate in a cyclical industry that is sensitive to political and regulatory uncertainty, including with respect to trade and the environment, all of which can be compounded by inflationary pressures, rising energy prices, interest rate fluctuations and the liquidity of enterprise customers. For example, inflationary pressures have increased across the markets in which we operate. In an effort to curb this trend, central banks in developed countries raised interest rates rapidly and substantially, impacting the affordability of vehicle lease and finance arrangements. Further, sales of vehicles in the automotive industry also tend to be cyclical in many markets, which may expose us to increased volatility as we expand and adjust our operations. Moreover, as additional competitors enter the marketplace and help bring the world closer to sustainable transportation, we will have to adjust and continue to execute well to maintain our momentum. Additionally, our suppliers' liquidity and allocation plans may be affected by current challenges in the North American automotive industry, which could reduce our access to components or result in unfavorable changes to cost. These macroeconomic and industry trends have had, and will likely continue to have, an impact on the pricing of, and order rate for our vehicles, and in turn our operating margin. Changes in government and economic incentives in relation to electric vehicles or tariffs may also impact our sales, sales, cost structure and the competitive landscape. We will continue to adjust accordingly to such developments, and we believe our ongoing cost reduction, including improved production innovation and efficiency at our newest factories and lower logistics costs, and focus on operating leverage will continue to benefit us in relation to our competitors, while our new products will help enable future growth.

As our production increases, we must work constantly to similarly increase vehicle delivery capability so that it does not become a bottleneck on our total deliveries. We are also committed to reducing the percentage of vehicles delivered in the third month of each quarter, which will help to reduce the cost per vehicle. As we expand our manufacturing operations globally, we will also have to continue to increase and staff our delivery, servicing and charging infrastructure accordingly, maintain our vehicle reliability and optimize our Supercharger locations to ensure cost effectiveness and customer satisfaction. In particular, as other automotive manufacturers have announced their adoption of the North American Charging Standard ("NACS") and agreements with us to utilize our Superchargers, we must correspondingly expand our network in order to ensure adequate availability to meet customer demands. We also remain focused on continued enhancements of the capability and efficiency of our servicing operations.

Energy Generation and Storage Demand, Production and Deployment

The long-term success of this business is dependent upon incremental volume growth. We continue to increase the production of our energy storage products to meet high levels of demand, including the construction of a new Megafactory in Shanghai and the ongoing ramp at our Megafactory in Lathrop, California. For Megapack, energy storage deployments can vary meaningfully quarter to quarter depending on the timing of specific project milestones, milestones and logistics. As these product lines grow, we will have to

maintain adequate battery cell supply for our energy storage products. At the same time, changes in government and economic incentives or tariffs may also impact our sales, cost structure and the competitive landscape.

Cash Flow and Capital Expenditure Trends

Our capital expenditures are typically difficult to project beyond the short-term given the number and breadth of our core projects at any given time, and may further be impacted by uncertainties in future global market conditions. We are simultaneously developing and ramping new products, building or ramping manufacturing facilities on three continents, piloting the development and manufacture of new battery cell technologies, expanding our Supercharger network and investing in autonomy and other artificial intelligence enabled training and products, and the pace of our capital spend may vary depending on overall priority among projects, the pace at which we meet milestones, production adjustments to and among our various products, increased capital efficiencies and the addition of new projects. Owing and subject to the foregoing as well as the pipeline of announced projects under development, all other continuing infrastructure growth and varying levels of inflation, we currently expect our capital expenditures to exceed \$10.00 billion in 2024 and be between \$8.00 to \$10.00 billion in each of the following two fiscal years.

Our business has generally been consistently generating cash flow from operations in excess of our level of capital spend, and with better working capital management resulting in shorter days sales outstanding than days payable outstanding, our sales growth is also generally facilitating positive cash generation. We have and will continue to utilize such cash flows, among other things, to invest in autonomy, do more vertical integration, expand our product roadmap invest in autonomy and provide financing options to our customers. At the same time, we are likely to see heightened levels of capital expenditures during certain periods depending on the specific pace of our capital-intensive projects and other potential variables such as rising material prices and increases in supply chain and labor expenses resulting from changes in global trade conditions and labor availability. Overall, we expect our ability to be self-funding to continue as long as macroeconomic factors support current trends in our sales.

Critical Accounting Policies and Estimates

For a description of our critical accounting policies and estimates, refer to Part II, Item 7, *Critical Accounting Policies and Estimates* in our Annual Report on Form 10-K for the year ended December 31, 2023. There have been no material changes to our critical accounting policies and estimates since our Annual Report on Form 10-K for the year ended December 31, 2023.

Recent Accounting Pronouncements

See Note 1, *Overview & Summary of Significant Accounting Policies*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Results of Operations

Revenues

(Dollars in millions)	(Dollars in millions)	Three Months Ended June				Six Months Ended June 30,				Change			
		30,		Change		2024		2023		\$		%	
		2024	2023	\$	%	2024	2023	\$	%				
(Dollars in millions)	(Dollars in millions)												
Automotive sales	Automotive sales	\$18,530	\$20,419	(\$1,889)	(9)%	\$34,990	\$39,297	(\$4,307)	(11)%				
Automotive regulatory credits	Automotive regulatory credits	890	282	282	608	608	216	216	216	1,332	803	803	529
Automotive regulatory credits													66
Automotive regulatory credits													66%
Automotive leasing	Automotive leasing	458	567	567	(109)	(109)	(19)	(19)	(19)%	934	1,131	1,131	(197)
Total automotive revenues	Total automotive revenues	19,878	21,268	21,268	(1,390)	(1,390)	(7)	(7)	(7)%	37,256	41,231	41,231	(3,975)
Total automotive revenues													(10)%
Services and other	Services and other												

Services and other	Services and other	2,608	2,150	2,150	458	458	21	21 %	4,896	3,987	3,987	909	909	909	23	23 %
Total automotive & services and other segment revenue	Total automotive & services and other segment revenue	22,486	23,418	23,418	(932)	(932)	(4)	(4) %	42,152	45,218	45,218	(3,066)	(3,066)	(3,066)	(7)	(7) %
Total automotive & services and other segment revenue																
Total automotive & services and other segment revenue																
Energy generation and storage segment revenue																
Energy generation and storage segment revenue																
Energy generation and storage segment revenue	Energy generation and storage segment revenue	3,014	1,509	1,509	1,505	1,505	100	100 %	4,649	3,038	3,038	1,611	1,611	1,611	53	53 %
Total revenues	Total revenues	\$25,500	\$24,927	\$24,927	\$573	\$573	2	2 %	\$46,801	\$48,256	\$48,256	\$1,455	\$1,455	\$1,455	(3)	(3) %
Total revenues																
Total revenues																

Automotive & Services and Other Segment

Automotive sales revenue decreased \$2.42 billion \$1.89 billion, or 13% 9%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023, primarily due to lower average selling price on our vehicles driven by overall price reductions and attractive financing options provided year over year. Additionally, there was a decrease of approximately 27,000 13,000 combined Model 3 and Model Y cash deliveries partially due to the early phase of the production ramp of the updated Model 3 at our Fremont factory. The decreases were partially offset by an increase of approximately 4,000 deliveries of other models, including Model S, Model X and Cybertruck, primarily due to our production ramp of Cybertruck.

Automotive sales revenue decreased \$4.31 billion, or 11%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023, primarily due to lower average selling price on our vehicles driven by overall price reductions and attractive financing options provided year over year. Additionally, there was a decrease of approximately 40,000 combined Model 3 and Model Y cash deliveries partially due to the early phase of the production ramp of the updated Model 3 at our Fremont factory and factory shutdowns resulting from shipping diversions caused by the Red Sea conflict and an arson attack at Gigafactory Berlin-Brandenburg. The decreases were partially offset by an increase of approximately 7,000 11,000 deliveries of other models, as we ramped including Model S, Model X and Cybertruck, primarily due to our production ramp of Cybertruck.

Automotive regulatory credits revenue decreased \$79 million increased \$608 million, or 15% 216%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Automotive regulatory credits revenue increased \$529 million, or 66%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. These increases were driven by demand for credits in North America as other automobile manufacturers scale back on their battery electric vehicle plans.

Automotive leasing revenue decreased \$88 million \$109 million, or 16% 19%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Automotive leasing revenue decreased \$197 million, or 17%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The decrease was decreases were primarily due to a decrease in lower direct sales-type leasing revenue driven by lower deliveries year over year, compared to the prior periods.

Services and other revenue increased \$451 million \$458 million, or 25% 21%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Services and other revenue increased \$909 million, or 23%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The increase was increases were primarily due to increases in non-warranty maintenance services and collision revenue, used vehicle revenue, insurance services revenue, paid Supercharging revenue and part sales revenue. Additionally, there was higher used vehicle revenue driven by increases in volume partially offset by a decrease in average selling price of used vehicles.

Energy Generation and Storage Segment

Energy generation and storage revenue increased \$106 million \$1.51 billion, or 7% 100%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Energy generation and storage revenue increased \$1.61 billion, or 53%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The increase was increases were primarily due to an increase increases in average selling price of Megapack partially offset by a decrease in solar deployments compared to the prior periods.

