

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

vs.

ELON MUSK,

Defendant.

Case No. 1:18-cv-8865-AJN-GWG

**RESPONSE TO ORDER TO SHOW CAUSE WHY DEFENDANT ELON MUSK
SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING THE COURT'S FINAL
JUDGMENT**

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INTRODUCTION

Elon Musk (“Musk”) did not violate this Court’s Final Judgment (the “Order”), and there is no basis to issue contempt sanctions against him. The Securities and Exchange Commission’s (“SEC’s”) request that Musk be held in civil contempt for a single, immaterial tweet that dutifully complied with the Order and with Tesla’s “Senior Executives Communications Policy” (the “Policy”) is incorrect on the facts and on the law.

First, a party can only be held in contempt if there is clear and convincing evidence that an unambiguous court order was violated. *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Techs., Inc.*, 369 F.3d 645, 655 (2d Cir. 2004). The Order requires that Musk comply with Tesla’s Policy on the pre-approval of certain communications “that contain, or reasonably could contain, information material to [Tesla] or its shareholders.” 1:18-cv-8865-AJN-GWG, Dkt. No. 14 at 14. As Tesla has confirmed, Musk has complied with the Policy, which permits Musk to exercise his reasonable discretion in the first instance to determine whether his communications contain information requiring pre-approval.¹ As relevant here, Musk correctly used his discretion to determine that his 7:15 pm tweet was not material and did not contain information that could reasonably be considered material. The definition of materiality is well-settled under the securities law. “[T]o fulfill the materiality requirement there must be a substantial likelihood that the disclosure . . . would have been viewed by the reasonable investor as having significantly altered

¹ The Policy provides that an “Authorized Executive,” which includes Musk, may use written communications “to disseminate information relating to Tesla,” subject to following certain procedures, and specifies that one such procedure is seeking pre-approval of posts that “contain, or reasonably could contain,” material information. Dkt. No. 18-1 at 1. As explained by Tesla to the SEC, Tesla’s Policy entrusts the Authorized Executive (here, Musk) with the discretion in the first instance to determine whether a communication “reasonably could contain” material information that would require pre-approval. Mar. 11, 2019 Letter from M. Martens to C. Crumpton (attached hereto as Exhibit 8). In addition to granting preliminary discretion to the Executive, the Policy also provides that Tesla will periodically review the Executive’s statements that have already been communicated and provide guidance should it be necessary. Tesla and Musk have done so here.

the total mix of information made available.” *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (internal quotation marks omitted). Here, the tweet was simply Musk’s shorthand gloss on and entirely consistent with prior public disclosures² detailing Tesla’s anticipated production volume. Moreover, it is clear from the context of the tweet that it was celebratory and forward-looking—a type of statement that courts have concluded is immaterial as a matter of law. Musk was rightfully proud of the work he and his team had done to get Tesla from a point where it produced no cars to a point where it would be producing hundreds of thousands of vehicles. Under no fair reading of the materiality standard did Musk’s proud and optimistic restatement of publicly disclosed information, coming after the market closed, “significantly alter” the total mix of information available to investors. The Court need not go further to discharge its Order to Show Cause.

Second, even if Musk were incorrect in his judgment that the tweet was not nor reasonably could be considered material—a view shared by Tesla and reflected by the market’s non-reaction—he cannot be held in contempt unless there is evidence that he did not diligently attempt to comply with the Order. *Paramedics Electromedicina Comercial, Ltda.*, 369 F.3d at 655. Musk’s conduct since entry of the Order, and his conduct with respect to the particular tweet at issue, demonstrates the opposite. He has diligently attempted to comply with the Order. Since entry of the Order, Musk has dramatically reduced his volume of tweets generally and regarding Tesla in particular. This self-censorship is reflective of his commitment to adhering to the Order and avoiding unnecessary disputes with the SEC. Indeed, Musk’s actions on February 19, 2019, underscore his diligence. Despite his view that there was no need for a subsequent clarification

² Tesla’s January 30, 2019 Fourth Quarter & Full Year 2018 Update; Tesla’s January 30, 2019 Earnings Call; Tesla’s February 19, 2019 Annual Report (10-K); and Tesla’s January 2, 2019 Form 8-K.

tweet, Musk posted such a clarification promptly after speaking with Disclosure Counsel and without any intervention by the SEC.

Third, the Order as the SEC interprets it would raise serious First Amendment issues and implicate other constitutional rights. The SEC seeks to rewrite the Order to eliminate Musk's discretion, effectively requiring Musk to seek pre-approval of any tweet that relates to Tesla, regardless of its significance, prior dissemination, or nature. Such a broad prior restraint would violate the First Amendment. Moreover, the SEC seeks to procure through a contempt proceeding enforcement power that is far broader and less clearly defined than the power Congress has granted it via statute. The Court should construe the Order narrowly to avoid applying it in a way that would raise significant constitutional concerns.

This contempt action, following Musk's sincerely-held criticism of the SEC on *60 Minutes*, also reflects concerning and unprecedented overreach on the part of the SEC. The SEC no doubt recognizes that "exercise [of contempt power] is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions," *Cooke v. United States*, 267 U.S. 517, 539 (1925), and it is rare for the agency to seek a contempt order. Virtually every SEC contempt motion in recent years has sought to preserve assets, to recover money owed to the agency, to enforce a prohibition against issuance of securities or solicitation of investors, or to enforce compliance with an investigative subpoena. The SEC has not cited—and counsel has not identified—any prior case in the last decade where the SEC has sought a contempt order to enforce the type of injunction at issue here.³

This case should not be the first.

³ See, e.g., *SEC v. Roger S. Bliss, et al.*, No. 2:15-cv-00098, Dkt. No. 84 (D. Utah Aug. 14, 2015) (contempt order for violating asset freeze); *SEC v. James M. Louks et al.*, No. 15-cv-3456, Dkt. No. 86 (D. Minn. Sep. 30, 2016) (contempt order for violating order to halt raising money from investors); *SEC v. Sethi Petroleum, LLC and Sameer P. Sethi*, No. 4:15-cv-338, Dkt. No. 169 (E.D. Tex. Aug. 9, 2016) (contempt order for violating preliminary injunction restraining defendants from participating in securities offerings); *SEC v. Anvil Partners, Inc.*, 1:17-mc-

Musk respectfully requests that the Court's Order to Show Cause be discharged.

FACTUAL BACKGROUND

I. The Settlement

On September 27, 2018, the SEC filed a complaint against Musk related to statements he had published on Twitter in August 2018 about a potential transaction to take Tesla private. Two days later, the SEC reached settlement agreements with Musk and Tesla.

On October 16, 2018, the Court entered a Final Judgment as to Musk (the "Order"). *See* Dkt. No. 14. The Order reflects Musk's obligations under the settlement. As relevant here, the Order enjoins Musk from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. *Id.* at 10-11. It also requires Musk to "comply with all mandatory procedures implemented by Tesla, Inc. . . . regarding . . . the pre-approval of any [] written communications that contain, or reasonably could contain, information material to [Tesla] or its shareholders." *Id.* at 13-14. The Order itself does not specify a protocol for pre-approval of Tesla-related tweets; rather, it directs Musk to comply with Tesla's policies regarding certain tweets.

Tesla, in turn, enacted a "Senior Executives Communications Policy" on December 11, 2018 (the "Policy"). *See* Dkt. No. 18-1. The Policy mandates that any of Musk's "Written Communications" that "contain, or reasonably could contain, information material to Tesla or its stockholders" must be submitted to Tesla's General Counsel and Disclosure Counsel for pre-approval prior to publication. *Id.* at 1. The Policy lists various categories of information that "may, depending on its significance, be material," including, among other things, production progress or delays, sales or delivery numbers, projections, forecasts, or estimates regarding Tesla business. *Id.* The Policy also provides that, if Musk plans to publish a communication that

00318, Dkt. No. 22 (S.D.N.Y. Dec. 19, 2017) (contempt order for failing to comply with SEC subpoena).

contains, or reasonably could contain, material information more than two days after that communication was pre-approved, Musk must re-confirm the pre-approval. *Id.* at 2. The Policy does not contain any requirement to obtain a second pre-approval after the information in question has been publicly disseminated.

As Tesla has explained, the Policy was drafted to permit Musk to determine, in the first instance, whether a communication “contain[s], or reasonably could contain,” material information requiring pre-approval. Ex. 8 at 2-3; Declaration of Elon R. Musk (Musk Decl.) ¶ 6.

II. The February 19, 2019 Tweets and Prior Disclosures

Musk posted a series of tweets on February 19, 2019. Musk. Decl. ¶¶ 8, 12. At 7:02 p.m. ET, Musk tweeted, “4000 Tesla cars loading in SF for Europe.” *Id.* ¶ 8. The tweet attached a photograph depicting thousands of Tesla vehicles on a loading dock in the San Francisco Bay. *Id.* A few minutes later, at 7:15 p.m. ET, Musk tweeted, “Tesla made 0 cars in 2011, but will make around 500k in 2019” (the “7:15 tweet”). *Id.* The 7:15 tweet was linked to the 7:02 tweet.

At the time Musk posted these tweets, Tesla had already disclosed in recent public statements information relating to its current and anticipated 2019 production volumes. On January 2, 2019, Tesla filed a Form 8-K reporting its Fourth Quarter 2018 production numbers, stating in part:

Production in Q4 grew to 86,555 vehicles, 8% more than our prior all-time high in Q3. This included:

- 61,394 Model 3 vehicles, in line with our guidance and 15% more than Q3.
- 25,161 Model S and X vehicles, *consistent with our long-term run rate of approximately 100,000 per year.*”

Form 8-K (Jan. 2, 2019), attached hereto as Exhibit 1, at 5 (emphasis added).

On January 30, 2019, Tesla released its financial results for the fiscal quarter and year ended December 31, 2018 by posting its Fourth Quarter & Full Year 2018 Update letter (the “Update”) on its website and filing a copy of the letter with the SEC. The letter stated, in part:

Model 3 production volumes in Fremont should gradually continue to grow throughout 2019 and reach a sustained rate of 7,000 units per week by the end of the year. We are planning to continue to produce Model 3 vehicles at maximum production rates throughout 2019. Inclusive of Gigafactory Shanghai, where we are initially aiming for 3,000 Model 3 vehicles per week, our goal is to be able to produce 10,000 vehicles per week on a sustained basis. Barring unexpected challenges with Gigafactory Shanghai, we are targeting annualized Model 3 output *in excess of 500,000 units* sometime between Q4 of 2019 and Q2 of 2020.

Tesla Fourth Quarter & Full Year 2018 Update (Jan. 30, 2019), attached hereto as Exhibit 2, at 6 (emphasis added).

This information was discussed in a January 30, 2019 earnings call (the “Earnings Call”), which included the following comments by Musk and Tesla’s then-CFO Deepak Ahuja:

[MUSK]: [W]e do feel quite confident at this point, at least for the factories that are in our control, that we can achieve volume production in Shanghai by the end of the year. And that should allow us to get to the 10,000 vehicles a week rate, or very close to it, by the end of the year.

...

[ANALYST]: Can you talk a little bit about the geographic dispersion for the guidance for 2019, where you’re expecting the Model 3s to sell through as well as the other models?

ELON R. MUSK: Well, I think we did, actually. Yes, it’s clear in our letter.

DEEPAK AHUJA: Correct. We indicated in Q1, we will start delivering Model 3s in Europe and China. And we also shared a chart showing the potential market size for mid-sized premium sedans in North America, Europe and Asia, suggesting those markets can be even bigger. So I think that gives a good sense of where we’ll be. And we’ll launch the right-hand drive version at some point to go to the other markets.

ELON R. MUSK: Yes, it’s *maybe on the order of 350,000 to 500,000 Model 3s*, something like that this year.

Q4 2018 Tesla Inc. Earnings Call Transcript (Jan. 30, 2019), attached hereto as Exhibit 3, at 5, 8 (emphasis added).

Finally, on February 19, 2019—the *same day* that Musk posted his comments on Twitter—Tesla filed its Form 10-K for 2018, which reiterates information contained and discussed in the prior disclosures and the Earnings Call, including the following:

At the Tesla Factory, we expect to continue to increase our Model 3 production rate to approximately 7,000 units per week on a sustained basis by the end of 2019. Moreover, in China, we expect to commence production of certain trims of Model 3 for the local market in China in the initial phase of our Gigafactory Shanghai by the end of 2019, and then progressively increase levels of localization through local sourcing and manufacturing. Inclusive of Gigafactory Shanghai, our goal is to be able to produce 10,000 Model 3 vehicles per week on a sustained basis, and an annualized output rate *in excess of 500,000 Model 3 vehicles* sometime between the fourth quarter of 2019 and the second quarter of 2020.

Form 10-K (Feb. 19, 2019), excerpts attached hereto as Exhibit 4, at 3 (emphasis added). The Form 10-K also includes lengthy disclosures regarding the risks and assumptions affecting Tesla's production projections. Ex. 4 at 3-24.

III. Musk's Post-Tweet Response

Tesla's Disclosure Counsel reviewed Musk's 7:15 tweet shortly after it was posted. Musk Decl. ¶ 12. This was consistent with the Policy, which provides that Tesla will periodically review tweets after they are posted and provide feedback if necessary. Ex. 8 at 3. As Tesla has confirmed to the SEC, the company does not view the tweet as material, or possibly material, and does not believe it required pre-approval under the Policy. *See* Ex. 8 at 3-4. However, out of an abundance of caution and because pundits and others tend to scrutinize statements by Musk and Tesla for criticism, Musk posted another tweet at 11:41 p.m. ET. Musk Decl. ¶ 12.

IV. SEC's Post-Tweet Response

On Wednesday, February 20, 2019, the SEC sent letters to counsel for Musk and for Tesla, demanding to know whether the 7:15 tweet had been pre-approved. *See* Dkt. Nos. 18-2, 18-3. On Friday, February 22, 2019, counsel responded on behalf of Tesla and Musk, confirming that the 7:15 tweet was not pre-approved and explaining Tesla's determination that pre-approval was not required under the Policy. Dkt. No. 18-4. The letter also included steps Musk and Tesla have taken, and continue to take, to comply with the Order. *Id.* at 1-2.

On Sunday, February 24, 2019, the SEC sent a further request for information to Musk and Tesla, demanding a response on the same day (i.e., on Sunday). *See* Feb. 24, 2019 Email from C. Crumpton to B. Bondi, attached hereto as Exhibit 5. Musk's counsel responded that he could not provide an immediate response, as the request sought substantial information and it was a Sunday, but that counsel would likely be able to respond in full on the following day, Monday, February 25. *See* Feb. 24, 2019 Email from B. Bondi to C. Crumpton, attached hereto as Exhibit 6. Rather than providing Tesla or Musk a reasonable opportunity to respond, on Monday, February 25, 2019, the SEC moved for an order to show cause why Musk should not be held in contempt. *See* SEC's Motion and Memorandum of Law in Support of an Order to Show Cause ("Mot."). Despite having moved for a contempt order, however, the SEC continued to investigate the facts surrounding the 7:15 tweet, sending *another* letter to Tesla on February 26, 2019, that contained 11 additional Requests for Information. *See* Feb. 26, 2019 Letter from C. Crumpton to B. Bondi, attached hereto as Exhibit 7. Counsel for Tesla responded to that letter on March 11, 2019. *See* Ex. 8.

V. Market's Post-Tweet Response

As confirmed by the declaration of Dr. Christopher Noe, the 7:15 tweet did not cause any notable move in Tesla's stock price in the after-hours market and was plainly not material to

shareholders. Declaration of Christopher F. Noe, PhD (“Noe Decl.”) ¶ 21 (noting a .09% movement in the stock price in after-hours trading). By contrast, the SEC’s filing a motion seeking to hold Musk in contempt caused a 3.4% decline in Tesla’s stock price during after-hours trading. *Id.* ¶¶ 21, 30.

LEGAL STANDARD

“A party may be held in civil contempt for failure to comply with a court order if (1) the order the [party] failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the [party] has not diligently attempted to comply in a reasonable manner.” *Paramedics Electromedicina Comercial, Ltda.*, 369 F.3d at 655 (internal quotation marks omitted). “In a civil contempt proceeding . . . the government must prove its case by clear and convincing proof of violation of a court decree; a bare preponderance of the evidence will not suffice.” *In re Weiss*, 703 F.2d 653, 662 (2d Cir. 1983) (internal quotation marks omitted). As the Second Circuit cautions, “a contempt order . . . is a potent weapon to which courts should not resort when there is a fair ground of doubt as to the wrongfulness of the defendant’s conduct.” *King v. Allied Vision, Ltd.*, 65 F.3d 1051, 1058 (2d Cir. 1995) (internal quotation marks and citations omitted).

ARGUMENT

I. Musk Did Not Violate the Order, Much Less Clearly So.

Proof of non-compliance is not “clear and convincing” because Musk did not violate the Order. The 7:15 tweet was not material given the total mix of information available, and Musk exercised his discretion reasonably in making that determination. The SEC’s arguments to the contrary are unpersuasive, and the SEC has therefore failed to carry its burden of proving contempt by clear and convincing evidence.

A. The 7:15 Tweet Was Not Material.

It is well established that a statement is material for purposes of the federal securities laws only if there is a “substantial likelihood that the disclosure . . . would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.” *Basic Inc.*, 485 U.S. at 231-32; *see also Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31, 36 (2d Cir. 2017) (a statement or omission is material “if a reasonable investor would view [it] as significantly altering the total mix of information made available” (internal quotation marks omitted)). Musk’s 7:15 tweet did not significantly alter the total mix of information available to investors, and he thus reasonably determined that it did not contain material information.

Prior to Musk’s posting of the 7:15 tweet, the subject matter and substance of the tweet—i.e., Tesla’s projected production and rates of production for 2019—had been publicly disclosed in multiple documents and discussed at length in an earnings call. As noted above, on January 2, 2019, Tesla filed a Form 8-K reporting its Q4 2018 production of “25,161 Model S and X vehicles, consistent with our long-term run rate of approximately 100,000 per year.” Ex. 1 at 5. Then, during the January 30 Earnings Call, Musk stated that Model 3 production in 2019 would be on the order of “350,000 to 500,000” vehicles. Ex. 3 at 8. Tesla similarly disclosed in its January 30 Update and February 19 Form 10-K that it was “targeting annualized Model 3 output in excess of 500,000 units sometime between Q4 of 2019 and Q2 of 2020.” Ex. 4 at 3. Thus, whether one adds the production estimates for the three models (S, X, and 3) together or even considers projections for the Model 3 alone, Musk’s statement that Tesla would make “around 500k” “cars” in 2019 was within previously disclosed ranges. The tweet simply was not “news.” Because this constitutes “information already known on the market,” it is “immaterial.” *Gissin v. Endres*, 739 F. Supp. 2d 488, 502 (S.D.N.Y. 2010); *see also Ganino v. Citizens Utils. Co.*, 228 F.3d 154, 167

(2d Cir. 2000) (“A defendant may rebut the presumption that its misrepresentations have affected the market price of its stock by showing that the truth of the matter was already known.”).

The immateriality of the 7:15 tweet is confirmed by an analysis of the after-hours trading market. *See generally* Noe Decl. ¶¶ 14-34. After Musk posted the 7:15 tweet, there was no noticeable change in either the after-hours trading price or volume. *Id.* ¶¶ 21-22 (noting a .09% change in the stock price after the 7:15 tweet, and that after-hours trading volume after the 7:15 tweet was less than .01% of the shares of outstanding common stock). This is probative evidence that the 7:15 tweet was not material to shareholders. *Id.* ¶ 23.⁴

Moreover, the 7:15 tweet was not posted in a vacuum. Just minutes earlier, at 7:02 p.m., Musk tweeted, “4000 Tesla cars loading in SF for Europe.” Musk. Decl. ¶ 8. Attached to that tweet was a photograph of thousands of Tesla vehicles on a dock on the San Francisco Bay, ready for shipping abroad. *Id.* The message was that Tesla has come a long way and is now flourishing globally. At 7:15 p.m., Musk tweeted—in a tweet linked in a chain to the 7:02 tweet—“Tesla made 0 cars in 2011, but will make around 500k in 2019.” *Id.* This was a celebratory string of tweets, expressing excitement about Tesla’s success since 2011 and pride for what Tesla anticipated achieving in 2019. *Id.* To any reasonable observer, this is a statement of pride and optimism, not of guidance. *See IBEW Local Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC*, 783 F.3d 383, 392 (2d Cir. 2015) (“Statements of general corporate optimism . . . do not give rise to securities violations.”).