Cost of Revenues and Gross Margin

		Three Months Ended March 31,				Three Months Ended March 31,				Three Months Ended March 31,	
		Three Months Ended June		Change		Six Months Ended June		Change			
		30,				30,					
(Dollars in millions)	(Dollars in millions)	2024	2023	\$	%	2024	2023	\$	%		
(Dollars in millions)	(Dollars in millions)										
Cost of revenues	Cost of revenues										
Cost of revenues	Cost of revenues										
Automotive sales	Automotive sales										
Automotive sales	Automotive sales	\$ 15,962	\$ 16,841	\$ (879)	(5)%	\$ 29,859	\$ 32,263	\$ (2,404)	(7)%		
Automotive leasing	Automotive leasing	245	338	338	(93)	(93)	(28)	514	671	671	(157)
Automotive leasing	Automotive leasing										
Automotive leasing	Automotive leasing										
Total automotive cost of revenues	Total automotive cost of revenues	16,207	17,179	17,179	(972)	(972)	(6)%	30,373	32,934	32,934	(2,561)
Services and other	Services and other	2,441	1,984	1,984	457	457	23 %	4,648	3,686	3,686	962
Services and other	Services and other										
Services and other segment cost of revenues	Services and other segment cost of revenues										
Total automotive & services and other segment cost of revenues	Total automotive & services and other segment cost of revenues										
Total automotive & services and other segment cost of revenues	Total automotive & services and other segment cost of revenues										

Total	Total											
automotive	automotive											
& services	& services											
and other	and other											
segment	segment											
cost of	cost of											
revenues	revenues	18,648	19,163		19,163	(515)		(515)	(3)	(3)%		
Energy	Energy											
generation	generation											
and storage	and storage											
segment	segment	2,274	1,231		1,231	1,043		1,043	85	85 %		
Energy												
generation												
and storage												
segment												
Total cost of												
revenues												
Total cost of												
revenues												
Total cost of	Total cost of											
revenues	revenues	\$20,922	\$		\$20,394	\$		\$528	3	3 %	\$38,527	\$
Gross profit total												
automotive												
Gross profit total												
automotive												
Gross profit total												
automotive												
Gross margin												
total automotive												
Gross margin												
total automotive												
Gross margin												
total automotive												
Gross profit total												
automotive &												
services and												
other segment												
Gross profit total												
automotive &												
services and												
other segment												
Gross margin												
total automotive												
& services and												
other segment												
Gross margin												
total automotive												
& services and												
other segment												

Gross margin
total automotive
& services and
other segment
Gross profit
energy
generation and
storage
segment
Gross profit
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generation and
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segment
Gross profit
energy
generation and
storage
segment
Gross margin
energy
generation and
storage
segment
Gross margin
energy
generation and
storage
segment
Gross margin
energy
generation and
storage
segment
Total gross profit
Total gross profit
Total gross profit
Total gross
margin
Total gross
margin
Total gross
margin

Automotive & Services and Other Segment

Cost of automotive sales revenue decreased \$1.53 billion \$879 million, or 10% 5%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Cost of automotive sales revenue decreased \$2.40 billion, or 7%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. Cost of automotive sales revenue decreased due to a decrease in the average combined cost per unit of our vehicles primarily from lower raw material costs, freight and duties and higher IRA manufacturing credits in addition to the volume changes in deliveries year over year as discussed. Additionally, there discussed above. These decreases were partially offset by higher costs for Cybertruck and the updated Model 3 at our Fremont factory as a result of the temporary under-utilization of manufacturing capacity as production ramps.

Cost of automotive leasing revenue decreased \$64 million \$93 million, or 19% 28%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Cost of automotive leasing revenue decreased \$157 million, or 23%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The decrease was decreases were primarily due to a decrease in direct sales-type leasing cost of revenue driven by lower deliveries year over year compared to the prior periods.

Cost of services and other revenue increased \$505 million \$457 million, or 30% 23%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Cost of services and other revenue increased \$962 million, or 26%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The increase was increases were generally in line with the changes in services and other revenue as discussed above.

Gross margin for total automotive decreased from **21.1%** **19.2%** to 18.5% in the three months ended **March 31, 2024** **June 30, 2024** as compared to the three months ended **March 31, 2023** **June 30, 2023**. Gross margin for total automotive decreased from 20.1% to 18.5% in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The decrease was driven by the changes in automotive sales revenue, lower average selling price on our vehicles and cost of temporary under-utilization of revenue as well as a decrease in manufacturing capacity during production ramps, partially offset by increases in regulatory credits revenue and lower average combined cost per unit of our vehicles, as discussed above.

Gross margin for total automotive & services and other segment decreased from **19.9%** **18.2%** to **16.7%** **17.1%** in the three months ended **March 31, 2024** **June 30, 2024** as compared to the three months ended **March 31, 2023** **June 30, 2023**. Gross margin for total automotive & services and other segment decreased from 19.0% to 16.9% in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023, primarily due to the automotive gross margin decrease discussed above.

Energy Generation and Storage Segment

Cost of energy generation and storage revenue decreased \$129 million increased \$1.04 billion, or 9% 85%, in the three months ended **March 31, 2024** **June 30, 2024** as compared to the three months ended **March 31, 2023** **June 30, 2023**. Cost of energy generation and storage revenue increased \$914 million, or 35%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The decrease was increases were primarily due to an increase in Megapack deployments, partially offset by increases in IRA manufacturing credits recognized year over year as compared to the prior periods.

Gross margin for energy generation and storage increased from **11.0%** **18.4%** to 24.6% in the three months ended **March 31, 2024** **June 30, 2024** as compared to the three months ended **March 31, 2023** **June 30, 2023**. The increase was driven by the changes in Gross margin for energy generation and storage revenue increased from 14.7% to 24.6% in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The increases were primarily due to increases in IRA manufacturing credits and a higher proportion of revenue from our storage business, which operated at a higher gross margin, within the segment as discussed above, compared to the prior periods.

Research and Development Expense

		Three Months Ended March 31,			Three Months Ended March 31,			Three Months Ended March 31,			
(Dollars in millions)											
(Dollars in millions)	(Dollars in millions)	2024	2023	\$	2024	2023	\$	2024	2023	\$	
Research and development	Research and development	\$ 1,074	\$ 943	\$ 131	14	14	%	\$ 2,225	\$ 1,714	\$ 511	30 %
Research and development											
Research and development											
As a percentage of revenues											
As a percentage of revenues											
As a percentage of revenues											

Research and development ("R&D") expenses increased \$380 million \$131 million, or 49% 14%, in the three months ended **March 31, 2024** **June 30, 2024** as compared to the three months ended **March 31, 2023** **June 30, 2023**. R&D expenses increased \$511 million, or 30%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The overall increase was primarily driven by additional costs year over year related to AI advancement of our proprietary battery cell technologies and other programs.

R&D expenses as a percentage of revenue increased from 3% to 5% stayed consistent at 4% in the three months ended **March 31, 2024** **June 30, 2024** as compared to the three months ended **March 31, 2023** **June 30, 2023**. R&D expenses as a percentage of revenue increased from 4% to 5% in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023 as we continue to expand our product roadmap and technologies.

Selling, General and Administrative Expense

		Three Months Ended March 31,			Three Months Ended March 31,			Three Months Ended March 31,			
(Dollars in millions)											
(Dollars in millions)	(Dollars in millions)	2024	2023	\$	2024	2023	\$	2024	2023	\$	
Selling, general and administrative	Selling, general and administrative	\$ 1,277	\$ 1,191	\$ 86	7	7 %	%	\$ 2,651	\$ 2,267	\$ 384	17 %
Selling, general and administrative											
Selling, general and administrative											

As a percentage of revenues

As a percentage of revenues

As a percentage of revenues

Selling, general and administrative ("SG&A") expenses increased \$298 million \$86 million, or 28% 7%, in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. This was driven by a \$176 million increase in employee and labor costs primarily from increased headcount, including professional services, a \$62 million \$73 million increase in facilities related expenses and a \$41 million \$32 million increase in promotions, advertising employee and labor costs, including professional services.

SG&A expenses increased \$384 million, or 17%, in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. This was driven by a \$208 million increase in employee and labor costs, including professional services, and a \$135 million increase in facilities related expenses.

Restructuring and Other

(Dollars in millions)	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2024	2023	\$	%	2024	2023	\$	%
Restructuring and other	\$ 622	\$ —	\$ 622	Not meaningful	\$ 622	\$ —	\$ 622	Not meaningful

In the second quarter of 2024, we initiated and substantially completed certain restructuring actions to reduce costs and improve efficiency. As a result, we recognized \$583 million of employee termination expenses in Restructuring and other marketing expenses, in our consolidated income statement. These expenses were substantially paid during the quarter with the remaining unpaid immaterial accrual recorded in Accrued liabilities and other in our consolidated balance sheet as of June 30, 2024.

Interest Income

(Dollars in millions)	Three Months Ended March 31,		Change		Six Months Ended June 30,		Change				
	2024	2023	\$	%	2024	2023	\$	%			
Interest income	Interest income	\$ 348	\$ 238	\$ 110	46	46 %	\$ 698	\$ 451	\$ 247	55	55 %
Interest income											
Interest income											

Interest income increased \$137 million \$110 million, or 64% 46%, in the three months ended March 31, 2024 June 30, 2024 and increased \$247 million, or 55%, in the six months ended June 30, 2024 as compared to the three and six months ended March 31, 2023. This increase was June 30, 2023, respectively. The increases were primarily due to higher interest earned on our cash and cash equivalents and short-term investments in the three months ended March 31, 2024 as compared to the prior period periods due to rising interest rates and increases in our increasing portfolio balance.

Other Income, (Expense), Net

(Dollars in millions)	Three Months Ended March 31,		Change		Six Months Ended June 30,		Change	
	2024	2023	\$	%	2024	2023	\$	%
Other income (expense), net		\$ 108	\$ (48)	\$ 156	Not meaningful			
Other income, net	\$ 20	\$ 328	\$ (308)	(94)%	\$ 128	\$ 280	\$ (152)	(54)%

Other income, (expense), net, changed favorably unfavorably by \$156 million \$308 million in the three months ended March 31, 2024 June 30, 2024 as compared to the three months ended March 31, 2023 June 30, 2023. Other income, net changed unfavorably by \$152 million in the six months ended June 30, 2024 as compared to the six months ended June 30, 2023. The favorable change was unfavorable changes were primarily due to fluctuations in foreign currency exchange rates on our intercompany balances. As our intercompany balances are significant in nature and as we do not typically hedge foreign currency risk, we can experience significant fluctuations in foreign currency exchange rate gains and losses from period to period.

Provision for Income Taxes

Three Months Ended March 31,
Three Months Ended March 31,

Three Months Ended March 31,													
(Dollars in millions)		Three Months Ended June 30,					Change						
(Dollars in millions)		2024		2023		\$	%	2024		2023		\$	%
Provision for income taxes	Provision for income taxes	\$ 393	\$ 323	\$ 70	22%	22%		\$ 802	\$ 584	\$ 218	37%	\$ 37%	
Provision for income taxes													
Provision for income taxes													
Effective tax rate													
Effective tax rate													
Effective tax rate													

Our provision for income taxes increased by **\$148 million** **\$70 million** in the three months ended **March 31, 2024** **June 30, 2024** and increased by **\$218 million** in the six months ended **June 30, 2024** as compared to the three and six months ended **March 31, 2023** **June 30, 2023**, respectively. Our effective tax rate increased from **9%** **11%** to **26%** **21%** in the three months ended **March 31, 2024** **June 30, 2024** and increased from **10%** to **23%** in the six months ended **June 30, 2024** as compared to the prior period, three and six months ended **June 30, 2023**, respectively. These increases are primarily due to the impact of releasing the valuation allowance on our U.S. deferred tax assets in the fourth quarter of 2023 and changes in mix of jurisdictional earnings.