⁴ By contrast, significant trading volume and price movement can occur in after-market or pre-market trading when material events occur during those periods. Noe Decl. ¶ 30. For example, the SEC filed its motion for an order to show cause regarding contempt on February 25, 2019, during after-market trading hours. *Id.* After the filing, there was a significant 3.4% decrease in Tesla’s stock price, and a spike in trading volume to an average of 222,674 shares traded per hour—approximately 17 times higher than the hourly trading volume after the 7:15 tweet. *Id.*

The 7:15 tweet—that Tesla “*will make around*” 500,000 cars—was also aspirational and forward-looking on its face. Courts have repeatedly held that non-specific statements concerning anticipated future performance are immaterial as a matter of law. *See City of Pontiac Policemen’s & Firemen’s Ret. Sys. v. UBS AG*, 752 F.3d 173, 185 (2d Cir. 2014) (“To be ‘material’ within the meaning of § 10(b), the alleged misstatement must be sufficiently specific for an investor to reasonably rely on that statement as a guarantee of some concrete fact or outcome . . .”); *In re IBM Corp. Sec. Litig.*, 163 F.3d 102, 107 (2d Cir. 1998) (holding statements not material where they reflected “expressions of optimism or projections about the future”).⁵ Here, the statement with which the SEC takes issue concerns general estimates of expected future production levels. Reasonable investors are expected to use caution in evaluating such forward-looking statements, which carry with them a strong presumption of immateriality. *See, e.g., In re Duane Reade Inc. Sec. Litig.*, 2003 WL 22801416, at *5 (S.D.N.Y. Nov. 25, 2003) (citing *Lasker v. N.Y. State Elec. & Gas Corp.*, 85 F.3d 55, 58 (2d Cir. 1996) for the proposition that “future earnings, sales goals, and the Company’s desire to achieve continued prosperity are just the sort of predictive statements of opinion and belief that courts have found immaterial” and thus finding “protected forward-looking opinions and inactionable puffery” when defendant stated that “we anticipate achieving sales of approximately \$355 million and expect diluted earnings per share will range from \$.40-\$0.44”) (internal quotation marks and alterations omitted), *aff’d sub nom. Nadoff v. Duane Reade, Inc.*, 107 F. App’x 250 (2d Cir. 2004); *Raab v. Gen. Physics Corp.*, 4 F.3d 286, 289 (4th Cir. 1993) (holding that a company’s statement that “regulatory changes” had created a marketplace for one

⁵ Statements of this type are not actionable in private litigation unless a plaintiff can “prove that the forward-looking statement . . . was made with actual knowledge by that person that the statement was false or misleading.” 15 U.S.C. § 77z-2(c)(1)(B)(i); 15 U.S.C. § 78u-5(c)(1)(B)(i) (same); *see Slayton v. Am. Exp. Co.*, 604 F.3d 758, 766 (2d Cir. 2010). Not even the SEC argues that Musk deliberately made a false or misleading statement.

of its business lines with “an expected annual growth rate of 10% to 30% over the next several years” was the kind of “[s]oft” and “puffing” statement that generally lacked materiality, “because the market price of a share is not inflated by vague statements predicting growth”).

The 7:15 tweet was a celebratory, aspirational, and forward-looking statement on a topic that had been the subject of multiple written disclosures by Tesla—including a Form 10-K filed the same day the tweet was posted—as well as an extensive discussion by company executives on a recent earnings call. The tweet thus would not have been perceived by a reasonable investor (and was not perceived by the market) as having “significantly altered the total mix of information” already available. Musk therefore properly utilized the discretion granted to him under the Policy when he determined that the tweet was not material and did not require pre-approval.

B. The SEC Has Not Shown the Tweet Contained, or Reasonably Could Contain, Material Information.

Remarkably, the SEC does not even argue that the 7:15 tweet was, in fact, material. Rather, the SEC states that the tweet was “reasonably likely” to contain material information because Tesla’s Policy lists “projections, forecasts, or estimates regarding Tesla’s business” as *examples* of subjects “that may be material to Tesla and its shareholders.” Mot. at 8. This clearly misreads the Policy, which states that information on these and other subjects “may, *depending on its significance*, be material to Tesla or its stockholders[.]” Dkt. No. 18-1 at 1 (emphasis added). In other words, whether or not a statement fits in one of the listed categories is not determinative of whether the statement requires pre-approval. Rather, the question under the Policy is still one of “significance”—i.e., whether the statement is or could contain *material* information. Tesla has confirmed that with respect to the 7:15 tweet, Musk’s decision not to submit the statement for pre-approval complied with the Policy. Ex. 8 at 3-4.

The SEC argues that notwithstanding the Policy's plain wording and Tesla's interpretation of it, the Court should interpret the Policy, and therefore the Order, to require categorical pre-approval of *every* statement that arguably falls into any of the numerous and non-exhaustive categories listed in the Policy, irrespective the statement's significance and materiality. Such an interpretation would go well beyond the requirements of the Order and the Court's authority.

When enforcing a consent decree, "a district court may not impose obligations on a party that are not unambiguously mandated by the decree itself," and any portions of a contempt order that are "inconsistent with or beyond the scope" of the decree are therefore invalid. *King*, 65 F.3d at 1058. The Order requires Musk to "comply with all mandatory procedures implemented by" Tesla. Dkt. No. 14 at 13-14. Tesla has confirmed that the 7:15 tweet did not require pre-approval and that Musk complied with the Policy. Ex. 8 at 3-4. The plain words of the policy, and Tesla's determination that the 7:15 tweet complied with it, are thus determinative of his obligation under the Order. Dkt. No. 14 at 13-14.

The SEC also claims that the tweet is inaccurate when compared with the January 30 Update. But, again, the SEC fails to consider the total mix of information available to investors. The Update was a ten-page, detailed analysis of Tesla's latest financials and outlook. The Form 10-K was similarly detailed and included a lengthy discussion of the risks and assumptions underlying Tesla's production estimates. In the January 30 Earnings Call, which the SEC ignores, Musk and other Tesla executives had extensive discussions with analysts regarding Model 3 production and deliveries. The 7:15 tweet was a shorthand gloss on topics that had already been covered in depth in company filings and an earnings call with analysts. Any reasonable investor would have read the tweet with reference to the much more thorough disclosures and extensive discussions on the same topic. *See United States v. Contorinis*, 692 F.3d 136, 143 (2d Cir. 2012)

(information “comes in varying degrees of specificity and reliability, and the extent to which a newly reported item of information alters the total mix may depend on the specificity or reliability of that information”); *see also In re Nokia Oyj (Nokia Corp.) Sec. Litig.*, 423 F. Supp. 2d 364, 397 (S.D.N.Y. 2006) (“In reviewing forward-looking statements, courts are instructed to consider the total mix of information and are supposed to bear in mind that disclosure requirements are not intended to attribute to investors a child-like simplicity. Rather, investors are presumed to have the ability to be able to digest varying reports and data.” (quotations and citations omitted)).

Finally, the SEC claims that even if the tweet was not material and even if Musk was simply restating previously disclosed information, Musk still violated the Policy’s procedures because more than two days had lapsed since that information first had been approved. Mot. at 9. To support its position, the SEC points to a provision in the Policy that requires Musk to seek reconfirmation if he desires to release a communication he has had pre-approved more than two days after the pre-approval. Dkt. No. 18-1 at 2. But as Tesla has explained to the SEC, Tesla’s Policy does not operate that way: “This provision addresses the time frame in which a pre-approved communication must be released in order for the pre-approval to remain effective, not whether a communication is subject to mandatory pre-approval in the first instance.” Ex. 8 at 3. That is, the Policy *does not* operate to require Musk to seek pre-approval of any communication that once was pre-approved and then publicly disclosed. Such a requirement would make no sense, because “information already known on the market is . . . immaterial.” *Gissin*, 739 F. Supp. 2d at 502. Because Musk believed that his statement was re-iterating information that had already been

publicly disseminated, he reasonably believed that the 7:15 tweet contained no material information (and thus did not require pre-approval under the Policy).⁶

II. Musk Diligently Attempted to Comply with the Order in a Reasonable Manner.

A party will not be held in contempt unless it has been shown that the party “has not been reasonably diligent and energetic in attempting to accomplish what was ordered.” *King v. Allied Vision, Ltd.*, 919 F. Supp. 747, 752 (S.D.N.Y. 1996) (internal citation and quotation marks omitted). In assessing a party’s diligence, courts in this District generally require a showing of intent, sometimes amounting to willfulness, before a party will be held in contempt. *Jeri-Jo Knitwear, Inc. v. Club Italia, Inc.*, 94 F. Supp. 2d 457, 459 (S.D.N.Y. 2000) (“I can not, however, conclude on the total record before me that defendants’ conduct is of that flouting willfulness to have earned the denomination ‘contemnor.’”); *Wojnarowicz v. Am. Family Ass’n*, 772 F. Supp. 201, 202 (S.D.N.Y. 1991) (“While the Court is troubled by the mailings and the potential damage that may come to plaintiff therefrom, it finds no ‘willfulness’ on the part of defendants and concludes that the mailings were mistakes from which no malevolence may be presumed.”). Musk has diligently attempted to comply with the Order, both generally, as reflected by significant changes to his tweeting behavior since the Order was entered, and specifically with respect to his actions on February 19, 2019.

A. Musk Has Significantly Altered His Communications with the Public as a Result of the Order.

Musk has approached his Tesla-related communications, especially Twitter communications, with a significantly heightened awareness as part of his commitment to adhering to the Order and Tesla’s Policy. Compared to the three months prior to the August tweets (May,

⁶ Additionally, Tesla production numbers were published on February 19, 2019 in Tesla’s Form 10-K. This document is formally reviewed by Tesla for accuracy.

June, and July 2018), during the three months following the entry of the Order (November and December 2018 and January 2019), Musk has cut his average monthly Tesla-related tweets nearly in half. Ex. 8 at 6; *see also* Musk Decl. ¶ 7. By the numbers, it is evident that Musk has taken steps to dramatically reduce the volume of communications that he understands have been a source of concern in the past.

In addition to reducing volume, Musk has modified the content of his tweets, and no longer tweets information that he believes is, or could be, material. Musk Decl. ¶ 7. The Disclosure Counsel and other members of Tesla's legal department have reviewed the updated controls and procedures with Musk on multiple occasions. *Id.* Tesla's General Counsel and Disclosure Counsel have been reviewing all his tweets promptly in real time upon publication to double-check compliance with the Policy and to ensure that any errors are caught and rectified quickly. *Id.*

B. Musk's Actions on February 19 Demonstrated Diligence.

Musk complied with the Order by reasonably determining that the 7:15 tweet did not require pre-approval. *See supra* Section I; Musk Decl. ¶¶ 9-11. Moreover, Musk consulted with Tesla's Disclosure Counsel after posting the 7:15 tweet. *Id.* ¶ 12. Out of an abundance of caution, Musk posted another tweet at 11:41 p.m. ET. *Id.* This is precisely the kind of diligence that one would expect from someone who is endeavoring to comply with the Order, and it is certainly not the type of "willful flouting" of judicial authority that is often required to justify a contempt finding. *See Robert Half, Inc. v. Romac Int'l, Inc.*, 101 F. Supp. 2d 223, 225 (S.D.N.Y. 2000) (holding that an "inadvertent" violation "is not such a willful flouting of the court's authority so as to warrant a finding of contempt"); *Wojnarowicz*, 772 F. Supp. at 202 (refusing to find party in contempt upon a party's first time violation of a court order that could reasonably have been a mistake); *Matrix Essentials v. Quality King Distribs., Inc.*, 346 F. Supp. 2d 384, 393 (E.D.N.Y.

2004) (refusing to hold party in contempt without further factual development about whether the “violations were *de minimus*, inadvertent and/or promptly cured”).

C. The SEC’s Purported Evidence of Lack of Diligence Is Uncompelling.

The SEC’s primary evidence that Musk has not been diligent in his efforts to comply with the Order consists of excerpts from an interview he gave to *60 Minutes*. See Mot. at 11-12. During the interview, and consistent with his First Amendment rights, Musk was sharply critical of the SEC. The SEC’s heavy reliance on this interview in its motion for contempt smacks of retaliation and censorship.

As an initial matter, and as the SEC admits, Tesla had not yet implemented the Policy at the time of the interview. Musk thus did not make (and could not have made) any statement during the interview regarding the Policy or his efforts to comply with it. Nevertheless, the SEC points to Musk’s statement during the interview that he may “make mistakes” in implementing the Order as evidence that he *intended* to violate the Policy (once promulgated) and, therefore, the Order. This is untrue. When Musk was asked in the interview whether he intended to comply with the Order, he answered unequivocally in the affirmative, “because [he] respect[s] the justice system.” Musk’s acknowledgment that he may “make mistakes” was an honest and accurate reflection of the fact that materiality is highly fact dependent, and that, despite his best efforts, Musk could make judgment calls with which others disagree. A “mistake” is not, however, an appropriate basis for a finding of *contempt*.

The SEC’s only other argument that Musk lacked diligence in complying with the Order is that he did not seek pre-approval for *other tweets* he has posted regarding Tesla. Mot. at 12. Tellingly, the SEC does not identify a *single other tweet* from Musk since the Policy was promulgated that it believes contained or reasonably could contain material information, and for which pre-approval thus could have been required. Indeed, based on his best efforts to comply

with the Order, Musk does not believe he has posted any such tweet. Musk Decl. ¶¶ 7, 11. The absence of other pre-approved tweets regarding Tesla is thus not evidence that Musk has *failed* to comply with the Order, but rather evidence that he *has*—by avoiding tweeting information that requires pre-approval. Moreover, as the SEC is aware, many other written communications containing material information have been subject to the pre-approval process under the Policy, further demonstrating Tesla’s and Musk’s compliance with the Order. Dkt. 18-4 at 2 (listing examples of written statements that have gone through the mandated pre-approval process).

Musk acted with diligence and in good faith to comply with the Order. The SEC cannot carry its heavy burden of presenting clear and convincing evidence that Musk violated a clear and unambiguous court order. Indeed, the SEC has not even attempted to prove Musk’s tweets were in fact material or had any effect on the market. The SEC knows Musk’s after-hours tweet did not affect Tesla’s stock price. The SEC knows that the information contained in Musk’s forward-looking and aspirational tweets already had been the subject of extensive public disclosures. The SEC knows that Musk promptly posted an additional tweet after discussions with Tesla’s Disclosure Counsel. And the SEC knows Musk has dramatically reduced his Tesla-related activity on Twitter since the Order was entered. Yet the SEC jumped at the first opportunity to move for contempt against Musk, refusing to wait even one business day for responses from Musk’s counsel (after requesting information on a Sunday).

The “exercise [of contempt power] is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions.” *Cooke*, 267 U.S. at 539. To issue a contempt order on the grounds advanced by the SEC here would be an improper use of this power.

III. The SEC’s Interpretation of the Order Raises Significant Constitutional Concerns.

Because Musk did not violate the Court’s Order or the Tesla Policy, the Court’s analysis can end and the Order to Show Cause should be discharged. Undeterred, and perhaps embarrassed by Musk’s criticism of it, the SEC urges the Court to read and apply the Order in an unconstitutional manner. The Court should reject the SEC’s invitation to trample on Musk’s First Amendment rights and grant the SEC far broader powers than authorized by Congress.

At bottom, the SEC demands that Musk be punished for failing to obtain preauthorization for tweeting: (a) his proud reflection of Tesla’s progress and (b) anticipation for the future that had (c) already been shared with shareholders and that he (d) reasonably and in good faith determined was not and could not be deemed material. The SEC’s desire for such a sweeping prior restraint on speech,⁷ effectuated not through some formal statutory authority granted to the SEC by Congress but through a contempt proceeding, must be rejected by the Court. *See United States v. Quattrone*, 402 F.3d 304, 309 (2d Cir. 2005) (Sotomayor, J.) (“A ‘prior restraint’ on speech is a law, regulation or *judicial order* that suppresses speech—or provides for its suppression at the discretion of government officials—on the basis of the speech’s content and in advance of its actual expression.” (emphasis added)).

Prior restraints on speech “are the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). “A prior restraint . . . has an immediate and irreversible sanction.” *Id.* “[While] a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it.” *Id.* Moreover, “[w]hen a prior restraint takes the form of a court-issued injunction, the risk of infringing on speech protected

⁷ Notably, the SEC’s interpretation is not limited to Twitter. The SEC could apply its rule to statements made “in any written format,” including press releases, blogs, website postings, and, even more expansively, any written materials, notes, Q&A, and scripts used for preparation for public statements such as earnings calls.

under the First Amendment increases.” *Metro. Opera Ass’n, Inc. v. Local 100, Hotel Emps. & Rest. Emps. Int’l Union*, 239 F.3d 172, 176 (2d Cir. 2001); see also *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 764 (1994) (“Injunctions . . . carry greater risks of censorship and discriminatory application than do general ordinances.”).

In light of these concerns, “[a]ny imposition of a prior restraint . . . bears ‘a heavy presumption against its constitutional validity.’” *Quattrone*, 402 F.3d at 310 (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). A content-based prior restraint, like the restraint urged by the SEC here, would be subject to review under strict scrutiny, “requiring a showing that the restriction is ‘narrowly tailored to promote a compelling Government interest.’” *John Doe, Inc. v. Mukasey*, 549 F.3d 861, 871 (2d Cir. 2008) (quoting *United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 813 (2000)); see also *Carroll v. President & Comm’rs of Princess Anne*, 393 U.S. 175, 183 (1968) (a prior restraint “must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order”).

As the SEC interprets and seeks to enforce it, the Order’s injunction is a *de facto* gag on a broad spectrum of statements implicating Tesla. Were the Order interpreted in this fashion, it would plainly fail strict scrutiny review. The government’s legitimate interest (shared by Musk) in protecting shareholders can be and has been served through less-restrictive means. These means include allowing Musk the discretion to make good-faith determinations of materiality (which is what the Order *actually* says) or by having the SEC go through normal enforcement proceedings under Rule 10b-5 targeting specific communications that the SEC contends are actionable.⁸ See

⁸ Even prior violations of Rule 10b-5 or other statutes or regulations cannot justify an otherwise unconstitutional prior restraint. An injunction against future expression issued because of prior acts is incompatible with the First Amendment. *Gayety Theatres, Inc. v. City of Miami*, 719 F.2d 1550, 1551-52 (11th Cir. 1983).

Reno v. ACLU, 521 U.S. 844, 874 (1997) (finding unconstitutional a statute that threatened to censor speech because such a burden is “unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve”).

The Second Circuit’s decision in *Metropolitan Opera Ass’n, Inc.* is illustrative. There, a local union challenged an injunction entered by the district court that “prohibit[ed] the Union and its members generally from ‘threatening or harassing’ and ‘engaging in fraudulent or defamatory representations regarding’ the Met” and others. *Metro. Opera Ass’n, Inc.*, 239 F.3d at 173. The court explained that the injunction “plainly constitute[d] a broad prior restraint on speech.” *Id.* at 176 (also finding that the district court’s “contempt sanctions on the Union” based upon statements the district court found “to be defamatory” were “improper”). The Second Circuit was clearly troubled by the fact that the “Union risks contempt sanctions for speech that may ultimately, after full appellate review, be found constitutionally protected” and even if the “Union’s methods may be harassing, upsetting, or coercive . . . they are constitutionally protected.” *Id.* at 176, 178. After reaffirming that “the First Amendment strongly disfavors injunctions that impose a prior restraint on speech,” the court vacated the injunction because its terms were “so vague and imprecise that the Union cannot fairly determine what future speech is permitted and what speech might place it in contempt.” *Id.* at 178-79. The SEC’s proffered interpretation of the Order, as imposing a broad, prior restraint on Musk’s speech, would violate the First Amendment and be unconstitutionally vague, because it does not make clear to Musk which of his words will expose him to contempt and which are protected. The law does not tolerate such uncertainty.

The constitutional concerns implicated by the SEC’s reinterpretation of the Order are heightened because the SEC is seeking to procure through this contempt proceeding what it cannot obtain through the exercise of its congressionally-delegated authority. Congress has carefully

circumscribed the SEC’s power to seek injunctive relief. The statutory provision pursuant to which the SEC originally brought this action provides, in relevant part, that “[w]henver it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of [Rule 10b-5],” the Commission may “bring an action . . . to enjoin *such* acts or practices[.]” 15 U.S.C. § 78u(d)(1) (emphasis added). The SEC’s statutory power is thus limited to seeking to enjoin “a certain, identifiable, and demonstrably imminent ‘act or practice,’” which “differs markedly from authorization to enjoin any act or practice and all possible acts or practices that violate the law, wherever and whenever the act or practice occurs.” *SEC v. Sky Way Glob., LLC*, 710 F. Supp. 2d 1274, 1282 (M.D. Fla. 2010). The reinterpretation and expansive application of the Order advanced by the SEC would expand the SEC’s power well beyond that afforded to it by Congress. In addition to running afoul of the First Amendment, seizure by the SEC of power to censor speech even when that speech does not violate the laws the SEC is empowered to enforce would implicate separation-of-powers concerns. *See id.*; *cf. 62 Cases v. United States*, 340 U.S. 593, 600 (1951) (“In our anxiety to effectuate the congressional purpose of protecting the public, we must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop.”); Federalist No. 47 (James Madison).