See Note 9, *Income Taxes*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for further details.

Liquidity and Capital Resources

We expect to continue to generate net positive operating cash flow as we have done in the last five fiscal years. The cash we generate from our core operations enables us to fund ongoing operations and production, our research and development projects for new products and technologies including our proprietary battery cells, additional manufacturing ramps at existing manufacturing facilities, the construction of future factories, and the continued expansion of our retail and service locations, body shops, Mobile Service fleet, Supercharger, including to support NACS, energy product installation capabilities and autonomy and other artificial intelligence enabled products.

In addition, because a large portion of our future expenditures will be to fund our growth, we expect that if needed we will be able to adjust our capital and operating expenditures by operating segment. For example, if our near-term manufacturing operations decrease in scale or ramp more slowly than expected, including due to global economic or business conditions, we may choose to correspondingly slow the pace of our capital expenditures. Finally, we continually evaluate our cash needs and may decide it is best to raise additional capital or seek alternative financing sources to fund the rapid growth of our business, including through drawdowns on existing or new debt facilities or financing funds. Conversely, we may also from time to time determine that it is in our best interests to voluntarily repay certain indebtedness early.

Accordingly, we believe that our current sources of funds will provide us with adequate liquidity during the 12-month period following **March 31, 2024** **June 30, 2024**, as well as in the long-term.

See the sections below for more details regarding the material requirements for cash in our business and our sources of liquidity to meet such needs.

Material Cash Requirements

From time to time in the ordinary course of business, we enter into agreements with vendors for the purchase of components and raw materials to be used in the manufacture of our products. However, due to contractual terms, variability in the precise growth curves of our development and production ramps, and opportunities to renegotiate pricing, we generally do not have binding and enforceable purchase orders under such contracts beyond the short-term, and the timing and magnitude of purchase orders beyond such period is difficult to accurately project.

As discussed in and subject to the considerations referenced in Part I, Item 2, *Management's Discussion and Analysis of Financial Condition and Results of Operations—Management Opportunities, Challenges and Uncertainties and 2024 Outlook—Cash Flow and Capital Expenditure Trends* in this Quarterly Report on Form 10-Q, we currently expect our capital expenditures to support our projects globally to exceed \$10.00 billion in 2024 and be between \$8.00 to \$10.00 billion in each of the following two fiscal years. We also have certain obligations in connection with our operations at Gigafactory New York and Gigafactory Shanghai, as outlined in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Material Cash Requirements* in our Annual Report on Form 10-K for the year ended December 31, 2023.

As of **March 31, 2024** **June 30, 2024**, we and our subsidiaries had outstanding **\$4.90 billion** **\$7.39 billion** in aggregate principal amount of indebtedness, of which **\$2.14 billion** **\$2.03 billion** is **scheduled to become due in the succeeding 12 months**, **current**. For details regarding our indebtedness, refer to Note 7, *Debt*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

Sources and Conditions of Liquidity

Our sources to fund our material cash requirements are predominantly from our deliveries and servicing of new and used vehicles, sales and installations of our energy storage products, interest income, and proceeds from debt facilities and equity offerings, when applicable.

As of **March 31, 2024** **June 30, 2024**, we had **\$11.81 billion** **\$14.64 billion** and **\$15.06 billion** **\$16.09 billion** of cash and cash equivalents and short-term investments, respectively. Balances held in foreign currencies had a U.S. dollar equivalent of **\$3.47** **\$4.09 billion** and consisted primarily of Chinese yuan and euros. We had \$5.00 billion of unused committed credit amounts as of **March 31, 2024** **June 30, 2024**. For details regarding our indebtedness, refer to Note 7, *Debt*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

We continue adapting our strategy to meet our liquidity and risk objectives, such as investing in U.S. government securities and other investments, to invest in autonomy, do more vertical integration, expand our product roadmap and provide financing options to our customers.

Summary of Cash Flows

(Dollars in millions)	(Dollars in millions)	Three Months Ended March 31,		Six Months Ended June 30,	
		2024	2023	(Dollars in millions)	2024
Net cash provided by operating activities					
Net cash used in investing activities					
Net cash provided by (used in) financing activities					

Cash Flows from Operating Activities

Net cash provided by operating activities decreased by **\$2.27 billion** **\$1.72 billion** to **\$242 million** **\$3.85 billion** during the **three six** months ended **March 31, 2024** **June 30, 2024** from **\$2.51 billion** **\$5.58 billion** during the **three six** months ended **March 31, 2023** **June 30, 2023**. This decrease was primarily due to unfavorable changes in net operating assets and liabilities of **\$1.19 billion** and the decrease in net income excluding non-cash expenses, gains and losses of **\$1.08 billion** **\$1.63 billion**, and unfavorable changes in net operating assets and liabilities of **\$95 million**.

Cash Flows from Investing Activities

Cash flows from investing activities and their variability across each period related primarily to capital expenditures, which were **\$2.77** **\$5.04 billion** for the **three six** months ended **March 31, 2024** **June 30, 2024** and **\$2.07 billion** **\$4.13 billion** for the **three six** months ended **March 31, 2023** **June 30, 2023**, mainly for global factory expansion, machinery and equipment and AI related capital expenditures as we expand or enhance our product roadmap. We also purchased **\$2.31 billion** **\$3.26 billion** and **\$411 million** **\$1.81 billion** of short-term investments, net of proceeds from maturities and sales, for the **three six** months ended **March 31, 2024** **June 30, 2024** and 2023, respectively.

Cash Flows from Financing Activities

Net cash flows from financing activities changed by **\$429 million** **\$3.30 billion** to **\$196 million** **\$2.74 billion** net cash provided by financing activities during the **three six** months ended **March 31, 2024** **June 30, 2024** from **\$233 million** **\$561 million** net cash used in financing activities during the **three six** months ended **March 31, 2023** **June 30, 2023**. The change was primarily due to a **\$776 million** **\$3.90 billion** increase in proceeds from issuances of debt, partially offset by a **\$289 million** **\$679 million** increase in repayments of debt and a **\$94 million** increase in payments for buy-outs of noncontrolling interests in subsidiaries. See Note 7, *Debt*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for further details regarding our debt obligations.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Currency Risk

We transact business globally in multiple currencies and hence have foreign currency risks related to our revenue, costs of revenue and operating expenses denominated in currencies other than the U.S. dollar (primarily the Chinese yuan and euro in relation to our current year operations). In general, we are a net receiver of currencies other than the U.S. dollar for our foreign subsidiaries. Accordingly, changes in exchange rates affect our operating results as expressed in U.S. dollars as we do not typically hedge foreign currency risk.

We have also experienced, and will continue to experience, fluctuations in our net income as a result of gains (losses) on the settlement and the re-measurement of monetary assets and liabilities denominated in currencies that are not the local currency (primarily consisting of our intercompany and cash and cash equivalents balances).

We considered the historical trends in foreign currency exchange rates and determined that it is reasonably possible that adverse changes in foreign currency exchange rates of 10% for all currencies could be experienced in the near-term. These changes were applied to our total monetary assets and liabilities denominated in currencies other than our local currencies at the balance sheet date to compute the impact these changes would have had on our net income before income taxes. These changes would have resulted in a gain or loss of **\$431** **\$756 million** at **March 31, 2024** **June 30, 2024** and **\$1.01 billion** at December 31, 2023, assuming no foreign currency hedging.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In designing and evaluating the disclosure controls and procedures, our

management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that our management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that, as of **March 31, 2024** **June 30, 2024**, our disclosure controls and procedures were designed at a reasonable assurance level and were effective to provide reasonable assurance that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during the quarter ended **March 31, 2024** **June 30, 2024**, which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

For a description of our material pending legal proceedings, please see Note 10, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

In addition, each of the matters below is being disclosed pursuant to Item 103 of Regulation S-K because it relates to environmental regulations and aggregate civil penalties that we currently believe could potentially exceed \$1 million. We believe that any proceeding that is material to our business or financial condition is likely to have potential penalties far in excess of such amount.

District attorneys in certain California counties conducted an investigation into Tesla's waste segregation practices.

In February 2024, the Superior Court of California for the County of San Joaquin entered a stipulated judgment as agreed to by all parties to settle this matter. As part of the settlement terms, Tesla agreed to certain practices with respect to our waste management activities and payment of approximately \$1.5 million in civil penalties and fees.

ITEM 1A. RISK FACTORS

Our operations and financial results are subject to various risks and uncertainties, including the factors discussed in Part I, Item 1A, *Risk Factors* in our Annual Report on Form 10-K for the year ended December 31, 2023, which could adversely affect our business, financial conditions and future results.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None of the Company's directors or officers adopted, modified or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement during the Company's fiscal quarter ended **March 31, 2024** **June 30, 2024**, as such terms are defined under Item 408(a) of Regulation S-K, except as follows:

On **February 5, 2024** **May 1, 2024**, Kathleen Wilson-Thompson, one of our directors, Vaibhav Taneja, Chief Financial Officer, adopted a Rule 10b5-1 trading arrangement for the potential sale of up to **280,000** **84,000** shares of our common stock, subject to certain conditions. The arrangement's expiration date is **February 28, 2025** **July 31, 2025**.

On May 2, 2024, Kathleen Wilson-Thompson, one of our directors, terminated a Rule 10b5-1 trading arrangement that was originally adopted on February 5, 2024. The arrangement was terminated during the Company's unrestricted trading window and at a time when Ms. Wilson-Thompson was not in possession of material, non-public information about the Company. No transactions were completed under the arrangement.

ITEM 6. EXHIBITS

See Index to Exhibits at the end of this Quarterly Report on Form 10-Q for the information required by this Item.

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	Certificate of Formation of the Registrant	—	—	—	—	X
3.2	Bylaws of the Registrant	—	—	—	—	X
31.1	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Executive Officer	—	—	—	—	X
31.2	Rule 13a-14(a) / 15(d)-14(a) Certification of Principal Financial Officer	—	—	—	—	X
32.1*	Section 1350 Certifications	—	—	—	—	—
101.INS	Inline XBRL Instance Document	—	—	—	—	X
101.SCH	Inline XBRL Taxonomy Extension Schema Document	—	—	—	—	X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.	—	—	—	—	X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	—	—	—	—	X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	—	—	—	—	X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	—	—	—	—	X
104	Cover Page Interactive Data File (formatted as inline XBRL with applicable taxonomy extension information contained in Exhibits 101)	—	—	—	—	—

* Furnished herewith

† Portions of this exhibit have been redacted in compliance with Regulation S-K Item 601(b)(10)(iv)

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Tesla, Inc.

Date: **April 23, 2024** July 23, 2024

/s/ Vaibhav Taneja

Vaibhav Taneja

Chief Financial Officer

(Principal Financial Officer and
Duly Authorized Officer)

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Exhibit 3.1

CERTIFICATE OF FORMATION

OF

TESLA, INC.

a Texas corporation

Tesla, Inc., a corporation organized and existing under the laws of the State of Texas (the "Corporation"), hereby certifies as follows:

A. Tesla, Inc. (formerly known as Tesla Motors, Inc.), a Delaware corporation (the "Delaware Corporation"), with its principal place of business at 1 Tesla Road, Austin, Texas 78725, was originally incorporated on July 1, 2003.

B. The Delaware Corporation was converted into a corporation incorporated under the laws of the State of Texas under the name "Tesla, Inc." on June 13, 2024 pursuant to a plan of conversion, under which the Delaware Corporation converted to the Corporation.

ARTICLE I

The name of the Corporation is Tesla, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Texas is 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. The name of its registered agent at such address is CT Corporation System. The initial mailing address of the Corporation is 1 Tesla Road, Austin, Texas 78725.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Texas Business Organizations Code (the "TBOC").

ARTICLE IV

4.1. **Authorized Capital Stock.** The total number of shares of all classes of capital stock which the Corporation is authorized to issue is 6,100,000,000 shares, consisting of 6,000,000,000 shares of Common Stock, par value \$0.001 per share (the "Common Stock"), and 100,000,000 shares of Preferred Stock, par value \$0.001 per share (the "Preferred Stock").

4.2. **Increase or Decrease in Authorized Capital Stock.** The number of authorized shares of Preferred Stock or Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, except as may be required by the TBOC, without a

separate vote of the holders of the class or classes the number of authorized shares of which are being increased or decreased, unless a vote by any holders of one or more series of Preferred Stock is required by the express terms of any series of Preferred Stock as provided for or fixed pursuant to the provisions of Section 4.4 of this Article IV.

4.3. **Common Stock.**

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share on each matter properly submitted to the shareholders on which the holders of shares of Common Stock are entitled to vote. Except as otherwise required by law or this certificate of formation (this "Certificate of Formation" which term, as used herein, shall mean the certificate of formation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock), and subject to the rights of the holders of Preferred Stock, at any annual or special meeting of the shareholders the holders of shares of Common Stock shall have the right to vote for the election of directors and on all other matters properly submitted to a vote of the shareholders; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Formation that relates solely to the terms, number of shares, powers, designations, preferences, or relative participating, optional or other special rights (including, without limitation, voting rights), or to qualifications, limitations or restrictions thereon, of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Formation (including, without limitation, by any certificate of designations relating to any series of Preferred Stock) or pursuant to the TBOC. To the maximum extent permitted by the TBOC, but subject to the rights, if any, of the holders of Preferred Stock as specified in this Certificate of Formation or in any certificate of designation, and further subject to the Bylaws and the provisions of Article IX of this Certificate of Formation, the vote of shareholders holding a majority of the shares of stock entitled to vote on the matter then outstanding shall be sufficient to approve, authorize, adopt, or to otherwise cause the Corporation to take, or affirm the Corporation's taking of, any action, including any "fundamental business transaction" as defined in the TBOC.

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board of Directors from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its shareholders, ratably in proportion to the number of shares of Common Stock held by them.

4.4. Preferred Stock

(a) The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors). The Board of Directors is further authorized, subject to limitations prescribed by law, to fix by resolution or resolutions and to set forth in a certification of designations filed pursuant to the TBOC the powers, designations, preferences and relative, participation, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, of any wholly unissued series of Preferred Stock, including without limitation dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), redemption price or prices, and liquidation preferences of any such series, and the number of shares constituting any such series and the designation thereof, or any of the foregoing.

(b) The Board of Directors is further authorized to increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares of any such series then outstanding) the number of shares of any series, the number of which was fixed by it, subsequent to the issuance of shares of such series then outstanding, subject to the powers, preferences and rights, and the qualifications, limitations and restrictions thereof stated in the Certificate of Formation or the resolution of the Board of Directors originally fixing the number of shares of such series. If the number of shares of any series is so decreased, then the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V

5.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

5.2. Number of Directors; Initial Directors; Election; Term.

(a) The number of directors constituting the initial Board of Directors is eight (8) and their names and addresses are as follows:

Name	Address
------	---------

1. Elon Musk	1 Tesla Road, Austin, Texas 78725
2. Robyn M. Denholm	1 Tesla Road, Austin, Texas 78725
3. Ira Ehrenpreis	1 Tesla Road, Austin, Texas 78725
4. Joe Gebbia	1 Tesla Road, Austin, Texas 78725
5. James Murdoch	1 Tesla Road, Austin, Texas 78725
6. Kimbal Musk	1 Tesla Road, Austin, Texas 78725
7. JB Straubel	1 Tesla Road, Austin, Texas 78725
8. Kathleen Wilson-Thompson	1 Tesla Road, Austin, Texas 78725

(b) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, the number of directors that constitutes the entire Board of Directors of the Corporation shall be fixed solely by the manner provided in the Bylaws.

(c) Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, effective upon the closing date (the "Effective Date") of the initial sale of shares of common stock in the Corporation's initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, the directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial assignment of members of the Board of Directors to each such class shall be made by the Board of Directors. The term of office of the initial Class I directors shall expire at the first regularly-scheduled annual meeting of the shareholders following the Effective Date, the term of office of the initial Class II directors shall expire at the second annual meeting of the shareholders following the Effective Date and the term of office of the initial Class III directors shall expire at the third annual meeting of the shareholders following the Effective Date. At each annual meeting of shareholders, commencing with the first regularly-scheduled annual meeting of shareholders following the Effective Date, each of the successors elected to replace the directors of a Class whose term shall have expired at such annual meeting shall be elected to hold office until the third annual meeting next succeeding his or her election and until his or her respective successor shall have been duly elected and qualified. Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, if the number of directors that constitutes the Board of Directors is changed, any newly created directorships or decrease in directorships shall be so apportioned by the Board of Directors among the classes as to make all classes as nearly equal in number as is practicable, provided that no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(d) Notwithstanding the foregoing provisions of this Section 5.2, and subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal.

(e) Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

5.3. **Removal.** Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, a director may be removed from office by the shareholders of the Corporation only for cause.

5.4. **Vacancies and Newly Created Directorships.** Subject to the rights of holders of any series of Preferred Stock with respect to the election of directors, and except as otherwise provided in the TBOC, vacancies occurring on the Board of Directors for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled in any manner permitted by the TBOC, including by (a) the Board of Directors at any meeting of the Board of Directors by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, or (b) a sole remaining director, in each case to the

extent permitted by the TBOC. A person so elected or appointed to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been assigned by the Board of Directors and until his or her successor shall be duly elected and qualified.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

ARTICLE VII

7.1. Action by Written Consent of Shareholders. Any action required or permitted by the TBOC to be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by all holders of shares entitled to vote on such action. Any such action taken by written consent shall be delivered to the Corporation at its principal office.

7.2. Special Meetings. Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to call a special meeting of the holders of such series, special meetings of shareholders of the Corporation may be called only by the Board of Directors, the chairperson of the Board of Directors, the chief executive officer, (to the extent required by the TBOC) the president, or by the holders of not less than 50% (or the highest percentage of ownership that may be set under the TBOC) of the Corporation's then outstanding shares of capital stock entitled to vote at such special meeting. The Board of Directors may postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the shareholders.

7.3. Advance Notice. Advance notice of shareholder nominations for the election of directors and of business to be brought by shareholders before any meeting of the shareholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

ARTICLE VIII

8.1. Limitation of Personal Liability. To the fullest extent permitted by the TBOC, as it presently exists or may hereafter be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. If the TBOC is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the TBOC, as so amended. Any repeal or amendment of this Section 8.1 by the shareholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Formation inconsistent with this Section 8.1 will, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to further limit or eliminate the liability of directors) and shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or amendment or adoption of such

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inconsistent provision with respect to acts or omissions occurring prior to such repeal or amendment or adoption of such inconsistent provision.

8.2. Indemnification. To the fullest extent permitted by the TBOC, as it presently exists or may hereafter be amended from time to time, the Corporation is also authorized to provide indemnification of (and advancement of expenses to) its directors, officers and agents of the Corporation (and any other persons to which the TBOC permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of shareholders or disinterested directors or otherwise.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Formation (including any rights, preferences or other designations of Preferred Stock), in the manner now or hereafter prescribed by this Certificate of Formation and the TBOC; and all rights, preferences and privileges herein conferred upon shareholders by and pursuant to this Certificate of Formation in its present form or as hereafter amended are granted subject to the right reserved in this Article IX. Notwithstanding any other provision of this Certificate of Formation, and in addition to any other vote that may be required by law or the terms of any series of Preferred Stock, the affirmative vote of the holders of at least 66 2/3% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision as part of this Certificate of Formation inconsistent with the purpose and intent of, Article V, Article VI, Article VII or this Article IX (including, without limitation, any such Article as renumbered as a result of any amendment, alteration, change, repeal or adoption of any other Article).

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IN WITNESS WHEREOF, Tesla, Inc. has caused this Certificate of Formation to be signed by a duly authorized officer of the Corporation on this 13th day of June, 2024.