The SEC may respond by claiming that Musk “consented” to the Order. But this is no defense to the SEC’s unconstitutional power grab. The SEC interprets the Order to require pre-approval of any Musk statement touching upon the subjects listed in the Policy. Mot. at 8 (citing Dkt. No. 18-1 at 1). This would effectively prevent Musk from speaking on *any* matters related to Tesla business based on the subject matter alone, as a substitute for any fact-based materiality consideration. Musk never consented to and would not consent to such a sweeping gag order (Musk Decl. ¶ 6), and Tesla has not implemented any such policy, Ex. 8 at 2-3.

Moreover, because this Court has an independent duty not to enter or enforce an unconstitutional order, any argument by the SEC regarding Musk's purported "consent" would also be legally irrelevant. *See Crosby v. Bradstreet Co.*, 312 F.2d 483, 485 (2d Cir. 1963) (invalidating a consent order that prohibited a defendant from publishing matter about the plaintiff and holding that "[t]he court was without power to make such an order" or to enforce it through the contempt power, and it was thus "immaterial" whether "the parties may have agreed to it"); *SEC v. Citigroup Glob. Markets Inc.*, 827 F. Supp. 2d 328, 333 n.5 (S.D.N.Y. 2011), *vacated and remanded on other grounds*, 752 F.3d 285 (2d Cir. 2014) (noting that under Second Circuit law, a consent settlement is invalid where the resulting "injunction, enforceable through the contempt power, constitute[d] a prior restraint by the United States against the publication of facts which the community has a right to know" (quoting *Crosby*, 312 F.2d at 485)); *see also In re Halkin*, 598 F.2d 176, 189-90 (D.C. Cir. 1979) ("Even where individuals have entered into express agreements not to disclose certain information . . . by consent agreement, . . . judicial orders enforcing such agreements are prior restraints implicating First Amendment rights." (internal citations omitted)). Similarly, this District has recognized that gag orders entered into consensually in SEC enforcement actions pose significant constitutional problems. *See Citigroup Glob. Markets Inc.*, 827 F. Supp. 2d at 333 n.5 ("On its face, the SEC's no-denial policy raises a potential First Amendment problem.").

The SEC's interpretation of the Order should be rejected in light of the significant constitutional issues illustrated above.⁹ The Supreme Court has long held that statutes be

⁹ The SEC may argue that by raising his constitutional arguments, Musk is impermissibly seeking to collaterally attack the Order. Not so. As explained above, the Order, properly construed, was not violated in this instance. Thus, it is not the Order that is being challenged here but rather the SEC's attempt to modify the Order into something far broader, far more pernicious, and far more constitutionally suspect.

interpreted to avoid constitutional concerns. *See, e.g., Grenada Cnty. Supervisors v. Brown*, 112 U.S. 261, 269 (1884) (“Our duty, therefore, is to adopt that construction which, without doing violence to the fair meaning of the words used, brings the statute into harmony with the provisions of the constitution.”); *Crowell v. Benson*, 285 U.S. 22, 62 (1932) (“When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.”); *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988) (“[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.”); *Blake v. Carbone*, 489 F.3d 88, 100 (2d Cir. 2007) (rejecting statutory interpretation offered by an executive agency and nothing that “[c]ourts interpret statutes to avoid constitutional infirmities”). This Court should likewise not adopt an interpretation of the Order that “infringe[s] constitutionally protected liberties or usurp[s] power constitutionally forbidden it.” *Edward J. DeBartolo Corp.*, 485 U.S. at 575. The Court should interpret the Order in the way Musk has explained herein and discharge the Order to Show Cause. *Cf. Empire HealthChoice Assurance, Inc. v. McVeigh*, 396 F.3d 136, 144 (2d Cir. 2005) (applying *Edward J. DeBartolo Corp.* to construe statute whose reading “would raise serious constitutional problems” in a manner “to avoid such problems”); *El Badrawi v. United States*, 787 F. Supp. 2d 204, 223 (D. Conn. 2011) (declining to adopt government’s proposed interpretation because “[c]ourts must avoid an interpretation of a statute or a regulation that would raise ‘a serious doubt’ as to its constitutionality”).

CONCLUSION

Musk respectfully requests that the Court discharge its order to show cause.

Dated: March 11, 2019

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CERTIFICATE OF SERVICE

I certify that on March 11, 2019, a copy of the foregoing was filed through the Court's CM/ECF system, which will send copies to all counsel of record.

s/ John C. Hueston
Counsel for Elon Musk

EXHIBIT 1

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)
January 2, 2019

Tesla, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-34756
(Commission File Number)

91-2197729
(IRS Employer
Identification No.)

3500 Deer Creek Road
Palo Alto, California 94304
(Address of principal executive offices, including zip code)

(650) 681-5000
(Registrant's telephone number, including area code)
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter). Emerging growth company

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.

Item 2.02 Results of Operations and Financial Condition.

Item 7.01 Regulation FD Disclosure.

On January 2, 2019, Tesla, Inc. published the press release which is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

This information is intended to be furnished under Items 2.02 and 7.01 of Form 8-K and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
99.1	<u>Press Release of Tesla, Inc., dated January 2, 2019.</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TESLA, INC.

By: /s/ Deepak Ahuja
Deepak Ahuja
Chief Financial Officer

Date: January 2, 2019

Tesla Q4 2018 Vehicle Production & Deliveries, Also Announcing \$2,000 Price Reduction in US

In Q4, we produced and delivered at the rate of nearly 1,000 vehicles per day, setting new company records for both production and deliveries.

Production in Q4 grew to 86,555 vehicles, 8% more than our prior all-time high in Q3. This included:

- 61,394 Model 3 vehicles, in line with our guidance and 15% more than Q3.
- 25,161 Model S and X vehicles, consistent with our long-term run rate of approximately 100,000 per year.

Q4 deliveries grew to 90,700 vehicles, which was 8% more than our prior all time-high in Q3. This included 63,150 Model 3 (13% growth over Q3), 13,500 Model S, and 14,050 Model X vehicles.

In 2018, we delivered a total of 245,240 vehicles: 145,846 Model 3 and 99,394 Model S and X. To put our growth into perspective, we delivered almost as many vehicles in 2018 as we did in all prior years combined.

Our Q4 Model 3 deliveries were limited to mid- and higher-priced variants, cash/loan transactions, and North American customers only. More than three quarters of Model 3 orders in Q4 came from new customers, rather than reservation holders.

There remain significant opportunities to continue to grow Model 3 sales by expanding to international markets, introducing lower-priced variants and offering leasing. International deliveries in Europe and China will start in February 2019. Expansion of Model 3 sales to other markets, including with a right-hand drive variant, will occur later in 2019.

1,010 Model 3 vehicles and 1,897 Model S and X vehicles were in transit to customers at the end of Q4, and will be delivered in early Q1 2019. Our inventory levels remain the smallest in the automotive industry, and we were able to reduce vehicles in transit to customers by significantly improving our logistics system in North America.

Moving beyond the success of Q4, we are taking steps to partially absorb the reduction of the federal EV tax credit (which, as of January 1st, dropped from \$7,500 to \$3,750). Starting today, we are reducing the price of Model S, Model X and Model 3 vehicles in the U.S. by \$2,000. Customers can apply to receive the \$3,750 federal tax credit for new deliveries starting on January 1, 2019, and may also be eligible for several state and local electric vehicle and utility incentives, which range up to \$4,000. Combined with the reduced costs of maintenance and of charging a Tesla versus paying for gas at the pump – which can result in up to \$100 per month or more in savings – this means our vehicles are even more affordable than similarly priced gasoline vehicles.

Tesla's achievements in 2018 likely represent the biggest single-year growth in the history of the automotive industry. We started the year with a delivery run rate of about 120,000 vehicles per year and ended it at more than 350,000 vehicles per year – an increase of almost 3X. As a result, we're starting to make a tangible impact on accelerating the world to sustainable energy. Additionally, 2018 was the first time in decades that an American car – the Model 3 – was the best-selling premium vehicle in the U.S. for the full year, with U.S. sales of Model 3 roughly double those of the runner up.

We want to thank our customers, suppliers, investors, and especially our employees, who worked so hard to accomplish this.

Our net income and cash flow results will be announced along with the rest of our financial performance when we announce Q4 earnings. Our delivery count should be viewed as slightly conservative, as we only count a car as delivered if it is transferred to the customer and all paperwork is correct. Final numbers could vary by up to 0.5%. Tesla vehicle deliveries represent only one measure of the company's financial performance and should not be relied on as an indicator of quarterly financial results, which depend on a variety of factors, including the cost of sales, foreign exchange movements and mix of directly leased vehicles.

Forward-Looking Statements

Certain statements herein, including statements regarding growing the addressable market for Model 3, such as our plans and timing for international expansion, are "forward-looking statements" that are subject to risks and uncertainties. These forward-looking statements are based on management's current expectations. Various important factors could cause actual results to differ materially, including the risks identified in our SEC filings. Tesla disclaims any obligation to update this information.

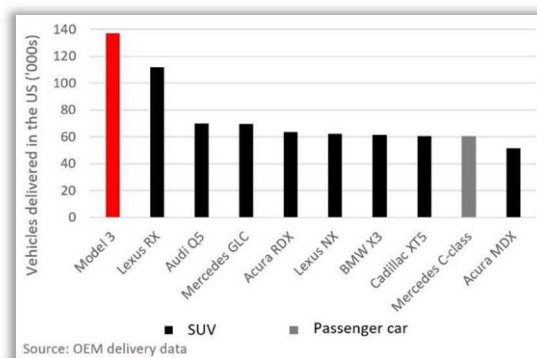
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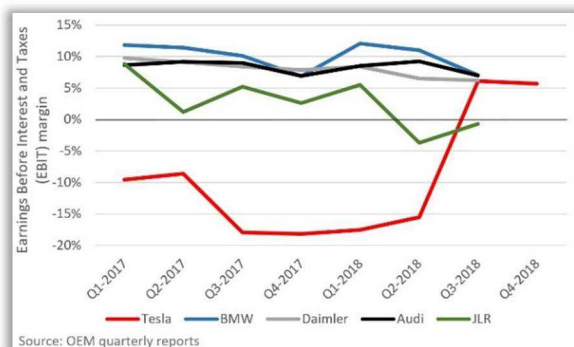
Tesla Fourth Quarter & Full Year 2018 Update

- Q4 operating income stable compared to Q3 at \$414M, operating margin of 5.7%
- Operating cash flow less capex improved from Q3 to \$910M in Q4
- Cash and cash equivalents of \$3.7B at Q4-end, increased by \$718M in Q4
- Q4 GAAP net income of \$139M impacted by \$54M non-cash charge
- Model 3 GAAP and non-GAAP gross margin remained stable at >20% in Q4

Last year was the most pivotal year in Tesla's history. During our Model 3 production ramp, we went through significant challenges with the battery module line at Gigafactory 1 in Nevada, and later with our general assembly line in Fremont. Thanks to the hard work and ingenuity of our manufacturing teams, by mid-2018 we successfully overcame these challenges and stabilized Model 3 production at high volumes. Model 3 then went on to become the best-selling passenger car in the US in terms of revenue in both Q3 and Q4. With nearly 140,000 units sold, Model 3 was also the best-selling premium vehicle (including SUVs) in the US for 2018 – the first time in decades an American carmaker has been able to secure the top spot.



Premium vehicle sales in the US (2018)



Operating (EBIT) margin of premium carmakers

Model 3's success has carried over to our financial performance in Q3 and Q4 of 2018. Operating income in Q4 remained stable at \$414 million despite a sequential decline in revenue from the sale of regulatory credits, higher import duties on components from China, a price reduction for Model S and Model X in China, and the introduction of a lower-priced mid-range version of Model 3. Our operating margin also improved significantly in the second half of 2018, changing from being negative to on-par with other premium carmakers. Despite margins in the automotive industry typically being lower in Q4, that was not true for us as our operating margin remained strong at 5.7% in Q4. Our GAAP net income of \$139 million was impacted by a non-cash charge of \$54 million attributable to non-controlling interests. Free cash flow (operating cash flow less capital expenditures) also improved sequentially in Q4 to \$910 million. In the second half of 2018, our cash position improved by \$1.45 billion despite the scheduled repayment of a \$230 million convertible bond in Q4. We have sufficient cash on hand to comfortably settle in cash our convertible bond that will mature in March 2019.

In 2019, full-year Model 3 volumes will grow substantially over 2018 due to a full year of high production rates at our Fremont facility. Also, by the end of this year we are expecting to start producing Model 3 vehicles at our Gigafactory Shanghai using a complete vehicle production line. We expect the capital spend per unit of capacity for this factory to be less than half of that of our Model 3 line in Fremont. Additionally, this year we will start tooling for Model Y to achieve volume production by the end of 2020, most likely at Gigafactory 1. All of these activities are setting us up for very significant annual growth in 2019 and beyond.

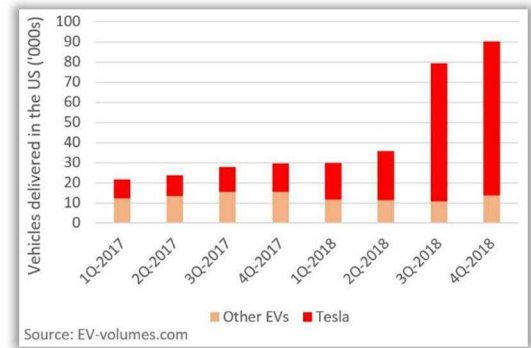
AUTOMOTIVE PRODUCTS

Model 3's production rate progressively improved through Q4, with December 2018 being our highest volume month ever. In our Fremont facility, we are now past the steep portion of the production S-curve, and we expect our production rate to continue to gradually improve. Every part of the Model 3 production process has demonstrated over a 24-hour period the ability to produce at an extrapolated rate of 7,000 vehicles per week. By the end of this year, we expect to be able to produce Model 3 at this rate on a sustained basis.

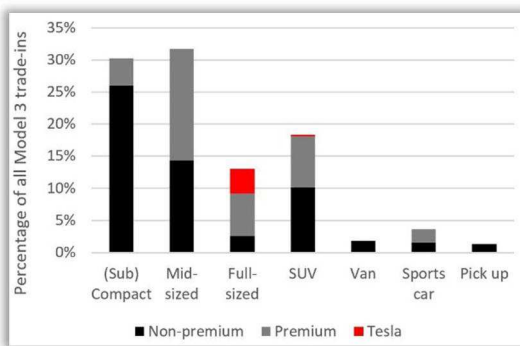
As we improve the production rate of Model 3, the cost per vehicle continues to decline. It is critical that we continue this trend so that we can keep increasing the affordability of Model 3 while retaining a sustainable level of profitability. The labor hours per Model 3 vehicle declined yet again by roughly 20% compared to Q3 and by about 65% in the second half of 2018 alone. Despite introducing a lower-priced mid-range variant and other headwinds, Model 3's gross margin remained stable in Q4 at over 20%.

Our delivery and logistics systems continued to progress in Q4, but there remains room for more improvement. In order to reduce vehicle transportation time and improve the timeliness of scheduled deliveries, we have purchased and are continuing to purchase our own car-hauling truck capacity for vehicle shipments. This gives us far more control while lowering costs and improving customer satisfaction.

In the past two years, Tesla vehicles have accounted for all of the electric vehicle (EV) volume growth in the US. Even with the radical EV growth in the second half of 2018, EVs still account for just 2% of the total US market, and there remains a substantial opportunity for EVs to continue to gain market share in the US and globally. Consumer purchases have demonstrated that EVs are becoming a preferred option, as EVs in Q4 2018 outsold hybrid electric vehicles (HEVs) in the US for the first time in history.



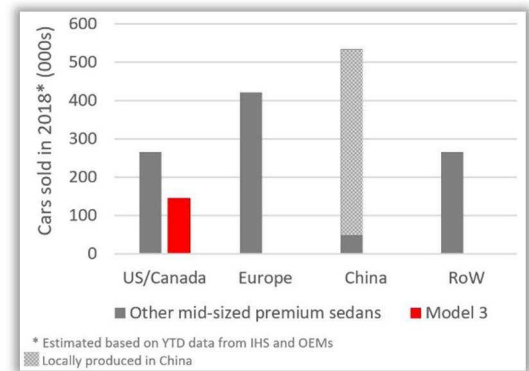
EV sales in the US



Model 3 trade-ins by vehicle type

The appeal of Model 3 continues to go far beyond the mid-sized premium sedan market. Our trade-in data suggests that consumers are significantly changing their purchasing habits in order to buy a Model 3. Of all trade-ins we've ever received from customers buying a Model 3, only 17% are other mid-sized premium sedans. Perhaps more surprisingly, almost 60% of these trade-ins are non-premium vehicles. We are also seeing that a significant number of Model 3 buyers are trading down in size from a larger car or a SUV to a Model 3. Designed from the ground up to be electric, Model 3 has more interior space than its gas-powered equivalents. Interestingly, Model 3 accounted for only a small portion (4%) of total Model 3 trade-ins.

In Q4, we delivered 63,359 Model 3 vehicles to customers in North America. In January 2019, we started to produce Model 3 vehicles for Europe and China, and the car is now fully certified for sale in these markets. The market opportunity for Model 3 in Europe and China exceeds North America based on the most recent sales of mid-sized premium sedans. Model 3 was designed from the outset for a global market, and shares more than 98% of its parts in common across its regional variants.



Model 3 vs other premium sedans in 2018

In January 2019, we started construction of Gigafactory Shanghai. Local manufacturing is an essential component of our ability to provide to customers in the region a truly affordable version of Model 3. Most other mid-sized premium sedans in China are locally produced, which allows them to have a lower average selling price. In the initial phase of Gigafactory Shanghai, we expect to have stamping, paint shop, body joining, and general assembly shops in operation by the end of 2019. This accelerated timeframe should be possible due to the radical simplification of our manufacturing layout and processes compared to our first-generation production line in Fremont. Higher-spec models such as our long-range all-wheel drive (AWD) and Performance versions will continue to be shipped to China from the US.

In Q4, we delivered 27,607 Model S and Model X vehicles to customers. For the full year, we delivered 99,475 Model S and Model X vehicles, which was in line with our guidance. We recently stopped taking orders for the 75 kWh versions of Model S and Model X and will focus on the longer-range versions of these flagship products instead, with the recent introduction of a 310 mile range base Model S and 270 mile range base Model X. Over the years, we have been gradually simplifying options for Model S and Model X by standardizing options such as the air suspension, AWD, premium package, and glass roof. This is yet another step towards increased standardization, which results in significantly lower manufacturing cost. Additionally, we believe this will provide more differentiation between Model S and Model 3. As a result of this change and improving efficiencies in our production lines, we have reduced Model S and Model X production hours accordingly. Last year alone, Model S and X production efficiencies improved 15%. Our objective is to

continue to achieve further efficiencies, which will reduce the manufacturing cost while providing us the flexibility to increase output as necessary.

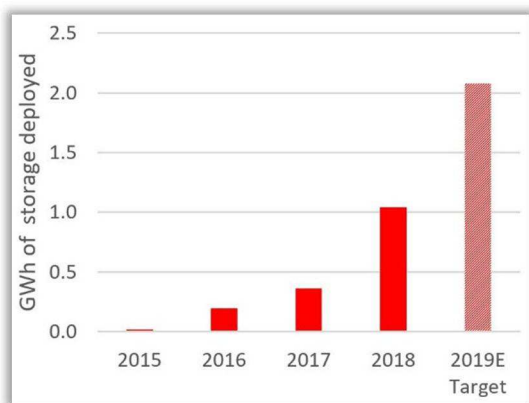
Our Autopilot team recently publicly launched “Navigate on Autopilot”, a feature that allows, on most controlled-access roads such as highways, any Tesla vehicle with Enhanced Autopilot to change lanes, transition from one highway to another, and ultimately exit the highway when approaching the final destination. We expect to increase the functionality of Autopilot to navigate increasingly complex environments and situations.

During Q4, we opened 27 new store and service locations, resulting in 378 locations worldwide at the end of the quarter. Our largely electrified Mobile Service fleet continued to grow further to 411 service vehicles on the road at the end of Q4. In 2018, the total Tesla vehicle fleet grew by 85%, mainly due to the steep Model 3 production ramp. We see upgrading our service capacity and improving customer service as a top priority at the moment. Where needed, our service centers are moving to two-shift operations in order to double service capacity quickly, and we are simplifying processes in order to increase service throughput. We are also increasing the functionality of the Tesla App for scheduling service in order to improve responsiveness and convenience for our customers. Furthermore, we are changing our parts distribution approach to ensure that spare parts are available in a timely manner at all our service centers globally.

In Q4, we opened 69 new Supercharger locations for a total of 1,421 Supercharger stations globally. In 2018, we opened 293 Supercharger locations, many of which have 20 to 50 stalls per location. To date, we have approximately 12,000 dedicated Supercharging connectors and over 21,000 Destination Charging connectors globally. In addition to our continued investment in global charging infrastructure, our engineering team is finalizing plans for the rollout of our V3 Supercharger technology early this year, which will enable significantly faster charge times. We anticipate V3 to not only provide a better customer experience for Tesla vehicle owners, but to also significantly lower Tesla’s operational and capital expenditures.

ENERGY PRODUCTS

While 2018 was predominantly the year of Model 3, our Energy business also reached a significant milestone. In 2018, we deployed 1.04 GWh of energy storage, nearly tripling our energy storage deployments compared to 358 MWh deployed in 2017. In Q4, energy storage deployments reached 225 MWh, a decrease of 6% sequentially, and up 57% compared to Q4 2017. A new manufacturing line made by Tesla Grohmann is further increasing production of Powerwall and Powerpack modules at Gigafactory 1. With a better supply of cells and new manufacturing equipment, we are aiming to more than double energy storage deployments to over 2 GWh in 2019. Through various operational efficiencies, our average sale-to-installation time also decreased by about 50% in 2018.



GWh of energy storage deployed

We see growth opportunities for Powerwall not only in North America, but also in Australia and Europe where electricity rates are high and solar panels combined with Powerwall units will help reduce electricity bills. South Australia has recently initiated a Virtual Power Plant program where the plan is to install 50,000 interconnected Powerwall units that will provide increased grid reliability and lower cost for all customers. The profitability of our energy products continued to improve partially due to the increased efficiency of Powerwall installations. Each Powerwall is an internet connected device, enabling us to continue to introduce new functionality and improvements over time, just like we do with our vehicles.

While the Hornsdale battery that we built in South Australia is still the largest battery in the world, we have recently received multiple requests to build significantly larger battery projects. The Hornsdale project has generated substantial savings and is likely to pay for itself within a few years. This has generated interest from governments and municipalities to invest in large battery storage projects rather than in conventional peak energy generation. In addition to providing backup generation and cost savings to businesses, Powerpack units are now used in over 100 microgrid projects across 32 countries.

We deployed 73 MW of retrofit solar systems in Q4, a 21% decrease sequentially. We are still in the process of transitioning our sales channel from former partners to our Tesla stores and training our sales team to sell solar systems in addition to vehicles. Cash and loan sales made up 75% of residential deployments in Q4, up from 51% in Q4 2017. Likewise, while total deployments decreased by 38% to 326 MW in 2018, cash and loan residential deployments increased from 39% in 2017 to 71% in 2018. This was an important contributor to improving the cash generation and profitability of the solar business.

We plan to ramp up the production of Solar Roof with significantly improved manufacturing capabilities during 2019, based on the design iterations and testing underway. In the meantime, we are continuing to install Solar Roofs at a slow pace to gather further learnings from our design changes, as well as about the viability of our installation processes by implementing them in areas around the U.S. that are experiencing inclement weather.

Q4 2018 RESULTS**Revenue & Gross Margin**

	Three Months Ended			Change	
	December 31, 2018	September 30, 2018	December 31, 2017	QoQ	YoY
Automotive revenue (\$000)	\$ 6,323,219	\$ 6,098,766	\$ 2,702,195	4%	134%
Automotive gross margin – GAAP	24.3%	25.8%	18.9%	-149 bp	540 bp
Automotive gross margin excluding SBC and ZEV credit – non-GAAP	24.7%	25.5%	13.8%	-85 bp	1,086 bp

- Automotive revenue in Q4 increased by 4% sequentially over Q3 and by 134% compared to Q4 2017, primarily due to a sharp increase in Model 3 deliveries. In Q4, we recognized less than \$1 million in ZEV credit sales compared to \$52 million in Q3.
- With the adoption of the new revenue recognition standard starting January 1, 2018, lease accounting generally applies only to vehicles directly leased by us without using bank partners. As a result, only 4% of vehicles delivered in Q4 were subject to lease accounting.
- GAAP Automotive gross margin slightly decreased to 24.3% in Q4 from 25.8% in Q3 primarily due to lower regulatory credit sales in Q4. Non-GAAP Automotive gross margin decreased to 24.7% in Q4 from 25.5% in the prior quarter due to a \$43 million decline in non-ZEV credit revenue and negative impact from Chinese import duties.
- Model 3 gross margin stayed flat compared to Q3, remaining above 20% despite the headwinds described above. The mix of the Performance versions of Model 3 remained only slightly above the percentage mix of Performance versions of Model S and X.
- Gross margin of Model S and Model X declined very slightly compared to Q3, which was in line with our guidance. Further cost reductions partially offset lowered prices in China as well as other negative factors. For full year 2018, Model S and Model X non-GAAP gross margin improved by over 500 bp and GAAP gross margin improved by over 300 bp compared to 2017, mainly due to significant cost reductions.

	Three Months Ended			Change	
	December 31, 2018	September 30, 2018	December 31, 2017	QoQ	YoY
Energy generation and storage revenue (\$000)	\$ 371,497	\$ 399,317	\$ 298,037	-7%	25%
Energy generation and storage gross margin	11.5%	17.2%	5.5%	-570 bp	604 bp

- Energy generation and storage revenue in Q4 decreased by 7% over Q3 and increased by 25% compared to Q4 2017. This year-over-year increase was mainly driven by a substantial growth in energy storage deployments.
- GAAP gross margin of the Energy business in Q4 dropped significantly to 11.5% compared to Q3 mainly due to the typical seasonal decline in solar energy production and correspondingly lower lease revenue in the winter months, Solar Roof ramp cost, and a higher mix of lower margin energy storage business.

Other Highlights

- Service and Other revenue in Q4 increased by 63% compared to Q3. This was mainly due to increased used car sales and higher revenue from service and merchandise sales.
- Service and Other gross margin in Q4 improved sequentially to negative 26%. Total gross loss of Service and Other increased compared to Q3.
- Our total GAAP operating expenses decreased to \$1.03 billion in Q4, which was 7% less than in Q3. Excluding one-time restructuring and other costs, operating expenses decreased by 5% sequentially.
- Income attributable to non-controlling interests impacted our income statement negatively by \$71 million in Q4. The asset backed securitization (ABS) of auto leases completed in Q4 resulted in a change of ownership structure of those leased vehicles. This required a non-cash charge of \$54 million attributable to non-controlling interests.
- Interest and Other expenses, net were \$182 million in Q4 compared to \$145 million in Q3. Non-cash items accounted for \$87 million of total interest expense in Q4.
- There were approximately 172 million basic shares outstanding at the end of Q4.

Cash Flow and Liquidity

- Our cash position increased by \$718 million in Q4, despite the scheduled repayment of our \$230 million convertible bonds.
- Cash flow from operating activities in Q4 was \$1.23 billion. Operating cash flow remained strong although our days payable outstanding decreased significantly, partially limiting the positive impact of working capital.
- Customer deposits decreased sequentially by \$113 million in Q4 to \$793 million as we continue to work through our Model 3 backlog.
- Our capital expenditures were \$325 million in Q4. Because our acquisition of land in China is a 50-year lease from the Chinese government, our payment of \$141 million for it is excluded from capex and reflected in operating cash flow. Capital expenditures, including our China land acquisition payment, were at \$2.24 billion in 2018.

OUTLOOK

Model 3 production volumes in Fremont should gradually continue to grow throughout 2019 and reach a sustained rate of 7,000 units per week by the end of the year. We are planning to continue to produce Model 3 vehicles at maximum production rates throughout 2019. Inclusive of Gigafactory Shanghai, where we are initially aiming for 3,000 Model 3 vehicles per week, our goal is to be able to produce 10,000 vehicles per week on a sustained basis. Barring unexpected challenges with Gigafactory Shanghai, we are targeting annualized Model 3 output in excess of 500,000 units sometime between Q4 of 2019 and Q2 of 2020.

While the number of Model 3 vehicles produced should increase sequentially in Q1, deliveries in North America during Q1 will be lower than the prior quarter as we start delivering cars in Europe and China for the first time. As a result of the start of Model 3 expansion into Europe and China, deliveries will be lower than production by about 10,000 units due to vehicle transit times to these markets.

Because of the first scheduled reduction of the federal EV tax credit on January 1, 2019, we likely saw a pull-forward of demand in the US for Model S and Model X into 2018. Both Model S and Model X reached all-time high market shares in the US in the second half of 2018. Model S, for example, accounted for 38% of its segment in the US. Because this high level of demand presumably represented a pull-forward, we are expecting our Model S and Model X deliveries in Q1 2019 to be slightly below Q1 2018.

We continue to target a 25% Model 3 non-GAAP gross margin at some point in 2019. While there are many moving parts that will ultimately determine gross margin, we believe that significant cost reductions combined with better fixed-cost absorption and careful management of mix should enable us to get to this profit level. We expect that gross margin for Model S and Model X should remain relatively stable compared to 2018.

Energy generation and storage revenue should increase significantly in 2019, mainly due to the storage business. We expect that the deployment of retrofit solar systems in Q1 will be slightly lower than in Q4 due to seasonality. The gross margin of our Energy business should grow as the energy storage margin continues to improve from its current level.

We expect our Services and Other business to continue to grow, mainly due to projected used car sales volumes in 2019. We should continue to see further sequential improvements in gross margin throughout this year.

Our operating expenses will grow by less than 10% in 2019, thus creating massive leverage given the top line growth in 2019. This year, we will continue to implement more automation projects, and our ongoing cost reduction efforts will also make an impact. Since about 70% of Model 3 customers made a purchase without a test drive in the second half of 2018, we believe we can leverage our retail network further.

We expect that the restructuring actions taken in Q1 will reduce our costs by about \$400 million annually. Our Q1 financials will reflect a one-time restructuring cost. The gap between production and deliveries in Q1 will create a temporary but predictable dip in our revenues and earnings. As a result, our optimistic target is to achieve a very small GAAP net income in Q1, but that will require us to successfully execute on many fronts including handling logistics and delivery challenges in Europe and China. The higher in-transit inventory will also negatively impact operating cash flows in Q1.

In total, we are expecting to deliver 360,000 to 400,000 vehicles in 2019, representing a growth of approximately 45% to 65% compared to 2018. In this range, we are expecting to have positive GAAP net income and to generate positive free cash flow (operating cash flow less capex) in every quarter beyond Q1 2019. We believe these results will be substantially driven by our restructuring action and the ongoing financial discipline with which we are managing the business.

Our 2019 capex, the vast majority of which will be to grow our capacity and develop new vehicles, is expected to be about \$2.5 billion. We believe this amount should be sufficient to continue to develop our main projects, such as Gigafactory Shanghai, Model Y and Tesla Semi, as well as for the further expansion of our Supercharger, service and retail networks. We expect to arrange financing through local banks in China to fund most of the capex for Gigafactory Shanghai.

Since Model Y will be built on the Model 3 platform and is designed to share about 75% of its components with Model 3, the cost of the Model Y production line should be substantially lower than the Model 3 line in Fremont, and the production ramp should also be faster.

This year should be a truly exciting one for Tesla. Model 3 will become a global product, the profitability of our business should become sustainably positive, our new Gigafactory Shanghai should start producing cars, and we will start tooling for Model Y production. Our growth opportunities are massive. Our accomplishments have been possible thanks to the exceptional effort of our employees and the support of our customers, suppliers and investors. We hope you're as excited as we are about 2019.



Elon Musk



Deepak Ahuja

WEBCAST INFORMATION

Tesla will provide a live webcast of its fourth quarter and full year 2018 financial results conference call beginning at 2:30 p.m. PT on January 30, 2019, at ir.tesla.com. This webcast will also be available for replay for approximately one year thereafter.

NON-GAAP FINANCIAL INFORMATION

Consolidated financial information has been presented in accordance with GAAP as well as on a non-GAAP basis to supplement our consolidated financial results. Our non-GAAP financial measures include non-GAAP gross margin, non-GAAP net income (loss) attributable to common stockholders, non-GAAP net income (loss) attributable to common stockholders on a per share basis, and operating cash flows plus change in collateralized lease borrowing. Management believes that it is useful to supplement its GAAP financial statements with this non-GAAP information because management uses such information internally for its operating, budgeting and financial planning purposes. These non-GAAP financial measures also facilitate management's internal comparisons to Tesla's historical performance as well as comparisons to the operating results of other companies. Management also believes that presentation of the non-GAAP financial measures provides useful information to our investors regarding our financial condition and results of operations because it allows investors greater transparency to the information used by Tesla management in its financial and operational decision-making so that investors can see through the eyes of Tesla management regarding important financial metrics that Tesla management uses to run the business as well as allows investors to better understand Tesla's performance. Non-GAAP information is not prepared under a comprehensive set of accounting rules and therefore, should only be read in conjunction with financial information reported under U.S. GAAP when understanding Tesla's operating performance. A reconciliation between GAAP and non-GAAP financial information is provided below.

FORWARD-LOOKING STATEMENTS

Certain statements in this letter, including statements in the "Outlook" section; statements relating to the development, production, production rates, ramp and timing of existing and future Tesla products and technologies such as Model 3, Autopilot, Solar Roof, Model Y, Tesla Semi and Supercharger; statements regarding growth in the number of Tesla store, service center, Supercharger and Destination Charger locations and in other service and repair capabilities; statements regarding growth of our energy business and the means to achieve such growth; statements regarding growing market opportunities for Tesla products and the catalysts for that growth; statements regarding the ability to achieve our targets with respect to product demand, volume, production, delivery, leasing, market share, inventory and deployment; statements regarding revenue, cash availability and generation, cash flow, gross margin, product pricing, spending, capital expenditure and profitability targets; statements regarding productivity improvements, cost reductions and capacity expansion plans, such as for customer deliveries, logistics and vehicle servicing; statements regarding our Fremont factory, Gigafactory 1 and Gigafactory Shanghai, including cost, project financing and timing, plans and output expectations, including those related to vehicle, battery and other production; and statements regarding our investment in and the impact of changes to our customer delivery infrastructure, are "forward-looking statements" that are subject to risks and uncertainties. These forward-looking statements are based on management's current expectations, and as a result of certain risks and uncertainties, actual results may differ materially from those projected. The following important factors, without limitation, could cause actual results to differ materially from those in the forward-looking statements: the risk of delays in the manufacture, production, delivery and/or completion of our vehicles and energy products, particularly Model 3; the ability of Tesla to design and grow simultaneous and separate market acceptance of and demand for Model S, Model X, Model 3 and their variants, as well as new vehicle models such as Model Y; the ability of suppliers to meet quality and part delivery expectations at increasing volumes, especially with respect to Model 3 parts; adverse foreign exchange movements; any failures by Tesla products to perform as expected or if product recalls occur; Tesla's ability to continue to reduce or control manufacturing and other costs; consumers' willingness to adopt electric vehicles; competition in the automotive and energy product markets generally and the alternative fuel vehicle market and the premium sedan, premium SUV and small to medium-sized sedan markets in particular; Tesla's ability to establish, maintain and strengthen the Tesla brand; Tesla's ability to manage future growth effectively as we rapidly grow, especially internationally; the unavailability, reduction or elimination of government and economic incentives for electric vehicles and energy products; Tesla's ability to establish, maintain and strengthen its relationships with strategic partners such as Panasonic; potential difficulties in performing and realizing potential benefits under definitive agreements for our existing and future manufacturing facilities; Tesla's ability to maintain schedules, output and cost estimates for our manufacturing facilities; and Tesla's ability to execute on our strategy for new store, service center, Supercharger and other locations and capabilities. More information on potential factors that could affect our financial results is included from time to time in our Securities and Exchange Commission filings and reports, including the risks identified under the section captioned "Risk Factors" in our quarterly report on Form 10-Q filed with the SEC on November 2, 2018. Tesla disclaims any obligation to update information contained in these forward-looking statements whether as a result of new information, future events, or otherwise.

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Tesla, Inc.
Condensed Consolidated Statements of Operations
(Unaudited)
(In thousands, except per share data)

	Three Months Ended			Year Ended	
	December 31, 2018	September 30, 2018	December 31, 2017	December 31, 2018	December 31, 2017
Revenues					
Automotive sales	\$ 6,073,471	\$ 5,878,305	\$ 2,409,109	\$ 17,631,522	\$ 8,534,752
Automotive leasing	249,748	220,461	293,086	883,461	1,106,548
Total automotive revenue	6,323,219	6,098,766	2,702,195	18,514,983	9,641,300
Energy generation and storage	371,497	399,317	298,037	1,555,244	1,116,266
Services and other	531,157	326,330	288,017	1,391,041	1,001,185
Total revenues	7,225,873	6,824,413	3,288,249	21,461,268	11,758,751
Cost of revenues					
Automotive sales	4,658,517	4,405,919	1,999,631	13,685,572	6,724,480
Automotive leasing	127,731	119,283	191,541	488,425	708,224
Total automotive cost of revenues	4,786,248	4,525,202	2,191,172	14,173,997	7,432,704
Energy generation and storage	328,706	330,554	281,715	1,364,896	874,538
Services and other	668,019	444,992	376,576	1,880,354	1,229,022
Total cost of revenues	5,782,973	5,300,748	2,849,463	17,419,247	9,536,264
Gross profit	1,442,900	1,523,665	438,786	4,042,021	2,222,487
Operating expenses					
Research and development	356,297	350,848	354,637	1,460,370	1,378,073
Selling, general and administrative	667,452	729,876	682,290	2,834,491	2,476,500
Restructuring and other	5,615	26,184	—	135,233	—
Total operating expenses	1,029,364	1,106,908	1,036,927	4,430,094	3,854,573
Income (loss) from operations	413,536	416,757	(598,141)	(388,073)	(1,632,086)
Interest income	7,348	6,907	6,280	24,533	19,686
Interest expense	(174,723)	(175,220)	(146,363)	(663,071)	(471,259)
Other (expense) income, net	(14,205)	22,876	(41,677)	21,866	(125,373)
Income (loss) before income taxes	231,956	271,320	(779,901)	(1,004,745)	(2,209,032)
Provision (benefit) for income taxes	21,878	16,647	(9,094)	57,837	31,546
Net income (loss)	210,078	254,673	(770,807)	(1,062,582)	(2,240,578)
Net income (loss) attributable to noncontrolling interests and redeemable noncontrolling interests	70,595	(56,843)	(95,457)	(86,491)	(279,178)
Net income (loss) attributable to common stockholders	\$ 139,483	\$ 311,516	\$ (675,350)	\$ (976,091)	\$ (1,961,400)
Net income (loss) per share of common stock attributable to common stockholders – basic and diluted					
Basic	\$ 0.81	\$ 1.82	\$ (4.01)	\$ (5.72)	\$ (11.83)
Diluted	\$ 0.78	\$ 1.75	\$ (4.01)	\$ (5.72)	\$ (11.83)
Weighted average shares used in computing net income (loss) per share of common stock – basic and diluted					
Basic	172,026	170,893	168,314	170,525	165,758
Diluted	179,026	178,196	168,314	170,525	165,758

Tesla, Inc.
Condensed Consolidated Balance Sheets
(Unaudited)
(In thousands)