By:

/s/ Vaibhav Taneja

Vaibhav Taneja, Chief Financial Officer

Exhibit 3.2

BYLAWS
OF
TESLA, INC.

(as in effect pursuant to the plan of conversion adopted on June 13, 2024)

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BYLAWS OF TESLA, INC.

ARTICLE I — CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of Tesla, Inc. shall be fixed in the corporation's certificate of formation. References in these bylaws to the certificate of formation shall mean the certificate of formation of the corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock.

1.2 OTHER OFFICES

The corporation's board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II — MEETINGS OF SHAREHOLDERS

2.1 PLACE OF MEETINGS

Meetings of shareholders shall be held at any place, within or outside the State of Texas, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting of shareholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 6.002(a) of the Texas Business Organizations Code (the "TBOC"). In the absence of any such designation or determination, shareholders' meetings shall be held at the corporation's principal executive office.

2.2 ANNUAL MEETING

The annual meeting of shareholders shall be held on such date, at such time, and at such place (if any) within or without the State of Texas as shall be designated from time to time by the board of directors and stated in the corporation's notice of the meeting. At the annual meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING

(i) A special meeting of the shareholders, other than those required by statute, may be called at any time only by (A) the board of directors, (B) the chairperson of the board of directors, (C) the chief executive officer, (D) (to the extent required by the TBOC) the president or (E) as otherwise provided in the certificate of formation. A special meeting of the shareholders may not be called by any other person or persons. The board

of directors may cancel (to the extent permitted under the TBOC), postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the shareholders.

(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of shareholders as

shall have been brought before the meeting by or at the direction of the board of directors, the chairperson of the board of directors, the chief executive officer, the president or the shareholders holding at least 50% of the corporation's then outstanding shares of capital stock entitled to vote at such special meeting who have called such special meeting. Nothing contained in this Section 2.3(ii) shall be construed as limiting, fixing or affecting the time when a meeting of shareholders called by action of the board of directors may be held.

2.4 ADVANCE NOTICE PROCEDURES

(i) *Advance Notice of Shareholder Business.* At an annual meeting of the shareholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation's proxy materials with respect to such meeting, (B) by or at the direction of the board of directors, or (C) by a shareholder of the corporation who (1) is a shareholder of record at the time of the giving of the notice required by this Section 2.4(i) and on the record date for the determination of shareholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.4(i). In addition, for business to be properly brought before an annual meeting by a shareholder, such business must be a proper matter for shareholder action pursuant to these bylaws and applicable law. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934 (as amended, and including any successor thereto, the "1934 Act"), and the rules and regulations thereunder, and included in the notice of meeting given by or at the direction of the board of directors, for the avoidance of doubt, clause (C) above shall be the exclusive means for a shareholder to bring business before an annual meeting of shareholders.

(a) To comply with clause (C) of Section 2.4(i) above, a shareholder's notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the corporation. To be timely, a shareholder's notice must be received by the secretary at the principal executive offices of the corporation not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which the corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the shareholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a shareholder's notice as described in this Section 2.4(i)(a). **Public Announcement** shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document

publicly filed by the corporation with the Securities and Exchange Commission (the "SEC") pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(b) To be in proper written form, a shareholder's notice to the secretary must set forth as to each matter of business the shareholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation's books, of the shareholder proposing such business and any Shareholder Associated Person (as defined below), (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the shareholder or any Shareholder Associated Person and any derivative positions held or beneficially held by the shareholder or any Shareholder Associated Person, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such shareholder or any Shareholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including without limitation any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such shareholder or any Shareholder Associated Person with respect to any securities of the corporation, (5) any material interest of the shareholder or a Shareholder Associated Person in such business, and (6) a statement whether either such shareholder or any Shareholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (6), a "**Business Solicitation Statement**"). In addition, to be in proper written form, a shareholder's notice to the secretary must be supplemented not later than ten days following the record date for notice of the meeting to disclose the information contained in clauses (3) and (4) above as of the record date for notice of the meeting. For purposes of this Section 2.4, a "**Shareholder Associated Person**" of any shareholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such shareholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such shareholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4(i) and, if applicable, Section 2.4(ii). In addition, business proposed to be brought by a shareholder may not be brought before the annual meeting if such shareholder or a Shareholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4(i).

and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) *Advance Notice of Director Nominations at Annual Meetings.* Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4(ii) shall be eligible for election or re-election as directors at an annual meeting of shareholders. Nominations of persons for election or re-election to the board of directors of the corporation shall be made at an annual meeting of shareholders only (A) by or at the direction of the board of directors, (B) by a shareholder of the corporation who (1) was a shareholder of record at the time of the giving of the notice required by this Section 2.4(ii) and on the record date for the determination of shareholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.4(ii) and the applicable requirements of Rule 14a-19 under the 1934 Act, or (C) by an Eligible Shareholder (as defined in Section 2.15 of these bylaws) who complies with the procedures set forth in Section 2.15 of these bylaws. In addition to any other applicable requirements, for a nomination to be made by a shareholder in accordance with clause (B) of this Section 2.4(ii), the shareholder must have given timely notice thereof in proper written form to the secretary of the corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a shareholder must set forth all information required under this Section 2.4(ii) and must be received by the secretary of the corporation at the principal executive offices of the corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above.

(b) To be in proper written form, such shareholder's notice to the secretary must set forth:

(1) as to each person (a "nominee") whom the shareholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee, (D) the information required by Section 2.15(vi)(g) below, (E) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including without limitation any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (F) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the shareholder, (G) a written statement executed by the nominee acknowledging that as a director of the corporation, the nominee will owe a fiduciary duty under Texas law with respect to the corporation and its shareholders, and (H) any other information relating to the nominee that would be required to be disclosed about such

nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee's written consent to being named as a nominee in any proxy statement relating to the applicable meeting of shareholders and to serving as a director if elected or re-elected, as the case may be); and

(2) as to such shareholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of Section 2.4(i)(b) above, and the supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to "business" in such clauses shall instead refer to nominations of directors for purposes of this paragraph), (B) a statement that either such shareholder or Shareholder Associated Person intends to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote in the election of directors, and (C) all other information required by Rule 14a-19 under the 1934 Act (such information provided and statements made as required by clauses (A), (B) and (C) above, a "Nominee Solicitation Statement").

(c) To comply with clause (B) of Section 2.4(ii) above, a shareholder providing notice of any nomination proposed to be made at a meeting of shareholders shall further update and supplement such notice (1) if necessary so that the information provided or required to be provided in such notice pursuant to this Section 2.4(ii) shall be true and correct as of the record date for determining the shareholders entitled to receive notice of and to vote at such meeting of shareholders, and such update and supplement must be received by the secretary of the corporation at the principal executive offices of the corporation not later than five business days following the later of the record date for the determination of shareholders entitled to receive notice of and to vote at the meeting of shareholders and the date notice of the record date is first publicly disclosed and (2) to provide evidence that the shareholder providing the notice has solicited proxies from holders representing at least 67% of the voting power of the shares of capital stock entitled to vote in the election of directors, and such update and supplement must be received by the secretary of the corporation at the principal executive offices of the corporation not later than five business days after the shareholder files a definitive proxy statement in connection with the meeting of shareholders.

(d) At the request of the board of directors, any person nominated by a shareholder for election or re-election as a director must furnish to the secretary of the corporation (1) that information required to be set forth in the shareholder's notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given and (2) such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director or audit committee financial expert of the corporation under applicable law, securities exchange rule or regulation, or any publicly-disclosed corporate governance guideline or committee charter of the corporation and (3) that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee; in the absence of the furnishing of such information if requested, such shareholder's nomination shall not be considered in proper form pursuant to this Section 2.4(ii).

(e) Without exception, no person shall be eligible for election or re-election as a director of the corporation at an annual meeting of shareholders unless nominated in accordance with the provisions set forth in this Section 2.4(ii). In addition, a nominee shall not be eligible for election or re-election if a shareholder or Shareholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) Advance Notice of Director Nominations for Special Meetings.

(a) For a special meeting of shareholders at which directors are to be elected or re-elected, nominations of persons for election or re-election to the board of directors shall be made only (1) by or at the direction of the board of directors or (2) by any shareholder of the corporation who (A) is a shareholder of record at the time of the giving of the notice required by this Section 2.4(iii) and on the record date for the determination of shareholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the secretary of the corporation that includes the information set forth in Sections 2.4(ii)(b), (ii)(c) and (ii)(d) above. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected or re-elected at such meeting. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the board of directors or (ii) by a shareholder in accordance with the notice procedures set forth in this Section 2.4(iii). In addition, a nominee shall not be eligible for election or re-election if a shareholder or Shareholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) Other Requirements and Rights. In addition to the foregoing provisions of this Section 2.4, a shareholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4. Nothing in this Section 2.4 shall be deemed to affect any rights of:

(a) a shareholder to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act; or

(b) the corporation to omit a proposal from the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

2.5 NOTICE OF SHAREHOLDERS' MEETINGS

Whenever shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the shareholders entitled to vote at the meeting, if such date is different from the record date for determining shareholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose

or purposes for which the meeting is called. Except as otherwise provided in the TBOC, the certificate of formation or these bylaws, the written notice of any meeting of shareholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder entitled to vote at such meeting as of the record date for determining the shareholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the shareholders. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of formation or these bylaws

If a quorum is not present or represented at any meeting of the shareholders, then either (i) the chairperson of the meeting, or (ii) the shareholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each shareholder of record

entitled to vote at the meeting. If after the adjournment a new record date for shareholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 6.101 of the TBOC and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each shareholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of shareholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business. The chairperson of any meeting of shareholders shall be designated by the board of directors; in the absence of such designation, the chairperson of the board, if any, the chief executive officer (in the absence of the chairperson) or the president (in the absence of the chairperson of the board and the chief executive officer), or in their absence any other executive officer of the corporation, shall serve as chairperson of the shareholder meeting.

2.9 VOTING

The shareholders entitled to vote at any meeting of shareholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Sections 6.251 and 6.252 (relating to voting rights of fiduciaries, pledgors and joint owners of stock), and Subchapter D of Chapter 6 (relating to voting of ownership interests), of the TBOC.