	December 31, 2018	December 31, 2017
Assets		
Current assets		
Cash and cash equivalents	\$ 3,685,618	\$ 3,367,914
Restricted cash	192,551	155,323
Accounts receivable, net	949,022	515,381
Inventory	3,113,446	2,263,537
Prepaid expenses and other current assets	365,671	268,365
Total current assets	8,306,308	6,570,520
Operating lease vehicles, net	2,089,758	4,116,604
Solar energy systems, leased and to be leased, net	6,271,396	6,347,490
Property, plant and equipment, net	11,330,077	10,027,522
Goodwill and intangible assets, net	350,651	421,739
MyPower customer notes receivable, net of current portion	421,548	456,652
Restricted cash, net of current portion	398,219	441,722
Other assets	571,657	273,123
Total assets	\$ 29,739,614	\$ 28,655,372
Liabilities and Equity		
Current liabilities		
Accounts payable	\$ 3,404,451	\$ 2,390,250
Accrued liabilities and other	2,094,253	1,731,366
Deferred revenue	630,292	1,015,253
Resale value guarantees	502,840	787,333
Customer deposits	792,601	853,919
Current portion of long-term debt and capital leases (1)	2,567,699	896,549
Total current liabilities	9,992,136	7,674,670
Long-term debt and capital leases, net of current portion (1)	9,403,672	9,418,319
Deferred revenue, net of current portion	990,873	1,177,799
Resale value guarantees, net of current portion	328,926	2,309,222
Other long-term liabilities	2,710,403	2,442,970
Total liabilities	23,426,010	23,022,980
Redeemable noncontrolling interests in subsidiaries	555,964	397,734
Convertible senior notes (1)	—	70
Total stockholders' equity	4,923,243	4,237,242
Noncontrolling interests in subsidiaries	834,397	997,346
Total liabilities and equity	\$ 29,739,614	\$ 28,655,372
	-	-

(1) Breakdown of our debt is as follows:

Recourse debt	\$ 7,080,584	\$ 6,755,376
Non-recourse debt	\$ 3,551,891	\$ 2,873,458

Tesla, Inc.
Condensed Consolidated Statement of Cash Flows
(Unaudited)
(In thousands)

	Three Months Ended			Year Ended	
	December 31, 2018	September 30, 2018	December 31, 2017	December 31, 2018	December 31, 2017
Cash Flows from Operating Activities					
Net income (loss)	\$ 210,078	\$ 254,673	\$ (770,807)	\$ (1,062,582)	\$ (2,240,578)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:					
Depreciation, amortization and impairment	496,737	502,825	469,606	1,901,050	1,636,003
Stock-based compensation	205,313	204,728	134,348	749,024	466,760
Losses related to the SolarCity acquisition	—	—	27,950	—	57,746
Other	123,385	77,737	151,756	452,359	516,018
Changes in operating assets and liabilities, net of effect of business combinations	199,048	351,318	497,038	57,951	(496,603)
Net cash provided by (used in) operating activities	1,234,561	1,391,281	509,891	2,097,802	(60,654)
Cash Flows from Investing Activities					
Capital expenditures	(324,978)	(510,271)	(786,688)	(2,100,724)	(3,414,814)
Payments for the cost of solar energy systems, leased and to be leased	(28,923)	(49,494)	(119,455)	(218,792)	(666,540)
Business combinations, net of cash acquired	(11,108)	(1,200)	(5,376)	(17,912)	(114,523)
Net cash used in investing activities	(365,009)	(560,965)	(911,519)	(2,337,428)	(4,195,877)
Cash Flows from Financing Activities					
Net cash flows from debt activities	(184,099)	(195,760)	28,056	37,202	2,414,896
Collateralized lease (repayments) borrowings	(216,081)	(142,568)	94,894	(559,167)	511,321
Net borrowings under Warehouse Agreements and automotive asset-backed notes	193,086	114,942	116,820	596,125	283,811
Net cash flows from noncontrolling interests - Auto	37,575	17,224	31,763	111,753	43,417
Net cash flows from noncontrolling interests - Solar	(18,567)	27,070	(5,479)	92,120	484,070
Proceeds from issuances of common stock in public offerings	—	—	—	—	400,175
Other	75,777	94,874	19,788	295,722	277,174
Net cash (used in) provided by financing activities	(112,309)	(84,218)	285,842	573,755	4,414,864
Effect of exchange rate changes on cash and cash equivalents and restricted cash	(3,821)	(6,370)	3,990	(22,700)	39,726
Net increase (decrease) in cash and cash equivalents and restricted cash	753,422	739,728	(111,796)	311,429	198,059
Cash and cash equivalents and restricted cash at beginning of period	3,522,966	2,783,238	4,076,755	3,964,959	3,766,900
Cash and cash equivalents and restricted cash at end of period	\$ 4,276,388	\$ 3,522,966	\$ 3,964,959	\$ 4,276,388	\$ 3,964,959

Tesla, Inc.
Reconciliation of GAAP to Non-GAAP Financial Information
(Unaudited)
(In thousands, except per share data)

	Three Months Ended			Year Ended	
	December 31, 2018	September 30, 2018	December 31, 2017	December 31, 2018	December 31, 2017
Automotive gross profit – GAAP	\$ 1,536,971	\$ 1,573,564	\$ 511,023	\$ 4,340,986	\$ 2,208,596
Stock-based compensation expense in automotive cost of revenue	22,566	20,955	16,182	71,797	43,845
ZEV credit revenue recognized	(768)	(52,269)	(179,142)	(103,351)	(279,717)
Automotive gross profit excluding SBC and ZEV credit – non-GAAP	\$ 1,558,769	\$ 1,542,250	\$ 348,063	\$ 4,309,432	\$ 1,972,724
Automotive gross margin – GAAP	24.3%	25.8%	18.9%	23.4%	22.9%
Stock-based compensation expense	0.4%	0.3%	0.6%	0.4%	0.5%
ZEV credit revenue recognized	0.0%	-0.6%	-5.7%	-0.4%	-2.3%
Automotive gross margin excluding SBC and ZEV credit – non-GAAP	24.7%	25.5%	13.8%	23.4%	21.1%
Net income (loss) attributable to common stockholders – GAAP	\$ 139,483	\$ 311,516	\$ (675,350)	\$ (976,091)	\$ (1,961,400)
Stock-based compensation expense	205,313	204,728	134,348	749,024	466,760
Losses related to the SolarCity acquisition	—	—	27,950	—	57,746
Net income (loss) attributable to common stockholders – non-GAAP	\$ 344,796	\$ 516,244	\$ (513,052)	\$ (227,067)	\$ (1,436,894)
Net income (loss) per share attributable to common stockholders, basic – GAAP	\$ 0.81	\$ 1.82	\$ (4.01)	\$ (5.72)	\$ (11.83)
Stock-based compensation expense	1.19	1.20	0.80	4.39	2.82
Losses related to the SolarCity acquisition	—	—	0.17	—	0.35
Net income (loss) per share attributable to common stockholders, basic – non-GAAP	\$ 2.00	\$ 3.02	\$ (3.04)	\$ (1.33)	\$ (8.66)
Shares used in per share calculation, basic – GAAP and non-GAAP	172,026	170,893	168,314	170,525	165,758
Net income (loss) per share attributable to common stockholders, diluted - GAAP	\$ 0.78	\$ 1.75	\$ (4.01)	\$ (5.72)	\$ (11.83)
Stock-based compensation expense	1.15	1.15	0.80	4.39	2.82
Losses related to the SolarCity acquisition	—	—	0.17	—	0.35
Net income (loss) per share attributable to common stockholders, diluted - non-GAAP	\$ 1.93	\$ 2.90	\$ (3.04)	\$ (1.33)	\$ (8.66)
Shares used in per share calculation, diluted - GAAP and non-GAAP	179,026	178,196	168,314	170,525	165,758

EXHIBIT 3

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FD (Fair Disclosure) Wire

January 30, 2019 Wednesday

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Body

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Tesla, Inc. - Former CFO

* Elon R. Musk

Tesla, Inc. - Co-Founder, CEO & Product Architect

* Jeffrey B. Straubel

Tesla, Inc. - CTO

* Jerome Guillen

Tesla, Inc. - President of Automotive Division

* Martin Viecha

Tesla, Inc. - Senior Director for IR

* Zach Kirkhorn

Conference Call Participants

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* Benjamin Joseph Kallo

Robert W. Baird & Co. Incorporated, Research Division - Senior Research Analyst

* Charles Eugene Munster

Loup Ventures, LLC - Managing Partner, Co-Founder & Head of Research

* Colin Langan

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UBS Investment Bank, Research Division - Director in the General Industrials Group and Analyst

* Colin William Rusch

Oppenheimer & Co. Inc., Research Division - MD and Senior Analyst

* Daniel Harlan Ives

Wedbush Securities Inc., Research Division - MD of Equity Research

* Daniel V. Galves

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* David J. Tamberrino

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* Emmanuel Rosner

Deutsche Bank AG, Research Division - Director & Research Analyst

* Maynard Joseph Um

Macquarie Research - Analyst

* Pierre C. Ferragu

New Street Research LLP - Global Team Head of Technology Infrastructure

* Ryan J. Brinkman

JP Morgan Chase & Co, Research Division - Senior Equity Research Analyst

Presentation

OPERATOR: Good day, ladies and gentlemen, and welcome to the **Tesla**, Inc. Q4 2018 Financial Results and Q&A Webcast. (Operator Instructions) As a reminder, this conference is being recorded.

I would like to introduce your host for today's call, Mr. Martin Viecha, Senior Director of Investor Relations. Mr. Viecha, you may begin.

MARTIN VIECHA, SENIOR DIRECTOR FOR IR, **TESLA**, INC.: Thank you, Sherry, and good afternoon, everyone. Welcome to **Tesla's** Fourth Quarter 2018 Q&A Webcast. I'm joined today by Elon Musk, J.B. Straubel, Deepak Ahuja and a number of other executives. Our Q4 results were announced at about 1 p.m. Pacific Time in the update letter we published at the same link as this webcast.

During this call, we will discuss our business outlook and make forward-looking statements. These comments are based on our predictions and expectations as of today. Actual events or results could differ materially due to a number of risks and uncertainties, including those mentioned in our most recent filings with the SEC. (Operator Instructions)

But before we jump into Q&A, Elon has some opening remarks. Elon?

ELON R. MUSK, CO-FOUNDER, CEO & PRODUCT ARCHITECT, **TESLA**, INC.: Thanks, Martin. Last year was definitely the most challenging year in **Tesla** history, but also the most successful. Thanks to the incredible work of the **Tesla** team, Model 3 became the best-selling premium vehicle in the U.S. for 2018. And in fact, when considering battery electric vehicles, **Tesla** achieved an 80% market share of U.S. sales in the last year. I think this point is perhaps not well appreciated. All other electric vehicles combined were 20% of sales in the U.S. in last year. So I think that's not bad.

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We also delivered -- also made vehicles last year as we did in all prior years combined, which is a tremendous achievement by the **Tesla** team. The -- if you track **Tesla** vehicle production year-over-year, cumulative sales deliveries year-over-year, it is about the cleanest exponential I've ever seen. We've basically almost doubled our fleet every year. Every year, we make as many cars as we did in all prior years. So this is a very unusual thing to see for -- especially for a large complex manufactured object. I think it may be the fastest that a complex manufactured object like a car has grown in history, or at least I'm not aware of anything that is faster. Martin, are you -- do you...?

MARTIN VIECHA: I'm not sure. I think Model T was a little bit slower, but I'm not 100% sure.

ELON R. MUSK: Okay. And we expect that exponential to continue. So with the deliveries this year being -- even in the face of -- if there's a global recession -- even if there's a global recession, we're expecting deliveries this year to be about 50% higher than last year. And this -- it could be a lot more than that. But even with tough economic times, to receive 50% growth is pretty nutty.

Over Q4, we achieved GAAP profitability for the second quarter for the first time in the company history, and we increased our cash on hand by more than \$700 million, even after paying debt, ending the year with a total of \$3.7 billion of cash. This means we have enough cash to settle our convertible bond that will mature in March.

In addition, our operating margin remains strong at 5.7%. Operating margins in the fourth quarter are usually lower in the automotive industry, but this was not the case for **Tesla**.

2019 is going to be an amazing year for **Tesla**. As I mentioned, we're expecting to increase sales by 50%. Perhaps it could be a lot more than 50%, but I think 50% is a very reasonable number. But that's crazy growth for the automotive industry.

I want to note that one of our major priorities this quarter is improving service operations. So really, from my standpoint, when I think about what my priorities are this quarter, it's improving service in North America. That's #1. And I think there are some very exciting initiatives we're going to roll out with regard to that. We're going to get cars to China and Europe and make sure that we have good logistics for the whole delivery process, from factory gate to the customer. That's obviously pretty far from California to get to Europe and China and then get to -- get product to our customers. So we're working every aspect of that logistics chain. And I think we've -- I think it's going to be good.

I'd say at this point, I'm optimistic about being profitable in Q1. Not by a lot, but I'm optimistic about being profitable in Q1 and for all quarters going forward.

So let's see, we've opened 27 new store and service locations, bringing our total locations worldwide to 378. And we increased our Mobile Service fleet to 411 vehicles. The Mobile Service fleet is something we can scale up very rapidly, because we don't need bricks and mortar. We can get more vehicles, hire people and deploy rapidly. It also actually results in higher customer satisfaction, because we can actually send one of our service vans to your work or home and fix the car without you having to bring it into a service center or do any paperwork or anything like that. It's really seamless, invisible, the customers love it.

And we're also increasing the functionality of the **Tesla** App for service, so that instead of having to make an appointment, to call and make an appointment, you can just open your **Tesla** App, say you want to make a service appointment, and it lists the top 10 most frequently requested service items, and you can, with a couple of taps, you've made your service appointment. And we're going to make it easier for the car to be picked up and dropped off as well. So if you want -- if you prefer not coming to the service center at all, you can just request that the car be picked up and delivered. That's something that we'll be -- so that's already been rolled out and have a big improvement to customer satisfaction. That rolled out 2 or 3 weeks ago.

But the next thing we're going to add is, if your car detects something wrong, like a flat tire or a drive unit failure, that before the car has even come to a halt, there is a tow truck and a service loaner on the way. So the car has already notified **Tesla** emergency services, and a service loaner, a tow truck, are on their way before your car has even come to a stop. Now this will be immense in improving customer happiness. Basically, it'll just call it and you'll have to tap the center screen to cancel it. So you can cancel it if you want. We just have to -- it's like automatically going to happen, you just press cancel.

We're also improving product distribution. So I think we made a strategic error in the past about not having service parts located at our service centers. We had them in product distribution warehouses, which basically meant it was impossible to

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have a fast turnaround on servicing a car, because the car would come in, then the parts will be requested, they come to the service center, this would basically -- even for a very simple repair, could take days. So we're going to be able to stock in all common parts at the service centers, so that it's possible to -- and first of all, have -- get your car serviced in 20 minutes or 15 minutes, even, if it's a simple matter. I mean, it should be like Jiffy Lube, like 8 minutes or whatever, not 8 minutes, that's -- it should be like lightning fast. But in order to do that, we have to have the parts located at our service centers.

Also, it's going to make sense for our service centers to do basic body work or essentially, if all you need to do to is replace a front or rear fascia, it makes sense to just pre-stock the front and rear fascia in the common colors. So unless you have an unusual color, we can literally replace your fascia in 15, 20 minutes, and there's none of this, like, weeks at a body shop stuff.

Let's see, in terms of the new products, with Model Y, we've completed [ensuring] of and design of Model Y, and the products are -- the tooling that's going out for production of Model Y, 3/4 of the Model Y is common with the Model 3, so it's a much lower CapEx per vehicle than Model 3. And the risk is also quite low. This is in contrast to Model S versus Model X, where the theory was -- I think Model X, we just -- it's like sort of Model X to be like sort of the Fabergé egg of cars. It's a -- it's an incredible vehicle and probably one -- probably nothing like it will ever be made again, and maybe it shouldn't. But it is a work of art. It's a special work of art. But the commonality with the Model S is limited. It was only about maybe 30% in common with the Model S, whereas Model Y is, I think, 76% or something like that, in common with the Model 3. And we're most likely going to put Model Y production right next to -- in fact, as part of our main Gigafactory in Nevada. So it will just be right there, batteries and powertrains will come out and go straight into the vehicle. So that also reduces our risk of execution and reduces the cost of having to transfer parts from California to Nevada. It's not a for-sure thing, but it's quite likely, and it's our default plan.

I would expect Model Y will probably be -- the demand for Model Y will be maybe 50% higher than Model 3, could be even double. The -- as I understand it, the mid-sized SUV segment is the, worldwide, is the most popular type of vehicle. So we'll probably see a higher volume of Y than 3.

And earlier this month, we started construction of Gigafactory Shanghai, and by the end of this year, we expect to be producing Model 3s using a complete vehicle production line. That's body, paint, final assembly, general assembly and module production. So it basically would be -- this should be extremely fast. I get like daily updates of progress of the Shanghai Gigafactory, and those factories are going to go up like lightning. So we do feel quite confident at this point, at least for the factories that are in our control, that we can achieve volume production in Shanghai by the end of the year. And that should allow us to get to the 10,000 vehicles a week rate, or very close to it, by the end of the year.

And yes, I think that's it.

Questions and Answers

MARTIN VIECHA: Okay, great. So we're going to take the first questions from our retail investors who have been submitting their questions on say.com. So the question that has been submitted has been about service, which I think you already spoke at length about. So let's go to the second question.

The second question would be, how are you feeling about demand right now across the product line? Is 500,000 to 700,000 units at \$42,000 ASP still a realistic annual target for Model 3, even considering Model Y and its impact on demand? And do you continue to see S and X demand of 100,000 annually?

ELON R. MUSK: I mean, my best guess, this is just a guess, my best guess for demand of Model 3 worldwide is something -- in a strong economy, is something on the order of 700,000 or 800,000 units a year. That's my best guess for demand of Model 3 in a strong economy. If the economy goes into a recession, then I think that could be something on the -- 40% less. But I think even in a recession, worldwide demand is still something in the order of 500,000 for Model 3. For S and X, we did eliminate the 75 kilowatt hour version of S and X and to provide more differentiation relative to 3 and then Y that's coming out. I think we could see a slight decline in total vehicles, but I think the net cash flow from S and X is likely to be very similar. So probably no major change in net cash flow for S and X.

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MARTIN VIECHA: Okay. The next question from Alex is, can you please share an update on full self-driving and **Tesla** Network development? When will customers start to see full self driving features? What's the best case time line for **Tesla** Network to go live?

ELON R. MUSK: Sure. We -- we already have full self-driving capability on highway. So from highway on-ramp to highway exit, including passing cars and going from one highway interchange to another, full self driving capability is there. In a few weeks, we'll be pushing an update that will allow the option of removing stalk confirm in markets where regulators approve it, which we believe that will be the case in the U.S., for example. And over time, we think probably all regulators will approve it. But we kept stalk confirm there just to make sure that we took care of like -- of any strange corner cases. And it's really quite sublime, if you have stalk confirm off and like the car goes from highway on-ramp, passes slower cars, change -- takes an interchange and then takes the exit and then comes to a stop after the exit. So it's really quite profound to have that experience. Then the next part of full self-driving would really be to -- is traffic lights. So it's hard. So stop streets are pretty easy because you can essentially geocode those and it's easier to recognize stop signs. Traffic lights and intersections will be the next really tricky one. And then navigating complex parking lots and like -- so like if you're underground in a mall parking lot with a lot of traffic and pedestrians and it's on multiple levels, that kind of thing is what gets tricky. With the release of enhanced or advanced Summon, you'll see the first indications of the car being able to navigate complex parking lots, and that's also coming out fairly soon, probably next month. And in development mode, the car does all of the things that I just mentioned in development mode. It recognizes traffic lights and stop signs and basically has all the functionality in development mode. It's really just a question of getting the reliability of recognizing traffic lights to several 9s, like -- so maybe it's like, I don't know, 98% good right now, but we need it to be like 99.999%, really extremely reliable. So in a nutshell, when the capability will be there for -- when will we think it's safe for full self-driving, it's probably towards the end of this year, and then it's up to regulators to decide when they want to approve that.

MARTIN VIECHA: Okay. Let's go to the next question, which is, if and when will **Tesla** switch Model S and X to 2170 battery cells? What percent range improvement do you expect?

ELON R. MUSK: We have no plans to switch S and X to 2170 and can't comment on future product developments.

MARTIN VIECHA: Okay. So maybe we'll take the last question from retail investors, which was, where will **Tesla** Semi and Model Y be produced? Can you share a time line on expected production ramp of these products?

ELON R. MUSK: I was mentioning earlier, the Model Y, we think, most likely will be produced at Gigafactory, but that's -- unless we encounter some obstacle -- that's the default plan that we're proceeding towards. And it's fast, lower risk and relatively low CapEx. In terms of the -- I mean, probably there's like initial production of Model Y, very low volume, early next year. But then it always takes time to ramp up any production system, and it's difficult to predict the shape of that S-curve. So we feel confident in saying there will be production volume of Model Y by the end of next year. But in between beginning of next year with low volume, it always starts with very low, and then it grows exponentially, from beginning of last year to end of next year, it's difficult to predict that ramp. So that's our expectation for Y. For Semi, we're -- I don't know if you want to comment on that, Jerome?

JEROME GUILLEN, PRESIDENT OF AUTOMOTIVE DIVISION, **TESLA**, INC.: Going to start next year as well.

ELON R. MUSK: Yes.

JEROME GUILLEN: But the first units will be -- this is Jerome -- well, first units will be for our own usage. So depends how many trucks we'll use for our own usage to move the parts and the vehicles to different locations, and then we'll start delivering to outside customers.

ELON R. MUSK: Yes, sounds good. And then the **Tesla** pickup truck, we might be ready to unveil that this summer. It will be something quite unique, unlike anything else.

MARTIN VIECHA: Okay, fantastic. So operator, we can start taking questions from participants on the call.

OPERATOR: Our first question comes from Ryan Brinkman with JPMorgan.

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RYAN J. BRINKMAN, SENIOR EQUITY RESEARCH ANALYST, JP MORGAN CHASE & CO, RESEARCH DIVISION: I see in the letter the amount that you have spent on land for Gigafactory Shanghai in the classification operating cash flows. Is there any guidance you can provide us in terms of how to think about CapEx for this facility going forward? And can you discuss the source of funds for the project? I think you've spoken in the past about the potential to raise debt locally in China. Is that still your thinking? And what kind of terms might you be able to raise that capital?

DEEPAK AHUJA, FORMER CFO, TESLA, INC.: Yes, Deepak here. You're right. The purchase of the land is a 50-year lease with the government of China. So it's not CapEx, but it's operating lease that shows up as cash flow from operations. However, the CapEx that we will invest is our equipment, and we fully own it. So that will show up as capital expenditures. The plan, as we have indicated in the letter, is still to get funding for a majority of debt capital spending from local China banks. And we expect pretty attractive rates based on the dialogue we've had. And there's a lot of interest. And we hope to finalize that and then share the details at that point.

ELON R. MUSK: Yes, I mean, as a ballpark figure, probably it's something about -- something in the order of \$0.5 billion in CapEx to get to the 3,000 vehicle rate in Shanghai, ballpark figure. And as Deepak was saying, we've been offered very competitive debt financing in China, really extremely compelling interest rates, so we do not expect that to be a capital drain on the company.

DEEPAK AHUJA: Yes, these are the biggest banks in the world, and for them, \$500 million is not a large amount of money in the scheme of things.

OPERATOR: Our next question comes from Gene Munster with Loup Ventures.

ELON R. MUSK: One thing is -- sorry, I just wanted to -- something that's perhaps, if you're in the automotive industry, you'll understand how significant this is, but maybe it's not as obvious to everyone, is **Tesla** has the first wholly-owned manufacturing facility in China for any -- of any automotive company. So this is profound, and we're very appreciative of the Chinese government allowing us to do this. I think it is symbolic of them wanting to open the market and apply fair rules for everyone, and I want to extend, like, a note of appreciation for the Chinese government in allowing us to do that. It's a very significant thing.

CHARLES EUGENE MUNSTER, MANAGING PARTNER, CO-FOUNDER & HEAD OF RESEARCH, LOUP VENTURES, LLC: This question I have is relative to Waymo and the autonomous driving opportunity. Morgan Stanley recently valued Waymo at \$175 billion. And my question is, what do they have that you don't have? And separately -- so what do they have that you don't have, and then separately, how important is autonomy to the **Tesla** story longer term? Is this nice to have? Is it really about EVs and renewable energy? Or is the autonomy kind of one of the foundational parts of the story longer term?

ELON R. MUSK: To find out the goodness of **Tesla**, so like sort of the why of **Tesla**, the relevance, what's the point of **Tesla**, comes down to 2 things: acceleration of sustainable energy and autonomy. The acceleration of sustainable energy is absolutely fundamental because this is the next potential risk for humanity. So obviously, that is, by far and away, the most important thing. But also, very important is autonomy. This has the potential to save millions of lives, tens of millions of serious highway injuries and give people their time back so that they don't have to drive, they can -- if you're on the road, you can spend time doing things that you enjoy instead of being in terrible traffic. So it's extremely important. We feel confident about our technical strategy, and I think we have an advantage that no one else has, which is that we have, at this point, somewhere in the order of 300,000 vehicles on the road, with a 360-degree camera sensor suite, radar, ultrasonics, always connected, uploads, especially video clips with [customer information], when there's an intervention. So effectively, we have a massive, massive training fleet. Our -- the miles of training that we have, if you added everyone else up combined, they're probably 5%, I'm being generous, of the miles that **Tesla** has. And this difference is increasing. A year from now, we'll probably go -- and if you go, certainly, if you go 18 months from now, we'll probably have 1 million vehicles on the road with -- and every time the customers drive the car, they're training the systems to be better. I'm just not sure how anyone competes with that.

OPERATOR: Our next question...

MARTIN VIECHA: Sorry, Gene, do you have a follow-up question? Okay, no follow-up question. Okay, let's go to the next participant.

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OPERATOR: Our next question is from Colin Rusch with Oppenheimer.

COLIN WILLIAM RUSCH, MD AND SENIOR ANALYST, OPPENHEIMER & CO. INC., RESEARCH DIVISION: Can you talk a little bit about the geographic dispersion for the guidance for 2019, where you're expecting the Model 3s to sell through as well as the other models?

ELON R. MUSK: Well, I think we did, actually. Yes, it's clear in our letter.

DEEPAK AHUJA: Correct. We indicated in Q1, we will start delivering Model 3s in Europe and China. And we also shared a chart showing the potential market size for mid-sized premium sedans in North America, Europe and Asia, suggesting those markets can be even bigger. So I think that gives a good sense of where we'll be. And we'll launch the right-hand drive version at some point to go to the other markets.

ELON R. MUSK: Yes, it's maybe on the order of 350,000 to 500,000 Model 3s, something like that this year.

COLIN WILLIAM RUSCH: Okay. And then just in terms of the cost reduction road map and rework, post-factory, can you talk a little bit about your expectation for reducing that in the next couple of quarters and what the order of magnitude is on that in your model internally?

ELON R. MUSK: Jerome, do you want to answer that?

JEROME GUILLEN: This is Jerome. Well, our manufacturing keeps improving quarter-over-quarter, actually, week-over-week. We take fewer hours, both here in Fremont or at the Gigafactory, to assemble the Model 3 and S and X as well. And then we track the quality very closely. We review that carefully with the engineers and the supply chain and the manufacturing teams. And the quality in the field and the number of incidents is also improving week-over-week, every week. So there are fewer and fewer need for cars to be in service, yes. So we'll keep going. There's no end in sight. And we'll try to make sure that the car never breaks down.

ELON R. MUSK: Yes, I think there's like some confusion about rectification. Like I said -- like for us, regarding the Model 3s that come off the line, all that happens is like some slight adjustment of drawer gaps and panel gaps and that kind of thing, and that's all that's done. There's nothing more than that.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Colin Langan with UBS.

COLIN LANGAN, DIRECTOR IN THE GENERAL INDUSTRIALS GROUP AND ANALYST, UBS INVESTMENT BANK, RESEARCH DIVISION: Just a follow-up on the comments around you said about 700,000 to 800,000, you think, is the normal demand. I mean, any color on what price you're expecting that to be? Because I think there's a lot of chatter that demand is already weak in -- of the midrange, at least, already in January. I don't know if that's true as well.

ELON R. MUSK: Yes, I mean, the -- it's more like there are multiple factors at play here. First of all, there's a lot of seasonality to automotive purchases. Most people do not buy a new car in the middle of a blizzard. So January and February tend to be seasonally low and then it picks up significantly around the early to mid-March time frame. In the U.S., we obviously have a pull forward of demand from the tax credit. And yes, there's -- so there's those factors. But I feel very confident about Model 3 demand. The customer happiness level with the car is incredible, I mean, I think probably the highest of any car in the world right now, I think. And so you can tell, like, basically, nobody wants to sell a car, so...

COLIN LANGAN: But the target price point is, I think, in the past, you mentioned mid-\$40,000. Is that where we're thinking? Or is that a long-term range?

ELON R. MUSK: Yes, this is really just a guess. So it's not like I've got some huge crystal ball or something. But at high -- at volume, I would expect, this is totally a guess, I just want to be clear, probably an average of \$42,000, probably at that volume level. I'm not certain, but that's my guess.

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COLIN LANGAN: And just as a follow-up, you commented that you expect China to be online by the end of the year, but there's a lot of articles that the battery supplier -- is you're looking at different battery suppliers still. I mean, do you have a battery supplier? Because it seems kind of close to when production is supposed to start.

ELON R. MUSK: Well, there's really 3 things. There's the cell, the module and the pack. We will be making the module and the pack. So it's really just a question of cell supply. And we can essentially use any high energy density 2170 chemistry. And we expect it to be a combination of cells produced at our Gigafactory in Nevada, cells produced in Japan and cells produced locally in China. And we feel confident of there's sufficient supply to hit the 3,000 units a week.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Emmanuel Rosner with Deutsche Bank.

EMMANUEL ROSNER, DIRECTOR & RESEARCH ANALYST, DEUTSCHE BANK AG, RESEARCH DIVISION: First, I wanted to ask you about the short-range Model 3. What are your latest thoughts in terms of timing of introduction? I think at some point, you had in mind to do it in the -- maybe the first half of this year. And just to clarify, when you're sort of talking about the outlook for 2019, the number of deliveries up 50% and then the margin target for Model 3 to get to 25%, does that assume that you're introducing a lower range, the short-range Model 3 at some point during the year?

ELON R. MUSK: Well, we call it the standard range, but it's maybe short by **Tesla's** standards, but it's long range by other manufacturers' standards. So -- but yes, we expect to introduce the standard range Model 3 sometime, probably the middle of this year is a rough -- rough guess. And we're working hard to improve our costs of production, our overhead costs, our fixed costs, just costs in general. I think this past year, while extremely difficult, has driven us to a high level of financial discipline. I think we're way smarter about how we spend money, and we're getting better with each passing week. Yes.

EMMANUEL ROSNER: And so to be clear, the -- you expect to reach at some point this year, or you're targeting at some point this year, 25% gross margin on Model 3, and that's despite introducing the lower-end, or I guess, the standard range Model 3. Is that correct?

ELON R. MUSK: Yes.

EMMANUEL ROSNER: Okay. And I guess, my follow-up would be on the demand side. So you're talking about 50% increase this year. You said a few times that it could be higher than this. I think you just mentioned in the previous question 350,000 to 500,000, if I understood well. So what is sort of like what drives the cautious outlook that's in your letter? Because it feels like it's the -- it's just basically 4x the fourth quarter run rate, which would imply sort of 50% for the full year, but not really a lot of growth versus what you just accomplished. So I guess, how do we think about the total demand for 2019, especially if you introduce this -- the cheaper version?

ELON R. MUSK: Well, we need to bring the Shanghai factory online. I think that's the biggest variable for getting to 500k-plus a year. Our car is just very expensive going into China. We've got import duties. We've got transport costs. We've got higher-cost labor here. And we've never been eligible for any of the EV tax credits. A lot of people (inaudible) being so dependent on incentives. In fact, we are, for a company making EVs, we have the least access to incentives. It's pretty crazy, because there's so many companies that, that -- countries that have put price caps on the EV incentive, which differentially affect **Tesla**. And in China, which is the biggest market for EVs, we've never had any subsidies or tax incentives for vehicles. So it's difficult. Once a car is made there, it is eligible for that. But it sounds like that's going to be reducing in China in the coming years. But really, bottom line is, we need the Shanghai factory to achieve that 10k rate and have the cars be affordable. The demand for -- it's important to appreciate, the demand for Model 3 is insanely high. The inhibitor is affordability. It's just like people literally don't have the money to buy the car. It's got nothing to do with desire. They just don't have enough money in their bank account. If the car can be made more affordable, the demand is extraordinary.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Pierre Ferragu with New Street Research.

PIERRE C. FERRAGU, GLOBAL TEAM HEAD OF TECHNOLOGY INFRASTRUCTURE, NEW STREET RESEARCH LLP: So Deepak, I was wondering, so as you get to 2019, we're all concerned about a potential recession, and I was wondering

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how you think about it and what you would tell us about what we should expect -- how we should expect **Tesla** to react to a recession in 2019. How do you manage your volume [LAM]? How do you manage your pricing? How do you possess cash? How do you manage your CapEx if things turn south in 2019? And then I have a follow-up on gross margin for Jerome.

DEEPAK AHUJA: Yes, it's a very broad question, which is not really just for me to answer. But I think at the highest level, the way we are trying to be prepared for any kind of contingency is to just continue focusing on cost. And the theme of our conversations here is, how do we reduce cost all the time? And how do we run our business with a very high level of financial discipline? And Elon alluded to that and so did Jerome, I think. That if we do that, we believe that even in some of the scenarios of lower volumes and pricing, tight pricing, we do have a good chance and a good shot of being profitable and generate free cash flow. So that's the best way to manage the business, be frugal.

ELON R. MUSK: Yes, I don't want to be a broken record about this, it's costs, costs, costs, cost, because reducing our costs -- by the way, while making modest improvements to Model 3, I want to emphasize, the product is getting better by slight degrees despite lower cost, in hundreds of small ways, that you actually wouldn't -- most people wouldn't notice explicitly, but they would appreciate subconsciously. And getting those costs down, variable costs and fixed costs, is what allows us to lower the price and be financially sustainable and achieve our mission of environmental sustainability. So we have to be absolute zealots about this, there's no question.

DEEPAK AHUJA: The other aspect of this, Elon, which we've been doing extremely well, is capital efficiency. We have dramatically cut back on capital expense, and we are spending it in a very efficient manner. We talk about it in the letter on Model 3 and Gigafactory Shanghai. We talk about it for Model Y. There are just so many learnings that we are incorporating. And we just want to beat what we did with Model 3 and the kind of spending we had for the returns we got.

ELON R. MUSK: Absolutely. I mean, like, we're confident that our CapEx per unit of production for Shanghai factory and for Model Y will be less than half of what we did for Model 3. Internally, we think it might be a quarter, but that's probably too good to believe, but it's definitely less than half.

MARTIN VIECHA: Great, let's go to the next question, please.

OPERATOR: Our next question comes from David Tamberrino with Goldman Sachs.

DAVID J. TAMBERRINO, EQUITY ANALYST, GOLDMAN SACHS GROUP INC., RESEARCH DIVISION: First thing I want to just understand is on what you're seeing from European orders and China orders so far. There are some numbers that get thrown around, but you guys are obviously taking a look at it. How is that order profile shaping up relative to what you saw in the U.S. with the launch of the 3?

ELON R. MUSK: I think it seems good. I mean, our issue actually with Europe and China is how do we get the cars made and on a boat as such that it reaches customers before end of quarter and we don't have a massive number of cars on the water. That's our biggest challenge. It's not demand. It's how do we get the cars there fast enough.

DAVID J. TAMBERRINO: So like orders above, I think I've seen like 20,000 order levels for Europe and single-digit thousands for China, it's better than that, Elon?

ELON R. MUSK: Yes, absolutely. The -- I mean, we're not even really trying, I should point out. I guess, it's -- we -- our factory is like, right now, only making cars for China and Europe. That's all it's doing for -- with respect to Model 3. And our whole focus is, okay, how do we get those cars made, get them on a ship as fast as possible, get the ship as fast as possible to Zeebrugge in Belgium, then get them over to Drammen in Norway and get those cars to customers as fast as possible. We get them to China as fast as possible. And China, we're also -- yes, we don't what's going to happen with the trade negotiations. So it's very important to get those cars, especially to China, as soon as possible. We hope the trade negotiations go well, but it's not clear. But we need to get them there while there's sort of a de facto -- sort of a truce on the tariff war. And the demand gen is really not one of the things we're thinking about.

DAVID J. TAMBERRINO: Okay. Then just lastly on this demand thread, customer deposits came in again over \$100 million. Is it possible to give us an update? I know you don't think it's really a relevant number, but I do and I'll explain why. On the reservation count, where you were at 450,000, you started delivering. And I ask this because I think we're just all trying to

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understand how much incremental demand you think there is based on what you see at that lower price point if, say, there's over half of those people that are still waiting for that 75k base model to come out. That would be interesting, and I think that's what you're seeing, but I just want to confirm that.

ELON R. MUSK: So Deepak, do you want to...?

DEEPAK AHUJA: Yes, I mean, I think reservations are not relevant for us. We are really focused on orders. Now we do have a large reservations backlog still, which tells us that a lot of customers are still waiting for those cars, but I don't think it's appropriate to share the reservations number.

ELON R. MUSK: Reservations are just like preorders. It's like you have like some video game come out and it's like a preorder number, then that's like -- stops being important once you start shipping the game or product. So yes, as I said earlier, I think -- my guess is demand is somewhere on the order -- in a strong economy, is on the order of 700,000 or 800,000 units a year for Model 3 and even in a recession is probably on the order of 0.5 million.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Daniel Ives with Wedbush Securities.

DANIEL HARLAN IVES, MD OF EQUITY RESEARCH, WEDBUSH SECURITIES INC., RESEARCH DIVISION: So my question is around Europe. Obviously, with deliveries coming onboard in the first quarter, maybe what surprised you in terms of -- demand looks strong, but in terms of what you're seeing out of the region, is it stronger than you expected in certain countries? What do you think is driving that? And maybe you can just talk about the opportunities and challenges in Europe, especially from a delivery logistics perspective.

ELON R. MUSK: Well, like I said, we're thinking about demand almost 0 right now. It's really getting the product there in time and not having a ton of cars on the water end of the quarter and then for China, getting cars there before there's a potential rise in tariffs. That's really -- put really at front of mind, that cost reduction and then improving service in North America, yes.

DANIEL HARLAN IVES: And just maybe a quick follow-up. Can you just talk about, when we look at the Gigafactory build-out in China and obviously how important that is, maybe just fast forward, let's say, 18, 24 months, I mean, how do you envision that as just a competitive advantage versus maybe some other automakers that will be trying to go in your tracks?

ELON R. MUSK: I think it will be quite a significant advantage. I really view it as quite fundamental to the future of **Tesla**, and I expect to make several trips to China this year. And I'm working very closely with the team building the factory. I literally get daily updates. So it's a super big deal and we're only just talking about Phase 1 here. Phase 1 is about 10% of what we think the Gigafactory will ultimately be. So it's a major, major, major deal. And we're getting a lot of support from the Shanghai government, which we're very appreciative of, and the national government.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Toni Sacconaghi with Bernstein.

A.M. SACCONAGHI, SENIOR ANALYST, SANFORD C. BERNSTEIN & CO., LLC., RESEARCH DIVISION: You've talked repeatedly about the need to drive down costs, which in turn drives elasticity of demand for cars. And I'm wondering if you can talk about how much of the price differential between the \$50,000 Model 3 and the \$35,000 Model 3 is structural, meaning that powertrain costs for EVs are just structurally higher than they are for internal combustion engine cars? And where you think that difference is today and when that is no longer a factor? So is -- or maybe said another way, is the bigger driver in getting to lower costs and lower -- and more affordability on the Model 3, is it really around the powertrain and getting that at parity? Or is it everything else about **Tesla** not being as efficient as other manufacturers that is causing the higher price right now? And have I follow-up, please.

JEROME GUILLEN: It's both, it's both the vehicle and both the powertrain. So I split my time half and half between the Gigafactory and here, and there is opportunities in both, yes.

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DEEPAK AHUJA: But I think the bigger point is that, yes, there is cost reduction opportunities out, but the bigger point is not that our cost is higher than a gas-powered or an internal combustion engine.

MARTIN VIECHA: I think what Toni meant is with a battery pack, as in battery pack as well as the powertrain together, are more expensive than an engine.

ELON R. MUSK: That's true.

A.M. SACCONAGHI: And how big do you think that delta is today? And when it's -- do you think of it as being kind of \$10,000, \$11,000 for that pack plus powertrain for an electric vehicle and maybe \$5,000 or \$6,000 for an internal combustion engine car? And is that sort of the order of magnitude? And where do you see those getting much more aligned, just sort of given the laws of where you think cell and pack costs are going?

ELON R. MUSK: Well, the biggest part to bear in mind is the cost of electricity is quite a bit less than the cost of gasoline, especially in Europe or in California or China, basically almost everywhere except, say, the middle of the United States, the cost of gasoline is very expensive and electricity is far cheaper. The -- so that factors into the cost of ownership pretty significantly. It's on -- sort of on the order of \$50 to \$100 a month, depending upon how much somebody drives. So that's a very important thing to consider for an electric car versus a gasoline car. The -- that said, in terms of initial cost of acquisition, I think it's probably -- this is just off the top of my head, not a calculated number, probably on the order of 7k, but trending towards 4k or 5k. Just off the top of my head.