Except as may be otherwise provided in the certificate of formation or these bylaws, each shareholder shall be entitled to one vote for each share of capital stock held by such shareholder.

Except as otherwise required by law, the certificate of formation or these bylaws, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the shareholders. Directors shall be elected by a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors, provided, however, that the directors shall be elected by a plurality of the shares represented in person or by proxy at any

such meeting and entitled to vote on the election of directors and cast in the election of directors at any meeting of shareholders for which (i) the secretary of the corporation receives a notice that a shareholder has nominated a person for election to the board of directors in compliance with the advance notice requirements for shareholder nominees for director set forth in Section 2.4 of these bylaws and (ii) such nomination has not been withdrawn by such shareholder on or prior to the tenth (10th) day preceding the date the corporation first mails its notice of meeting for such meeting to the shareholders. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of formation or these bylaws.

2.10 SHAREHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class of stock or series thereof that have been expressly granted the right to take action by less than unanimous written consent, any action required or permitted to be taken by the shareholders of the corporation by written consent, and not at a duly called annual or special meeting of shareholders of the corporation, may only be taken if such written consent is signed by all holders of shares entitled to vote on such action.

2.11 RECORD DATES

In order that the corporation may determine the shareholders entitled to notice of any meeting of shareholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the shareholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the board of directors, the record date for determining shareholders entitled to notice of and to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; *provided, however*, that the board of directors may fix a new record date for determination of shareholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for shareholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of shareholders entitled to vote in accordance with the provisions of Section 6.101 of the TBOC and this Section 2.11 at the adjourned meeting.

In order that the corporation may determine the shareholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the shareholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining shareholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

2.12 PROXIES

Each shareholder entitled to vote at a meeting of shareholders may authorize another person or persons to act for such shareholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after eleven months from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Sections 21.368 and 21.369 of the TBOC. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person and as provided in Section 21.367 of the TBOC. Any shareholder directly or indirectly soliciting proxies from other shareholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the board of directors.

2.13 LIST OF SHAREHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of the corporation shall prepare and make, not later than the 11th day before each meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting. The shareholder list shall be arranged in alphabetical order and show the address of each shareholder and the number of shares of each class registered in the name of each shareholder and such other information as required by the TBOC. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be kept on file at the registered office or principal executive office of the corporation for at least 10 days prior to the date of the applicable meeting, and shall be open to the examination of any shareholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to shareholders of the corporation. Such list shall presumptively determine the identity of the shareholders entitled to vote at the meeting and the number of shares held by each of them.

2.14 INSPECTORS OF ELECTION

Before any meeting of shareholders, the board of directors shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any shareholder or a shareholder's proxy shall, appoint a person to fill that vacancy.

Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed and designated shall (i)

ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each share, (ii) determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspector or inspectors' count of all votes and ballots.

In determining the validity and counting of proxies and ballots cast at any meeting of shareholders of the corporation, the inspector or inspectors may consider such information as is permitted by applicable law. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all.

2.15 PROXY ACCESS

(i) Whenever the board of directors solicits proxies with respect to the election of directors at an annual meeting, subject to the provisions of this Section 2.15, the corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the board of directors (or any duly authorized committee thereof), the name, together with the Required Information (as defined below), of any person nominated for election (the "Shareholder Nominee") to the board of directors by an Eligible Shareholder (as

defined in Section 2.15(iv)) that expressly elects at the time of providing the notice required by this Section 2.15 to have such nominee included in the corporation's proxy materials pursuant to this Section 2.15. For purposes of this Section 2.15, the "Required Information" that the corporation will include in its proxy statement is (A) the information provided to the secretary of the corporation concerning the Shareholder Nominee and the Eligible Shareholder that is required to be disclosed in the corporation's proxy statement pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder and (B) if the Eligible Shareholder so elects, a Supporting Statement (as defined in Section 2.15(viii)). For the avoidance of doubt, nothing in this Section 2.15 shall limit the corporation's ability to solicit against any Shareholder Nominee or include in its proxy materials the corporation's own statements or other information relating to any Eligible Shareholder or Shareholder Nominee, including any information provided to the corporation pursuant to this Section 2.15. Subject to the provisions of this Section 2.15, the name of any Shareholder Nominee included in the corporation's proxy statement for an annual meeting shall also be set forth on the form of proxy distributed by the corporation in connection with such annual meeting.

(ii) In addition to any other applicable requirements, for a nomination to be made by an Eligible Shareholder pursuant to this Section 2.15, the Eligible Shareholder must have given timely notice of such nomination (the "Notice of Proxy Access Nomination") in proper written form to the secretary of the corporation. To be timely, the Notice of Proxy Access Nomination must be delivered to or be mailed and received by the secretary at the principal executive offices of the corporation not less than 120 days nor more than 150 days prior to the first anniversary of the date that the corporation first distributed its proxy statement to

shareholders for the immediately preceding annual meeting. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination pursuant to this Section 2.15.

(iii) The maximum number of Shareholder Nominees nominated by all Eligible Shareholders that will be included in the corporation's proxy materials with respect to an annual meeting shall not exceed the greater of (A) two or (B) 20% of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 2.15 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below 20% (such greater number, as it may be adjusted pursuant to this Section 2.15, the "Permitted Number"). In the event that one or more vacancies for any reason occurs on the board of directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the board of directors resolves to reduce the size of the board of directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. For purposes of determining when the Permitted Number has been reached, each of the following persons shall be counted as one of the Shareholder Nominees: (A) any individual nominated by an Eligible Shareholder for inclusion in the corporation's proxy materials pursuant to this Section 2.15 whose nomination is subsequently withdrawn, (B) any individual nominated by an Eligible Shareholder for inclusion in the corporation's proxy materials pursuant to this Section 2.15 whom the board of directors decides to nominate for election to the board of directors and (C) any director in office as of the Final Proxy Access Nomination Date who was included in the corporation's proxy materials as a Shareholder Nominee for either of the two preceding annual meetings (including any individual counted as a Shareholder Nominee pursuant to the immediately preceding clause (B)) and whom the board of directors decides to nominate for re-election to the board of directors. Any Eligible Shareholder submitting more than one Shareholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 2.15 shall rank such Shareholder Nominees based on the order in which the Eligible Shareholder desires such Shareholder Nominees to be selected for inclusion in the corporation's proxy materials in the event that the total number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.15 exceeds the Permitted Number. In the event that the number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.15 exceeds the Permitted Number, the highest ranking Shareholder Nominee who meets the requirements of this Section 2.15 from each Eligible Shareholder will be selected for inclusion in the corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of capital stock of the corporation each Eligible Shareholder disclosed as owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Shareholder Nominee who meets the requirements of this Section 2.15 from each Eligible Shareholder has been selected, then the next highest ranking Shareholder Nominee who meets the requirements of this Section 2.15 from each Eligible Shareholder will be selected for inclusion in the corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached. Notwithstanding anything to the contrary contained in this Section 2.15, the corporation shall not be required to include any Shareholder Nominees in its

proxy materials pursuant to this Section 2.15 for any meeting of shareholders for which the secretary of the corporation receives notice (whether or not subsequently withdrawn) that a shareholder intends to nominate one or more persons for election to the board of directors pursuant to the advance notice requirements for shareholder nominees set forth in Section 2.4.

(iv) An "Eligible Shareholder" is a shareholder or group of no more than 20 shareholders (counting as one shareholder, for this purpose, any two or more funds that are part of the same Qualifying Fund Group (as defined below)) that (A) has owned (as defined in Section 2.15(v)) continuously for at least three years (the "Minimum Holding Period") a number of shares of capital stock of the corporation that represents at least 3% of the corporation's outstanding capital stock as of the date the Notice of Proxy Access Nomination is delivered to or mailed and received by the secretary of the corporation in accordance with this Section 2.15 (the "Required Shares"), (B) continues to own the Required Shares through the date of the annual meeting and (C) satisfies all other requirements of, and complies with all applicable procedures set forth in, this Section 2.15. A "Qualifying Fund Group" is a group of two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer or (C) a "group of investment companies" as such term is defined in Section 13(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. Whenever the Eligible Shareholder consists of a group of shareholders (including a group of funds that are part of the same Qualifying Fund Group), (A) each provision in this Section 2.15 that requires the Eligible Shareholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each shareholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has owned continuously for the Minimum Holding Period in order to meet the 3% ownership requirement of the "Required Shares" definition) and (B) a breach of any obligation, agreement or representation under this Section 2.15 by any member of such group shall be deemed a breach by the Eligible Shareholder. No person may be a member of more than one group of shareholders constituting an Eligible Shareholder with respect to any annual meeting.

(v) For purposes of this Section 2.15, an Eligible Shareholder shall be deemed to "own" only those outstanding shares of capital stock of the corporation as to which the shareholder possesses both (A) the full voting and investment rights pertaining to the shares and (B) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; *provided* that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell or (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding capital stock of the corporation,

in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such shareholder's or its affiliates' full right to vote or direct the voting of any such shares and/or (y) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or affiliate. For purposes of this Section 2.15, a shareholder shall "own" shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A shareholder's ownership of shares shall be deemed to continue during any period in which (A) the shareholder has loaned such shares; *provided* that the shareholder has the power to recall such loaned shares on five business days' notice and includes in its Notice of Proxy Access Nomination an agreement that it (1) will promptly recall such loaned shares upon being notified that any of its Shareholder Nominees will be

included in the corporation's proxy materials and (2) will continue to hold such recalled shares through the date of the annual meeting or (B) the shareholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the capital stock of the corporation are "owned" for these purposes shall be determined by the board of directors (or any duly authorized committee thereof). For purposes of this Section 2.15, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the 1934 Act.

(vi) To be in proper written form for purposes of this Section 2.15, the Notice of Proxy Access Nomination must include or be accompanied by the following:

(a) a written statement by the Eligible Shareholder certifying as to the number of shares it owns and has owned continuously for the Minimum Holding Period, and the Eligible Shareholder's agreement to provide (1) within five business days following the later of the record date for the determination of shareholders entitled to vote at the annual meeting or the date notice of the record date is first publicly disclosed, a written statement by the Eligible Shareholder certifying as to the number of shares it owns and has owned continuously through the record date and (2) immediate notice if the Eligible Shareholder ceases to own any of the Required Shares prior to the date of the annual meeting;

(b) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to or mailed and received by the secretary of the corporation, the Eligible Shareholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Shareholder's agreement to provide, within five business days following the later of the record date for the determination of shareholders entitled to vote at the annual meeting or the date notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Shareholder's continuous ownership of the Required Shares through the record date;

(c) a copy of the Schedule 14N that has been or is concurrently being filed with the SEC as required by Rule 14a-18 under the 1934 Act;

(d) the information and representations that would be required to be set forth in a shareholder's notice of a nomination pursuant to Section 2.4, together with the written consent of each Shareholder Nominee to being named as a nominee in any proxy statement relating to the annual meeting and to serving as a director if elected;

(e) a representation that the Eligible Shareholder (1) will continue to hold the Required Shares through the date of the annual meeting, (2) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the corporation, and does not presently have such intent, (3) has not nominated and will not nominate for election to the board of directors at the annual meeting any person other than the Shareholder Nominee(s) it is nominating pursuant to this Section 2.15, (4) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(1) under the 1934 Act in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a nominee of the board of directors, (5) has not distributed and will not distribute to any shareholder of the corporation any form of proxy for the annual meeting other than the form distributed by the corporation, (6) has complied and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, and (7) has provided and will provide facts, statements and other information in all communications with the corporation and its shareholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(f) an undertaking that the Eligible Shareholder agrees to (1) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Shareholder's communications with the shareholders of the corporation or out of the information that the Eligible Shareholder provided to the corporation, (2) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Shareholder pursuant to this Section 2.15 or any solicitation or other activity in connection therewith and (3) file with the SEC any solicitation or other communication with the

shareholders of the corporation relating to the meeting at which its Shareholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the 1934 Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the 1934 Act;

(g) the written representation and agreement from each Shareholder Nominee that such person (1) is not and will not become a party to (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act

or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation in such representation and agreement or (y) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law; (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the corporation in such representation and agreement; (3) would be in compliance, if elected as a director of the corporation, and will comply with the corporation's code of business ethics, corporate governance guidelines and any other policies or guidelines of the corporation applicable to directors; and (4) will make such other acknowledgments, enter into such agreements and provide such information as the board of directors requires of all directors, including promptly submitting all completed and signed questionnaires required of the corporation's directors;

(h) in the case of a nomination by a group of shareholders together constituting an Eligible Shareholder, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the corporation and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 2.15 (including withdrawal of the nomination); and

(i) in the case of a nomination by a group of shareholders together constituting an Eligible Shareholder in which two or more funds that are part of the same Qualifying Fund Group are counted as one shareholder for purposes of qualifying as an Eligible Shareholder, documentation reasonably satisfactory to the corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(vii) In addition to the information required pursuant to Section 2.15(vi) or any other provision of these bylaws, (A) the corporation may require any proposed Shareholder Nominee to furnish any other information (1) that may reasonably be requested by the corporation to determine whether the Shareholder Nominee would be independent under the rules and listing standards of the principal United States securities exchanges upon which the capital stock of the corporation is listed or traded, any applicable rules of the SEC or any publicly disclosed standards used by the board of directors in determining and disclosing the independence of the corporation's directors (collectively, the "**Independence Standards**"), (2) that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such Shareholder Nominee or (3) that may reasonably be requested by the corporation to determine the eligibility of such Shareholder Nominee to be included in the corporation's proxy materials pursuant to this Section 2.15 or to serve as a director of the corporation, and (B) the corporation may require the Eligible Shareholder to furnish any other information that may reasonably be requested by the corporation to verify the Eligible Shareholder's continuous ownership of the Required Shares for the Minimum Holding Period.

(viii) The Eligible Shareholder may, at its option, provide to the secretary of the corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement,

not to exceed 500 words, in support of the candidacy of the Shareholder Nominee(s) (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Shareholder (including any group of shareholders together constituting an Eligible Shareholder) in support of its Shareholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 2.15, the corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(ix) In the event that any information or communications provided by an Eligible Shareholder or a Shareholder Nominee to the corporation or its shareholders ceases to be true and correct in all material respects or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Shareholder or Shareholder Nominee, as the case may be, shall promptly notify the secretary of the corporation of any such defect in such previously provided information and of the information that is required to correct any such defect; it being understood that providing such notification shall not be deemed to cure any such defect or limit the remedies available to the corporation relating to any such defect (including the right to omit a Shareholder Nominee from its proxy materials pursuant to this Section 2.15). In addition, any person providing any information to the corporation pursuant to this Section 2.15 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for the determination of shareholders entitled to vote at the annual meeting, and such update and supplement shall be delivered to or be mailed and received by the secretary at the principal executive offices of the corporation not later than five business days following the later of the record date for the determination of shareholders entitled to vote at the annual meeting or the date notice of the record date is first publicly disclosed.

(x) Notwithstanding anything to the contrary contained in this Section 2.15, the corporation shall not be required to include in its proxy materials, pursuant to this Section 2.15, any Shareholder Nominee (A) who would not be an independent director under the Independence Standards, (B) whose election as a member of the board of directors would cause the corporation to be in violation of these bylaws, the certificate of formation, the rules and listing standards of the principal United States securities exchanges upon which the capital stock of the corporation is listed or traded, or any applicable law, rule or regulation, (C) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (D) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past 10 years, (E) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, or (F) who shall have provided any information to the corporation or its shareholders that was untrue in any material respect or that omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(xi) Notwithstanding anything to the contrary set forth herein, if (A) a Shareholder Nominee and/or the applicable Eligible Shareholder breaches any of its agreements

or representations or fails to comply with any of its obligations under this Section 2.15 or (B) a Shareholder Nominee otherwise becomes ineligible for inclusion in the corporation's proxy materials pursuant to this Section 2.15 or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the board of directors (or any duly authorized committee thereof) or the chairman of the annual meeting, (1) the corporation may omit or, to the extent feasible, remove the information concerning such Shareholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its shareholders that such Shareholder Nominee will not be eligible for election at the annual meeting, (2) the corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Shareholder or any other Eligible Shareholder and (3) the board of directors (or any duly authorized committee thereof) or the chairman of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the corporation. In addition, if the Eligible Shareholder (or a representative thereof) does not appear at the annual meeting to present any nomination pursuant to this Section 2.15, such nomination shall be declared invalid and disregarded as provided in clause (3) above.

(xii) Any Shareholder Nominee who is included in the corporation's proxy materials for a particular annual meeting but either (A) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (B) does not receive at least 25% of the votes cast in favor of such Shareholder Nominee's election, will be ineligible to be a Shareholder Nominee pursuant to this Section 2.15 for the next two annual meetings. For the avoidance of doubt, the immediately preceding sentence shall not prevent any shareholder from nominating any person to the board of directors pursuant to and in accordance with Section 2.4.

Other than Rule 14a-19 under the 1934 Act, this Section 2.15 provides the exclusive method for a shareholder to include nominees for election to the board of directors in the corporation's proxy statement.

ARTICLE III — DIRECTORS

3.1 POWERS

The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as may be otherwise provided in the TBOC or the certificate of formation.

3.2 NUMBER OF DIRECTORS

The board of directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of formation fixes the number of directors, the number of directors shall be determined from time to time solely by resolution of the board of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be shareholders unless so required by the certificate of formation or these bylaws. The certificate of formation or these bylaws may prescribe other qualifications for directors.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation; *provided, however,* that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. A resignation is effective when the resignation is received by the corporation unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of formation or these bylaws, when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of formation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled in any manner permitted by the TBOC, including by (1) the board of directors at any meeting of the board of directors by vote of a majority of the remaining members of the board of directors, although less than a quorum, or (2) a sole remaining director, in each case to the extent permitted by the TBOC; *provided,* that the term of any director appointed by the majority of the directors then in office to fill a vacancy shall last only until the next annual meeting of shareholders or special meeting of shareholders called to vote on the election of directors. If the directors are divided into classes, a person so elected or appointed to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors may hold meetings, both regular and special, either within or outside the State of Texas.

Unless otherwise restricted by the certificate of formation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other

communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board of directors, the chief executive officer, the president, the secretary or a majority of the authorized number of directors, at such times and places as he or she or they shall designate.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting.

3.8 QUORUM; VOTING

At all meetings of the board of directors, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the certificate of formation or these bylaws. To the maximum extent permitted by the TBOC, in the

event a director or directors abstain or are disqualified from a vote, the majority vote of the director or the directors thereof not abstaining or disqualified from voting, whether or not such director or directors constitute a quorum, shall be the act of the board of directors.

If the certificate of formation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of formation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of formation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS

A director may be removed from office by the shareholders of the corporation only for cause.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE IV — COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may

unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. In the event a member or members of a committee abstain or are disqualified from a vote, the majority vote of the member or members thereof not abstaining or disqualified from voting, whether or not such member or members constitute a quorum, shall be the act of such committee. Any such committee, to the extent provided in the resolution of the board of directors or in these bylaws, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the shareholders, any action or matter (other than the election or removal of directors) expressly required by the TBOC to be submitted to shareholders for approval or which otherwise may not be delegated to a committee, or (ii) adopt, amend or repeal any bylaw of the corporation.

4.2 COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings; notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 3.9 (action without a meeting); and
- (vi) Section 7.5 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members. However:

- (i) the time of regular meetings of committees may be determined by resolution of the committee;
- (ii) special meetings of committees may also be called by resolution of the committee; and
- (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of

directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of formation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of formation or these bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of formation, these bylaws or the resolutions of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V — OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a president and a secretary. The corporation may also have, at the discretion of the board of directors, a chairperson of the board of directors, a vice chairperson of the board of directors, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS

The board of directors shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Article V for the regular appointment to such office.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the corporation may require. Each of such officers and agents shall hold office for such

period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or, except in the case of an

officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written or electronic notice to the corporation; *provided, however,* that if such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the officer. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors or as provided in Section 5.3.

5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairperson of the board of directors, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the board of directors.

5.8 THE CHAIRPERSON OF THE BOARD

The chairperson of the board shall have the powers and duties customarily and usually associated with the office of the chairperson of the board. The chairperson of the board shall preside at meetings of the shareholders and of the board of directors.