A.M. SACCONAGHI: Okay. And as you think about 2019, you talked about sort of scenarios for demand and how you plan to roll out the intermediate range and then ultimately the standard range. What is -- if you do have to make a trade-off on volume or profitability during the course of the year, meaning to get the volume you need or you think you can deliver, you have to go to lower margins or vice versa, where's the trade-off? Is -- are units produced most important to you? Or is delivering the 25% gross margin more important? So if you have a chance to deliver 450,000 or 500,000 cars, but they'll be more standard editions and gross margins will end the year at 20%, is that -- are you willing to make that trade-off?

ELON R. MUSK: Yes, my guess is it ends up being sort of about the six in one, half dozen the other, where if there's a given amount of free cash flow, you sort of decide -- you decide to achieve that with a smaller production or smaller volume of cars at a higher margin or large volume cars at a smaller margin. I think we're already towards the second. We're going to make more cars at a lower margin, but I think it's more or less a flat rate.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Maynard Um with Macquarie.

MAYNARD JOSEPH UM, ANALYST, MACQUARIE RESEARCH: Can you just update us on where battery costs are now and where you anticipate they'll be by year-end? I'm just trying to gauge how much of a factor this is to lowering costs and sustaining profitability.

ELON R. MUSK: That's a highly proprietary number. We cannot give it out. I'd like to tell you, but no. We do think we have the best costs in the world. We're -- to the best of our knowledge, our costs are better than anyone else right now and they're improving.

MAYNARD JOSEPH UM: And maybe talk about your expectations with the Panasonic-Toyota JV and how it might impact you. Was this something that you were made aware of?

ELON R. MUSK: I spoke directly with Tsuga-san about this, the Head of Panasonic, and he has assured me this will have no impact on **Tesla**.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Dan Galves with Wolfe Research.

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DANIEL V. GALVES, DIRECTOR OF EQUITY RESEARCH & SENIOR ANALYST, WOLFE RESEARCH, LLC: Do you plan to offer a U.S. lease product for Model 3 in the U.S.? When can we expect it? And can you talk about what percentage of S and X have historically been leased in the U.S.?

ELON R. MUSK: Well, we've been reluctant to introduce the leasing on Model 3 because of how -- of its effect on GAAP financials. So it is worth noting that demand to date is with 0 leasing. So obviously, leasing is a way to improve demand, but it has -- it makes our financials look worse. So we're like -- we're not wanting to introduce that right away. I mean, we'll introduce it sometime later this year probably. What -- I'm not sure the percentage of lease is for S and X right now.

DEEPAK AHUJA: It's around 20%, low 20s, and it stayed stable at that level for many, many quarters, which is -- it seems like the natural demand because we don't do subvention or artificially bump up...

ELON R. MUSK: Yes, exactly. Our leases are legit. The -- it usually affects small business tax write-off, is important for the -- for leasing, so.

DANIEL V. GALVES: Okay. And then I have just, like, 2 quick housekeeping questions. One, is there a restructuring charge that you expect in the first quarter? How much is it? And is it included in your expectation of a small profit?

DEEPAK AHUJA: Yes, it is included in that. It's difficult to say exactly what that is. At this point, it's, let's say, roughly around \$40 million, but that number can vary slightly.

DANIEL V. GALVES: Okay. And then just the last one is...

DEEPAK AHUJA: Sorry, go ahead.

DANIEL V. GALVES: Yes, the last one is, this change in your service parts structure to make things more distributed rather than in the parts warehouses, would that be like a meaningful working capital drag? What's the cash impact of that?

ELON R. MUSK: No, it's actually -- we've just been very silly about where we store our parts. So it's actually going to be no change in sort of working capital or not something you would even notice in the financials. It's just being smarter about sending parts directly to service centers, in fact, either directly from our factory here or from our suppliers, and just ship them direct to the service center. Right now -- actually, our costs will improve, I think, actually quite a lot, because there's been actually quite -- the current system is quite boneheaded, actually, speaking self-referentially. So just being -- so stopping doing the foolish things will massively improve our service costs, will massively improve customer happiness around the world, and it's just fundamentally better all around. I mean, there are some pretty -- like we've been just like super dumb in some of the things we've done, where -- like, on one of the trips to China last year, I always ask, "Okay, what are we doing wrong? What can we fix?" And like our China team is great, by the way. They're like, "Well, do you think we could have spare parts that are made in China just sent directly to our China service centers? Because currently, there's a bunch of parts that are made in China, then sent to a warehouse in New Jersey and then sent back to China." Literally, what was happening. It's super nuts stuff. So it's going to get way better. And yes, it's very clear.

MARTIN VIECHA: Okay, let's go to the next question, please.

OPERATOR: Our next question comes from Ben Kallo with Baird.

BENJAMIN JOSEPH KALLO, SENIOR RESEARCH ANALYST, ROBERT W. BAIRD & CO. INCORPORATED, RESEARCH DIVISION: I have 1 question and it's got 4 parts to it. Happy new year, Elon. So the first part is, so our Street numbers, like consensus, we've gotten everything wrong for 6 years or 7 years since you went public, and there are about \$6 in earnings. Talk to us about that if you can. Number two, Elon, could you talk to us about -- can you talk about -- I hear you cut some workforce at SpaceX and there at **Tesla** and I feel that you have a worry about global economy. Can you talk to us about how you feel about that with your guidance in order -- in the same order? And then can we talk about, maybe for the third thing, for JV, no one's ever going to talk about stationary storage, but we got a whole page on that, which looked pretty good to me, and what should we be focusing on that? And what can that add to the bottom line on top of that \$6 this next year?

DEEPAK AHUJA: I mean, we can't really, Ben, talk about consensus and what that means. I think we are -- maybe the better approach is we are providing certain guidance here and you and the other analysts need to reflect that in your modeling. And

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that's the best indication from the company of our projections. In all fairness, that's the best way I can think of answering your question here.

ELON R. MUSK: Yes, J.B., is there anything you want to say?

JEFFREY B. STRAUBEL, CTO, **TESLA**, INC.: I mean, I think the letter outlines the predicted growth in the battery storage business, the stationary storage business pretty clearly, and that should be included in the projections as well. So I mean, we're excited about it, but I can't say much more detail.

ELON R. MUSK: I mean, our internal projections for stationary storage are closer to 3 gigawatt hours. But some of it is kind of lumpy and may not be completed this year. We would have done more in stationary storage last year except we were cell-starved for vehicle production, so we had to convert a bunch of stationary storage lines, battery lines, to vehicle battery lines. Otherwise, we would have done quite a bit more in stationary storage. I expect that to grow, I mean, probably twice as fast as automotive for short -- a long time.

JEFFREY B. STRAUBEL: We continue to set production records basically every month, so that's growing.

DEEPAK AHUJA: And the profitability of the storage business and the gross margin continue to improve as we keep ramping up production and scale.

ELON R. MUSK: It's going to be a gigantic business down the road.

MARTIN VIECHA: And the last question was about economy, global economy.

ELON R. MUSK: Sure. I mean, I do think that the economy moves in cycles and there's clearly a significant risk of a recession over the next 12 to 18 months, but I'm confident that **Tesla** will remain at least slightly profitable, even with -- even if there is a significant recession. And then when -- and be all the stronger for it when the recession ends. And the -- yes, we have to be relentless about cost in order to make affordable cars and not go bankrupt. That's what our headcount reduction is about, yes, yes. I think we have to -- it's -- we have to be super hardcore about it. It's the only way to make affordable cars. The -- on the SpaceX side, the cost reduction was for a different reason unrelated to -- it was -- SpaceX has really -- SpaceX has 2 absolutely insane projects that would normally bankrupt a company, the Starship and Starlink, and so SpaceX has to be incredibly spartan with expenditures until those programs reach fruition.

MARTIN VIECHA: Okay, great. I think that's all we have time for today. Thank you very much for your questions, and Elon would like to have some closing remarks.

ELON R. MUSK: Yes, so let's see -- the -- so Deepak is -- well, I'll let you make the announcement, but Deepak is going to be retiring.

DEEPAK AHUJA: Again.

ELON R. MUSK: Yes, from **Tesla**.

DEEPAK AHUJA: Yes.

ELON R. MUSK: Deepak, I think it's been -- you first started with **Tesla** about 11 years ago, right?

DEEPAK AHUJA: It's been close to that, yes.

ELON R. MUSK: Yes, almost 11 years. Thank you for your tremendous contribution to **Tesla**. And he's announcing retirement but the retirement will not be immediate, but Deepak will continue to be at **Tesla** for a few more months and will continue to serve as a senior adviser to **Tesla** for probably years to come, hopefully. And we thought long and hard about who the right person is to take over from Deepak, and that's Zach. And Zach has been with **Tesla** now for 9 years...

ZACH KIRKHORN: 9 years.

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ELON R. MUSK: Yes, so Zach, management and technology at Wharton undergrad and then worked at **Tesla** and then spent a couple of years at Harvard Business School, which I actually don't think was necessary, by the way.

ZACH KIRKHORN: You told me that when I came back.

ELON R. MUSK: Yes, exactly. So Zach's incredibly talented and has made a huge contribution to **Tesla** over the years, and obviously, a very well-known quantity to the whole team and has the respect of the whole team. And Zach, I don't know if you'd like to say a few words?

ZACH KIRKHORN: Yes, I will.

ELON R. MUSK: Okay. Or do you want, Deepak, do you want to say this?

ZACH KIRKHORN: Deepak?

DEEPAK AHUJA: Sure, okay. Thank you, yes. Well, first of all, Elon, thank you very much for the opportunity for me to be here and be here again a second time. I've learned a lot from you and I've been always inspired by you, and I've been also very inspired by the team at **Tesla**, who are incredibly brilliant, very passionate and just amazingly perseverant, the best team I could imagine. So thank you, everybody, for that. There is no good time to make this change. We felt this was a good time. It's a new chapter, a new year. **Tesla** has had 2 great quarters of profitability, cash flow, it's on a really solid foundation. And I feel really good about Zach taking over as the CFO. He's proven himself with his many years of experience and many tough challenges that he's worked on and really excited to have Zach take on this role, and I'll be here to support him and make sure we are all successful as a company.

ZACH KIRKHORN: Yes, well, thank you, Deepak. Thank you, Elon. So my name is Zach Kirkhorn. Just a brief background on myself. So I joined **Tesla** just under 9 years ago, when we were a super small company with a lot of potential ahead of us and I was attracted to the mission and the vision of the company. Throughout that time, I've been deep in the operations of every major program of the company, from the Roadster to Model S and X, Model 3, scaling our energy business and more things to come, which we've talked about on the call. I feel we're starting 2019 with a very strong financial foundation. We have enough cash to continue launching new programs and developing new technologies, and we're able to service upcoming debt obligations with our forecasted cash flows. My focus, alongside the talented and amazingly passionate team at **Tesla**, is to ensure we continue the terrific momentum on cost management and operational efficiency, which will enable us more -- enable more access to our products around the world, which is key to achieving the mission of the company. On a personal note, Deepak, a huge thank you to you for your leadership, mentorship and support and very much looking forward to discussing our progress on future earnings calls.

ELON R. MUSK: Great.

MARTIN VIECHA: Great. Thank you very much. We will speak to you in 3 months.

ELON R. MUSK: Thanks, guys.

OPERATOR: Ladies and gentlemen, thank you for participating in today's conference. This concludes the program. You may all disconnect, and have a wonderful day.

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In the conference calls upon which Event Transcripts are based, companies may make projections or other forward-looking statements regarding a variety of items. Such forward-looking statements are based upon current expectations and involve risks and uncertainties. Actual results may differ materially from those stated in any forward-looking statement based on a number of important factors and risks, which are more specifically identified in the companies' most recent SEC filings. Although the companies may indicate and believe that the assumptions underlying the forward-looking statements are reasonable, any of the assumptions could prove inaccurate or incorrect and, therefore, there can be no assurance that the results contemplated in the forward-looking statements will be realized.

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Load-Date: February 3, 2019

End of Document

EXHIBIT 4

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2018

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
(State or other jurisdiction of
incorporation or organization)

3500 Deer Creek Road
Palo Alto, California
(Address of principal executive offices)

91-2197729
(I.R.S. Employer
Identification No.)

94304
(Zip Code)

(650) 681-5000

(Registrant's telephone number, including area code)

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

Title of each class

Common Stock, \$0.001 par value

Name of each exchange on which registered

The NASDAQ Stock Market LLC

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

None

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

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 No

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 No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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.

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

The aggregate market value of voting stock held by non-affiliates of the registrant, as of June 30, 2018, the last day of the registrant's most recently completed second fiscal quarter, was \$46.57 billion (based on the closing price for shares of the registrant's Common Stock as reported by the NASDAQ Global Select Market on June 30, 2018). Shares of Common Stock held by each executive officer, director, and holder of 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 12, 2019, there were 172,721,487 shares of the registrant's Common Stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for the 2019 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2018.

ITEM 1A. RISK FACTORS

You should carefully consider the risks described below together with the other information set forth in this report, which could materially affect our business, financial condition and future results. The risks described below are not the only risks facing our company. Risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and operating results.

Risks Related to Our Business and Industry

We have experienced in the past, and may experience in the future, delays or other complications in the design, manufacture, launch, production, delivery and servicing ramp of new vehicles and other products such as Model 3, Model Y, our energy storage products and Solar Roof, which could harm our brand, business, prospects, financial condition and operating results.

We have previously experienced launch, manufacturing, production and delivery ramp delays or other complications in connection with new vehicle models such as Model S, Model X and Model 3, new vehicle features such as the all-wheel drive dual motor drivetrain on Model S and the second version of Autopilot hardware, and a significant increase in automation introduced in the manufacture of Model 3. For example, we encountered unanticipated challenges, such as certain supply chain constraints, that led to initial delays in producing Model X. Similarly, we experienced certain challenges in the production of Model 3 that led to delays in its ramp. Moreover, in the areas of Model 3 production where we had challenges ramping fully automated processes, such as portions of the battery module assembly line, material flow system and the general assembly line, we reduced the levels of automation and introduced semi-automated or manual processes. If issues like these arise or recur, if our remediation measures and process changes do not continue to be successful, if we experience issues with transitioning to full automation in certain production lines or to other planned manufacturing improvements, or if we experience issues or delays in building our Gigafactory Shanghai in China or commencing and ramping Model 3 production there, we could experience issues in sustaining the Model 3 ramp or delays in increasing Model 3 production further. Also, if we encounter difficulties in scaling our delivery or servicing capabilities for Model 3 or future vehicles and products to high volumes in the U.S. or internationally, our financial condition and operating results could suffer. In addition, because our vehicle models share certain production facilities with other vehicle models, the volume or efficiency of production with respect to one model may impact the production of other models or lead to bottlenecks that impact the production of all models.

We may also experience similar future delays or other complications in bringing to market and ramping production of new vehicles, such as Model Y, the Tesla Semi, our planned pickup truck and new Tesla Roadster, our energy storage products and Solar Roof. Any significant additional delay or other complication in the production of and delivery capabilities for our current products or the development, manufacture, launch, production and delivery and servicing capability ramp of our future products, including complications associated with expanding our production capacity, supply chain and delivery systems or obtaining or maintaining regulatory approvals, could materially damage our brand, business, prospects, financial condition and operating results.

We have experienced in the past, and may experience in the future, delays in realizing our projected timelines and cost and volume targets for the production and ramp of Model 3, which could harm our business, prospects, financial condition and operating results.

Our future business depends in large part on our ability to execute on our plans to manufacture, market and sell the Model 3 vehicle, which we are offering at a lower price point and which we are producing at significantly higher volumes than the Model S or Model X vehicles. We commenced production and initial customer deliveries of Model 3 in July 2017, and since then have achieved a stabilized production rate. At the Tesla Factory, we expect to continue to increase our Model 3 production rate to approximately 7,000 units per week on a sustained basis by the end of 2019. Moreover, in China, we expect to commence production of certain trims of Model 3 for the local market in China in the initial phase of our Gigafactory Shanghai by the end of 2019, and then progressively increase levels of localization through local sourcing and manufacturing. Inclusive of Gigafactory Shanghai, our goal is to be able to produce 10,000 Model 3 vehicles per week on a sustained basis, and an annualized output rate in excess of 500,000 Model 3 vehicles sometime between the fourth quarter of 2019 and the second quarter of 2020. However, the timeframe for commencing Model 3 production at Gigafactory Shanghai is subject to a number of uncertainties, including regulatory approval, supply chain constraints, and the pace of installing production equipment and bringing the factory online.

We have limited experience to date in manufacturing vehicles at the high volumes that we recently achieved and to which we anticipate ramping further for Model 3, and to be successful, we will need to complete the implementation and ramp of efficient and cost-effective manufacturing capabilities, processes and supply chains necessary to support such volumes, including at Gigafactory Shanghai. We are employing a higher degree of automation in the manufacturing processes for Model 3 than we have previously employed and to continue to implement additional automation. In some cases, we have temporarily reduced the levels of automation and introduced semi-automated or manual processes, at additional labor cost. Additional bottlenecks may also arise as we continue to ramp production at the Tesla Factory and commence the initial phase of Model 3 production at Gigafactory Shanghai, and it will be important that we address them promptly and in a cost-effective manner. Moreover, our Model 3 production plan has generally required to date significant investments of cash and management resources, and we expect to deploy some level of additional resources as we further progress our ramp and begin production in new locations in the future, such as China.

Our production plan for Model 3 is based on many key assumptions, including:

- that we will be able to sustain and further expand our high-volume production of Model 3 at the Tesla Factory without exceeding our projected costs and on our projected timeline;
- that we will be able to continue to expand Gigafactory 1 in a timely manner to produce high volumes of quality lithium-ion cells to be integrated into battery modules and finished battery packs and drive unit components for Model 3, including in part to support production in China as the level of local sourcing and manufacturing there progressively increases, all at costs that allow us to sell Model 3 at our target gross margins;
- that we will be able to build and commence production at additional future facilities, such as at Gigafactory Shanghai, to support our international ramp for Model 3 in accordance with our projected costs and timeline;
- that the equipment and processes which we have selected for Model 3 production will be able to accurately manufacture high volumes of Model 3 vehicles within specified design tolerances and with high quality;
- that we will be able to maintain suppliers for the necessary components on terms and conditions that are acceptable to us and that we will be able to obtain high-quality components on a timely basis and in the necessary quantities to support high-volume production; and
- that we will be able to attract, recruit, hire, train and retain skilled employees to operate our planned high-volume production facilities to support Model 3, including at the Tesla Factory, Gigafactory 1 and Gigafactory Shanghai.

If one or more of the foregoing assumptions turns out to be incorrect, our ability to meet our Model 3 projections on time and at volumes and prices that are profitable, the demand for and deliveries of Model 3, as well as our business, prospects, operating results and financial condition, may be materially and adversely impacted.

We may be unable to meet our growing vehicle production, sales and delivery plans and servicing needs, any of which could harm our business and prospects.

Our plans call for sustaining and further ramping from our significant increases in vehicle production and deliveries, particularly for Model 3. Our ability to achieve these plans will depend upon a number of factors, including our ability to utilize installed manufacturing capacity to achieve the planned production yield, further install and increase capacity in accordance with our planned timelines and costs, maintain our desired quality levels and optimize design and production changes, as well as our suppliers' ability to support our needs. In addition, we have used and may use in the future a number of new manufacturing technologies, techniques and processes for our vehicles, which we must successfully introduce and scale for high-volume production. For example, we have introduced highly automated production lines, aluminum spot welding systems and high-speed blow forming of certain difficult to stamp vehicle parts. We have also introduced unique design features in our vehicles with different manufacturing challenges, such as large display screens, dual motor drivetrain, Autopilot hardware and falcon-wing doors. We have limited experience developing, manufacturing, selling and servicing, and allocating our available resources among, multiple products simultaneously. If we are unable to realize our plans, our brand, business, prospects, financial condition and operating results could be materially damaged.

Concurrent with our increasing vehicle production levels, we will also need to continue to significantly increase sales and deliveries of our vehicles. Although we have a plan for selling and delivering increased volumes of vehicles, we have limited experience in marketing, selling and delivering vehicles at the higher volumes at which we are manufacturing Model 3, and we may face difficulties meeting our sales and delivery goals in both existing markets as well as new markets into which we expand, such as Europe and China where we are beginning to deliver Model 3 for the first time in the first quarter of 2019. In particular, we are targeting for the first time with Model 3 a mass demographic with a broad range of potential customers, in which we have limited experience projecting demand and pricing our products. While we are producing numerous variants (including regional versions) of Model 3 in accordance with the demand that we expect for them, if our projections are inaccurate, we may not be able to generate sales matched to the specific vehicles that we have the capacity to produce, based on vehicle production line constraints and long lead times for procuring certain parts.