5.9 THE VICE CHAIRPERSON OF THE BOARD

The vice chairperson of the board shall have the powers and duties customarily and usually associated with the office of the vice chairperson of the board. In the case of absence or disability of the chairperson of the board, the vice chairperson of the board shall perform the duties and exercise the powers of the chairperson of the board.

5.10 THE CHIEF EXECUTIVE OFFICER

The chief executive officer shall have, subject to the supervision, direction and control of the board of directors, ultimate authority for decisions relating to the supervision, direction and management of the affairs and the business of the corporation customarily and usually associated with the position of chief executive officer, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the corporation. If at any time the office of the chairperson and vice chairperson of the board shall not be filled, or in the event of the temporary absence or disability of the chairperson of the board and the vice chairperson of the board, the chief executive officer shall perform the duties and exercise the powers of the chairperson of the board unless otherwise determined by the board of directors.

5.11 THE PRESIDENT

The president shall have, subject to the supervision, direction and control of the board of directors, the general powers and duties of supervision, direction and management of the affairs and business of the corporation customarily and usually associated with the position of president. The president shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board or the chief executive officer. In the event of the absence or disability of the chief executive officer, the president shall perform the duties and exercise the powers of the chief executive officer unless otherwise determined by the board of directors.

5.12 THE VICE PRESIDENTS AND ASSISTANT VICE PRESIDENTS

Each vice president and assistant vice president shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer or the president.

5.13 THE SECRETARY AND ASSISTANT SECRETARIES

(i) The secretary shall attend meetings of the board of directors and meetings of the shareholders and record all votes and minutes of all such proceedings in a book or books kept for such purpose. The secretary shall have all such further powers and duties as are customarily and usually associated with the position of secretary or as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer or the president.

(ii) Each assistant secretary shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chairperson of the board, the chief executive officer, the president or the secretary. In the event of the absence, inability or refusal to act of the secretary, the assistant secretary (or if there shall be more than one, the assistant secretaries in the order determined by the board of directors) shall perform the duties and exercise the powers of the secretary.

5.14 THE CHIEF FINANCIAL OFFICER AND ASSISTANT TREASURERS

(i) The chief financial officer shall be the treasurer of the corporation. The chief financial officer shall have custody of the corporation's funds and securities, shall be responsible for maintaining the corporation's accounting records and statements, shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation, and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors. The chief financial officer shall also maintain adequate records of all assets, liabilities and transactions of the corporation and shall assure that adequate audits thereof are currently and regularly made. The chief financial officer shall have all such further powers and duties as are customarily and usually associated with the position of chief financial officer, or as may from time to time be assigned to him or her by the board of directors, the chairperson, the chief executive officer or the president.

(ii) Each assistant treasurer shall have such powers and perform such duties as may from time to time be assigned to him or her by the board of directors, the chief executive officer, the president or the chief financial officer. In the event of the absence, inability or refusal to act of the chief financial officer, the assistant treasurer (or if there shall be more than one, the assistant treasurers in the order determined by the board of directors) shall perform the duties and exercise the powers of the chief financial officer.

ARTICLE VI — STOCK

6.1 STOCK CERTIFICATES

The shares of the corporation shall be represented by certificates, provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by the chairperson of the board of directors or vice chairperson of the board of directors, or the president or a vice president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have the power to issue a certificate in bearer form.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the

qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; *provided, however,* that, except as otherwise provided in Section 3.202 of the TBOC, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 6.2 or Section 3.205 of the TBOC or with respect to this Section 6.2 a statement that the corporation will furnish without charge to each shareholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 LOST, STOLEN OR DESTROYED CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The board of directors, subject to any restrictions contained in the certificate of formation or applicable law, may declare and pay dividends upon the shares of the corporation's capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock, subject to the provisions of the certificate of formation.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is

certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer; *provided, however,* that such succession, assignment or authority to transfer is not prohibited by the certificate of formation, these bylaws, applicable law or contract.

6.6 STOCK TRANSFER AGREEMENTS

The corporation shall have the power to enter into and perform any agreement with any number of shareholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such shareholders in any manner not prohibited by the TBOC.

6.7 REGISTERED SHAREHOLDERS

The corporation:

- (i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;
- (ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and
- (iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Texas.

ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF SHAREHOLDERS' MEETINGS

Notice of any meeting of shareholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the shareholder at such shareholder's address as it appears on the corporation's records. An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

7.2 NOTICE BY ELECTRONIC TRANSMISSION

Without limiting the manner by which notice otherwise may be given effectively to shareholders pursuant to the TBOC, the certificate of formation or these bylaws, any notice to shareholders given by the corporation under any provision of the TBOC, the certificate of formation or these bylaws shall be effective if given by a form of electronic transmission consented to by the shareholder to whom the notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any such consent shall be deemed revoked if:

- (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (i) if by facsimile telecommunication, when transmitted to a number at which the shareholder has consented to receive notice;
- (ii) if by electronic mail, when transmitted to an electronic mail address at which the shareholder has consented to receive notice;
- (iii) if by a posting on an electronic network together with separate notice to the shareholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and
- (iv) if by any other form of electronic transmission, when communicated to the shareholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

7.3 NOTICE TO SHAREHOLDERS SHARING AN ADDRESS

To the extent permitted under the TBOC, without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under the provisions of the TBOC, the certificate of formation or these bylaws shall be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Any such consent shall be revocable by the shareholder by written notice to the corporation. Any shareholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.4 WAIVER OF NOTICE

Whenever notice is required to be given to shareholders, directors or other persons under any provision of the TBOC, the certificate of formation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person participates in or attends a meeting solely to object to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders or the board of directors, as the case may be, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of formation or these bylaws.

ARTICLE VIII — INDEMNIFICATION

8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the TBOC, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or

proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director of the corporation or an officer of the corporation, or while a director of the corporation or officer of the corporation is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the corporation shall indemnify, to the fullest extent permitted by the TBOC, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or while a director or officer of the

corporation is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the corporation shall have power to indemnify its employees and its agents to the extent not prohibited by the TBOC or other applicable law. The board of directors shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the board of directors determines.

8.5 ADVANCED PAYMENT OF EXPENSES

Expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses and any documentation as may be required by the TBOC) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the TBOC. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the corporation deems reasonably appropriate and shall be subject to the corporation's expense guidelines. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding referenced in Section 8.6(ii) or 8.6(iii) prior to a determination that the person is not entitled to be indemnified by the corporation.

8.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the TBOC, the corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

- (i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;
- (ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);
- (iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);
- (iv) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 8.7 or (d) otherwise required by applicable law; or
- (v) if prohibited by applicable law; *provided, however,* that if any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

8.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within 90 days after receipt by the corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her

entitlement to such indemnification or advancement of expenses. The corporation shall indemnify such person against any and all expenses that are incurred by such person in connection with any action for indemnification or advancement of expenses from the corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

8.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of formation or any statute, bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the TBOC or other applicable law.

8.9 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the TBOC.

8.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.11 EFFECT OF REPEAL OR MODIFICATION

Any amendment, alteration or repeal of this Article VIII shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to such amendment, alteration or repeal.

8.12 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued,

would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article VIII.

ARTICLE IX — GENERAL MATTERS

9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of formation or these bylaws, the board of directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

9.2 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

9.3 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the TBOC shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both an entity and a natural person.

ARTICLE X — AMENDMENTS

These bylaws may be adopted, amended or repealed by the shareholders entitled to vote; *provided, however,* that the affirmative vote of the holders of at least 66 2/3% of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the shareholders of the corporation to alter, amend or repeal, or adopt any bylaw inconsistent with, the following provisions of these bylaws: Article II, Sections 3.1, 3.2, 3.4 and 3.11 of Article III, Article VIII and this Article X (including, without limitation, any such Article or Section as renumbered as a result of any amendment, alteration, change, repeal, or adoption of any other bylaw). The board of directors shall also have the power to adopt, amend or repeal these bylaws; *provided, however,* that a bylaw amendment adopted by shareholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

ARTICLE XI — EXCLUSIVE FORUM

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim for or based on a breach of a fiduciary duty owed by any current or former director or officer or other employee of the corporation to the corporation or the corporation's shareholders, including a claim alleging the aiding and abetting of such a breach of fiduciary duty, (iii) any action asserting a claim against the corporation or any current or former director or officer or other employee of the corporation arising pursuant to any provision of the TBOC or the certificate of formation or these bylaws (in each case, as they may be amended from time to time), (iv) any action asserting a claim related to or involving the corporation that is governed by the internal affairs doctrine, or (v) any action asserting an "internal entity claim" as that term is defined in Section 2.115 of the TBOC shall be the Business Court in the Third Business Court Division ("Business Court") of the State of Texas (provided that if the Business Court is not then accepting filings or determines that it lacks jurisdiction, the United States District Court for the Western District of Texas, Austin Division (the "Federal Court") or, if the Federal Court lacks jurisdiction, the state district court of Travis County, Texas). For the avoidance of doubt, this Article shall not apply to any direct claims under the Securities Act of 1933, as amended, or the 1934 Act.

Exhibit 31.1

CERTIFICATIONS

I, Elon Musk, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **April 23, 2024** July 23, 2024

/s/ Elon Musk

Elon Musk
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, Vaibhav Taneja, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tesla, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **April 23, 2024** July 23, 2024

/s/ Vaibhav Taneja

Vaibhav Taneja

Chief Financial Officer

(Principal Financial Officer)

Exhibit 32.1

SECTION 1350 CERTIFICATIONS

I, Elon Musk, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Quarterly Report of Tesla, Inc. on Form 10-Q for the quarterly period ended **March 31, 2024** June 30, 2024, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: **April 23, 2024** July 23, 2024

/s/ Elon Musk

Elon Musk

Chief Executive Officer

(Principal Executive Officer)

I, Vaibhav Taneja, certify, pursuant to 18 U.S.C. Section 1350, that, to my knowledge, the Quarterly Report of Tesla, Inc. on Form 10-Q for the quarterly period ended **March 31, 2024** June 30, 2024, (i) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) that the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Tesla, Inc.

Date: **April 23, 2024** July 23, 2024

/s/ Vaibhav Taneja

Vaibhav Taneja

Chief Financial Officer

(Principal Financial Officer)

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