Moreover, because we do not have independent dealer networks, we are responsible for delivering all of our vehicles to our customers and meeting their vehicle servicing needs. To date, we have limited experience with such deliveries and servicing at the scale to which we expect to grow, particularly in international markets. To accommodate our volumes, we have deployed a number of delivery models, such as deliveries to customers' homes and workplaces, some of which have not been previously tested at scale and in different geographies. Moreover, significant transit time may be required to transport vehicles such as Model 3 in volume into new markets for the first time. To the extent that such factors lead to delays in our deliveries, our results may be negatively impacted. Finally, because of our unique expertise with our vehicles, we recommend that our vehicles be serviced by our service centers, Mobile Service technicians or certain authorized professionals that we have specifically trained and equipped. If we experience delays in adding such servicing capacity or experience unforeseen issues with the reliability of Model 3, which we recently commenced producing at volume, it could overburden our servicing capabilities. If we are unable to ramp up to meet our sales, delivery and servicing targets globally, or our projections on which such targets are based are inaccurate, this could result in negative publicity and damage to our brand and have a material adverse effect on our business, prospects, financial condition and operating results.

Our future growth and success is dependent upon consumers' willingness to adopt electric vehicles and specifically our vehicles, especially in the mass market demographic which we are targeting with Model 3.

Our growth is highly dependent upon the adoption by consumers of alternative fuel vehicles in general and electric vehicles in particular. Although we have successfully grown demand for our vehicles thus far, there is no guarantee of such future demand, or that our vehicles will not compete with one another in the market. Moreover, the Model 3 mass market demographic is larger, but more competitive, than the demographic for Model S and Model X, and additional electric vehicles are entering the market.

If the market for electric vehicles in general and Tesla vehicles in particular does not develop as we expect, or develops more slowly than we expect, or if demand for our vehicles decreases in our markets, our business, prospects, financial condition and operating results could be harmed. We have only recently begun high volume production of vehicles, are still at an earlier stage and have limited resources relative to our competitors, and the market for alternative fuel vehicles is rapidly evolving. As a result, the market for our vehicles could be affected by numerous factors, such as:

- perceptions about electric vehicle features, quality, safety, performance and cost;
- perceptions about the limited range over which electric vehicles may be driven on a single battery charge;
- competition, including from other types of alternative fuel vehicles, plug-in hybrid electric vehicles and high fuel-economy internal combustion engine vehicles;
- volatility in the cost of oil and gasoline;
- government regulations and economic incentives;
- access to charging facilities; and
- concerns about our future viability.

We are dependent on our suppliers, the majority of which are single-source suppliers, and the inability of these suppliers to deliver necessary components of our products according to our schedule and at prices, quality levels and volumes acceptable to us, or our inability to efficiently manage these components, could have a material adverse effect on our financial condition and operating results.

Our products contain numerous purchased parts which we source globally from hundreds of direct suppliers, the majority of whom are currently single-source suppliers, although we attempt to qualify and obtain components from multiple sources whenever feasible. Any significant increases in our production may require us to procure additional components in a short amount of time, and in the past we have also replaced certain suppliers because of their failure to provide components that met our quality control standards. While we believe that we will be able to secure additional or alternate sources of supply for most of our components in a relatively short time frame, there is no assurance that we will be able to do so or develop our own replacements for certain highly customized components of our products. Moreover, we have signed long-term agreements with Panasonic to be our manufacturing partner and supplier for lithium-ion cells at Gigafactory 1 in Nevada and PV cells and panels at Gigafactory 2 in Buffalo, New York. If we encounter unexpected difficulties with key suppliers such as Panasonic, and if we are unable to fill these needs from other suppliers, we could experience production delays and potential loss of access to important technology and parts for producing, servicing and supporting our products.

This limited, and in many cases single source, supply chain exposes us to multiple potential sources of delivery failure or component shortages for the production of our products, such as those which we experienced in 2012 and 2016 in connection with our slower-than-planned Model S and Model X ramps. Furthermore, unexpected changes in business conditions, materials pricing, labor issues, wars, governmental changes, natural disasters such as the March 2011 earthquakes in Japan and other factors beyond our and our suppliers' control, could also affect our suppliers' ability to deliver components to us on a timely basis. The loss of any single or limited source supplier or the disruption in the supply of components from these suppliers could lead to product design changes and delays in product deliveries to our customers, which could hurt our relationships with our customers and result in negative publicity, damage to our brand and a material and adverse effect on our business, prospects, financial condition and operating results.

Changes in our supply chain have also resulted in the past, and may result in the future, in increased cost. We have also experienced cost increases from certain of our suppliers in order to meet our quality targets and development timelines as well as due to our design changes, and we may experience similar cost increases in the future. Certain suppliers have sought to renegotiate the terms of supply arrangements. Additionally, we are negotiating with existing suppliers for cost reductions, seeking new and less expensive suppliers for certain parts, and attempting to redesign certain parts to make them less expensive to produce. If we are unsuccessful in our efforts to control and reduce supplier costs, our operating results will suffer.

In particular, because we are producing Model 3 at significantly higher volumes than any of our other products to date, the negative impact of any delays or other constraints with respect to our suppliers for Model 3 could be substantially greater than any supply chain-related issues experienced with respect to our other products. We need our Model 3 suppliers to sustainably ramp in accordance with our ongoing ramp of Model 3 and deliver according to our schedule. There is no assurance that these suppliers will ultimately be able to sustainably and timely meet our cost, quality and volume needs. For example, we may experience issues or delays increasing the level of localization in China through local sourcing and manufacturing at our Gigafactory Shanghai. Furthermore, as the scale of our vehicle production increases, we will need to accurately forecast, purchase, warehouse and transport to our manufacturing facilities components at much higher volumes. If we are unable to accurately match the timing and quantities of component purchases to our actual needs, or successfully implement automation, inventory management and other systems to accommodate the increased complexity in our supply chain, we may incur unexpected production disruption, storage, transportation and write-off costs, which could have a material adverse effect on our financial condition and operating results.

Future problems or delays in expanding Gigafactory 1 or ramping operations there could negatively affect the production and profitability of our products, such as Model 3 and our energy storage products.

To lower the cost of cell production and produce cells in high volume, we have vertically integrated the production of lithium-ion cells and finished battery packs for Model 3 and energy storage products at Gigafactory 1. While Gigafactory 1 began producing lithium-ion cells for energy storage products in January 2017 and has since begun producing lithium-ion cells for Model 3, we have no other direct experience in the production of lithium-ion cells. Given the size and complexity of this undertaking, it is possible that future events could result in issues or delays in further ramping and expanding production at Gigafactory 1. Moreover, we expect that we will need additional production at Gigafactory 1 to support vehicle production at Gigafactory Shanghai in part when we commence Model 3 production there. In order to achieve our volume and gross margin targets for Model 3 and the anticipated ramp in production of energy storage products, we must continue to sustain and ramp significant cell production at Gigafactory 1, which, among other things, requires Panasonic to successfully operate and further ramp its cell production lines at significant volumes. Although Panasonic has a long track record of producing high-quality cells at significant volume at its factories in Japan, it has limited experience with cell production at Gigafactory 1. In addition, we produce several components for Model 3, such as battery modules incorporating the lithium-ion cells produced by Panasonic, and drive units, at Gigafactory 1. Some of the manufacturing lines for such components took longer than anticipated to ramp to their full capacity. While we have largely overcome this bottleneck after deploying multiple semi-automated lines and improving our original lines, additional bottlenecks may arise as we continue to increase the production rate. Finally, we have announced that we will likely manufacture Model Y at Gigafactory 1. If we are unable to maintain Gigafactory 1 production, ramp additionally over time as needed, and do so cost-effectively, or if we or Panasonic are unable to attract, hire and retain a substantial number of highly skilled personnel, our ability to supply battery packs or other components for Model 3 and our other products could be negatively impacted, which could negatively affect our brand and harm our business, prospects, financial condition and operating results.

If our vehicles or other products that we sell or install fail to perform as expected, our ability to develop, market and sell our products and services could be harmed.

If our vehicles or our energy products contain defects in design and manufacture that cause them not to perform as expected or that require repair, or certain features of our vehicles, such as full self-driving, take longer than expected to become enabled or are legally restricted, our ability to develop, market and sell our products and services could be harmed. For example, the operation of our vehicles is highly dependent on software, which is inherently complex and may contain latent defects and errors or be subject to external attacks. Issues experienced by vehicle customers have included those related to the software for the 17 inch display screen, the panoramic roof and the 12-volt battery in the Model S and the seats and doors in the Model X. Although we attempt to remedy any issues we observe in our products as effectively and rapidly as possible, such efforts may not be timely, may hamper production or may not be to the satisfaction of our customers. While we have performed extensive internal testing on the products we manufacture, we currently have a limited frame of reference by which to evaluate detailed long-term quality, reliability, durability and performance characteristics of our battery packs, powertrains, vehicles and energy storage products. There can be no assurance that we will be able to detect and fix any defects in our products prior to their sale to or installation for consumers.

Any product defects, delays or legal restrictions on product features, or other failure of our products to perform as expected, could harm our reputation and result in delivery delays, product recalls, product liability claims, and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

If we fail to scale our business operations and otherwise manage future growth and adapt to new conditions effectively as we rapidly grow our company, including internationally, we may not be able to produce, market, sell and service our products successfully.

Any failure to manage our growth effectively could materially and adversely affect our business, prospects, operating results and financial condition. We expect to continue to expand our operations significantly, including internationally and with our increasing production of Model 3, and the worldwide sales, delivery and servicing of a significantly higher number of vehicles than our current vehicle fleet in the coming years. Furthermore, we are developing and growing our energy storage product and solar business worldwide, including in countries where we have limited or no previous operating experience. Our future operating results depend to a large extent on our ability to manage our expansion and growth successfully. We may not be successful in undertaking this global expansion if we are unable to control expenses and avoid cost overruns and other unexpected operating costs, establish sufficient worldwide automobile sales, delivery, service and Supercharger facilities in a timely manner, adapt our products and conduct our operations to meet local requirements, implement required local infrastructure, systems and processes, and find and hire a significant number of additional manufacturing, engineering, service, electrical installation, construction and administrative personnel.

In particular, we plan to expand our manufacturing capabilities outside of the U.S., where we have limited experience operating a factory or managing related regulatory, financing and other challenges. For example, as part of our continuing work to increase Model 3 production to 10,000 vehicles per week on a sustained basis and make Model 3 affordable in the markets where we plan to offer it, we expect to commence the initial phase of Model 3 production at Gigafactory Shanghai for the local market in China by the end of 2019, although the timeframe for that is subject to a number of uncertainties, including regulatory approval, supply chain constraints, and the pace of installing production equipment and bringing the factory online. As we expect to commence our manufacturing activities in China using progressively increased levels of localization through local sourcing and manufacturing, we expect that we will need to initially support manufacturing activities there with production processes at our existing manufacturing facilities, such as Gigafactory 1. Moreover, local manufacturing is critical to our expansion and sales in China, which is the largest market for electric vehicles in the world. Our sales of Model S and Model X in China have been negatively impacted by certain tariffs on automobiles manufactured in the U.S., such as our vehicles, and our costs for producing our vehicles in the U.S. have also been affected by import duties on certain components sourced from China. If we are not able to establish manufacturing activities in China and other jurisdictions to minimize the impact of such unfavorable tariffs, duties or costs, or ramp our production capabilities at Gigafactory 1 or other facilities to support such vehicle manufacturing activities, our ability to compete in such jurisdictions, and our operating results, business and prospects, will be harmed.

If we are unable to achieve our targeted manufacturing costs for our vehicles, including Model 3, our financial condition and operating results will suffer.

While we are continuing to and expect in the future to realize cost reductions by both us and our suppliers, there is no guarantee we will be able to achieve sufficient cost savings to reach our gross margin and profitability goals, including for the least expensive variant of Model 3 that we ultimately expect to produce, or our other financial targets. We incur significant costs related to procuring the materials required to manufacture our vehicles, assembling vehicles and compensating our personnel. If our efforts to continue to decrease manufacturing costs are not successful, we may incur substantial costs or cost overruns in utilizing and increasing the production capability of our vehicle manufacturing facilities, such as for Model 3 both in the U.S. and internationally. Many of the factors that impact our manufacturing costs are beyond our control, such as potential increases in the costs of our materials and components, such as lithium, nickel and other components of our battery cells or aluminum used to produce body panels. If we are unable to continue to control and reduce our manufacturing costs, our operating results, business and prospects will be harmed.

Increases in costs, disruption of supply or shortage of materials, in particular for lithium-ion cells, could harm our business.

We may experience increases in the cost or a sustained interruption in the supply or shortage of materials. Any such increase, supply interruption or shortage could materially and negatively impact our business, prospects, financial condition and operating results. We use various materials in our business including aluminum, steel, lithium, nickel, copper and cobalt, as well as lithium-ion cells from suppliers. The prices for these materials fluctuate, and their available supply may be unstable, depending on market conditions and global demand for these materials, including as a result of increased production of electric vehicles and energy storage products by our competitors, and could adversely affect our business and operating results. For instance, we are exposed to multiple risks relating to lithium-ion cells. These risks include:

- an increase in the cost, or decrease in the available supply, of materials used in the cells;
- disruption in the supply of cells due to quality issues or recalls by battery cell manufacturers or any issues that may arise with respect to cells manufactured at our own facilities; and
- fluctuations in the value of the Japanese yen against the U.S. dollar as our battery-cell purchases for Model S and Model X and some raw materials for cells used in Model 3 and energy storage products are currently denominated in Japanese yen.

Our business is dependent on the continued supply of battery cells for the battery packs used in our vehicles and energy storage products. While we believe several sources of the battery cells are available for such battery packs, and expect to eventually rely substantially on battery cells manufactured at our own facilities, we have to date fully qualified only a very limited number of suppliers for the cells used in such battery packs and have very limited flexibility in changing cell suppliers. Any disruption in the supply of battery cells from such suppliers could disrupt production of our vehicles and of the battery packs we produce for energy products until such time as a different supplier is fully qualified. Furthermore, fluctuations or shortages in petroleum and other economic conditions may cause us to experience significant increases in freight charges and material costs. Substantial increases in the prices for our materials or prices charged to us, such as those charged by battery cell suppliers, would increase our operating costs, and could reduce our margins if we cannot recoup the increased costs through increased vehicle prices. Any attempts to increase vehicle prices in response to increased material costs could result in cancellations of vehicle orders and reservations and therefore materially and adversely affect our brand, image, business, prospects and operating results.

We may become subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.

Although we design our vehicles to be the safest vehicles on the road, product liability claims, even those without merit, could harm our business, prospects, operating results and financial condition. The automobile industry in particular experiences significant product liability claims and we face inherent risk of exposure to claims in the event our vehicles do not perform or are claimed to not have performed as expected. As is true for other automakers, our cars have been involved and we expect in the future will be involved in crashes resulting in death or personal injury, and such crashes where Autopilot is engaged are the subject of significant public attention. We have experienced and we expect to continue to face claims arising from or related to misuse or claimed failures of new technologies that we are pioneering, including Autopilot in our vehicles. Moreover, as our solar energy systems and energy storage products generate and store electricity, they have the potential to cause injury to people or property. A successful product liability claim against us could require us to pay a substantial monetary award. Our risks in this area are particularly pronounced given the relatively limited number of vehicles and energy storage products delivered to date and limited field experience of our products. Moreover, a product liability claim could generate substantial negative publicity about our products and business and could have a material adverse effect on our brand, business, prospects and operating results. In most jurisdictions, we generally self-insure against the risk of product liability claims for vehicle exposure, meaning that any product liability claims will likely have to be paid from company funds, not by insurance.

The markets in which we operate are highly competitive, and we may not be successful in competing in these industries. We currently face competition from new and established domestic and international competitors and expect to face competition from others in the future, including competition from companies with new technology.

The worldwide automotive market, particularly for alternative fuel vehicles, is highly competitive today and we expect it will become even more so in the future. There is no assurance that our vehicles will be successful in the respective markets in which they compete. A significant and growing number of established and new automobile manufacturers, as well as other companies, have entered or are reported to have plans to enter the alternative fuel vehicle market, including hybrid, plug-in hybrid and fully electric vehicles, as well as the market for self-driving technology and applications. In some cases, such competitors have announced an intention to produce electric vehicles exclusively at some point in the future. Most of our current and potential competitors have significantly greater financial, technical, manufacturing, marketing, vehicle sales resources and networks than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. In particular, some competitors have also announced plans to compete with us in important and large markets for electric vehicles, such as China. Increased competition could result in lower vehicle unit sales, price reductions, revenue shortfalls, loss of customers and loss of market share, which could harm our business, prospects, financial condition and operating results. In addition, our Model 3 vehicle faces competition from existing and future automobile manufacturers in the extremely competitive entry-level premium sedan market, including Audi, BMW, Lexus and Mercedes.

The solar and energy storage industries are highly competitive. We face competition from other manufacturers, developers and installers of solar and energy storage systems, as well as from large utilities. Decreases in the retail prices of electricity from utilities or other renewable energy sources could make our products less attractive to customers and lead to an increased rate of customer defaults under our existing long-term leases and PPAs. Moreover, solar panel and lithium-ion battery prices have declined and are continuing to decline. As we increase our battery and solar manufacturing capabilities, including at Gigafactory 1 and Gigafactory 2, future price declines may harm our ability to produce energy storage systems and solar systems at competitive prices.

If we are unable to establish and maintain confidence in our long-term business prospects among consumers, analysts and within our industries, then our financial condition, operating results, business prospects and stock price may suffer materially.

Consumers may be less likely to purchase our products if they are not convinced that our business will succeed or that our service and support and other operations will continue in the long term. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed. Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers, analysts, ratings agencies and other parties in our long-term financial viability and business prospects. Maintaining such confidence may be particularly complicated by certain factors, such as our limited operating history, negative press, customer unfamiliarity with our products, any delays in scaling manufacturing, delivery and service operations to meet demand, competition and uncertainty regarding the future of electric vehicles or our other products and services, our quarterly production and sales performance compared with market expectations, and any other negative publicity related to us. Many of these factors are largely outside our control, and any negative perceptions about our long-term business prospects, even if exaggerated or unfounded, such as speculation regarding the sufficiency or stability of our management team, could harm our business and make it more difficult to raise additional funds if needed.

Our plan to generate ongoing growth and demand, including by expanding and optimizing our retail, service and vehicle charging operations, will require significant cash investments and management resources and may not meet expectations with respect to additional sales, installations or servicing of our products or availability of public charging solutions.

We plan to generate ongoing growth and demand, including by globally expanding and optimizing our retail, service and vehicle charging operations. These plans require significant cash investments and management resources and may not meet our expectations with respect to additional sales or installations of our products. This ongoing global expansion, which includes planned entry into markets in which we have limited or no experience selling, delivering, installing and/or servicing our products at scale, and which may pose legal, regulatory, labor, cultural and political challenges that we have not previously encountered, may not have the desired effect of increasing sales and installations and expanding our brand presence to the degree we are anticipating. Furthermore, the increasing number of Tesla vehicles will require us to continue to increase the number of our Supercharger stations and connectors significantly in locations throughout the world. If we fail to do so in a timely manner, our customers could become dissatisfied, which could adversely affect sales of our vehicles. We will also need to ensure we are in compliance with any regulatory requirements applicable to the sale, installation and service of our products, the sale of electricity generated through our solar energy systems and operation of Superchargers in those jurisdictions, which could take considerable time and expense. If we experience any delays or cannot meet customer expectations in expanding our customer infrastructure network, or our expansion plans are not successful in continuing to grow demand, this could lead to a decrease or stagnation in sales or installations of our products and could negatively impact our business, prospects, financial condition and operating results.

We face risks associated with our global operations and expansion, including unfavorable regulatory, political, economic, tax and labor conditions, and with establishing ourselves in new markets, all of which could harm our business.

We currently have a global footprint, with domestic and international operations and subsidiaries in various countries and jurisdictions, and we continue to expand and optimize our retail, service and Supercharger capabilities internationally. Accordingly, we are subject to a variety of legal, political and regulatory requirements and social and economic conditions over which we have little control. For example, we may be impacted by trade policies, political uncertainty and economic cycles involving geographic regions where we have significant operations. 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 and retail strategies.

We are subject to a number of risks associated in particular with international business activities that may increase our costs, impact our ability to sell our products and require significant management attention. These risks include conforming our products to various international regulatory and safety requirements as well as charging and other electric infrastructures, organizing local operating entities, difficulty in establishing, staffing and managing foreign operations, challenges in attracting customers, foreign government taxes, regulations and permit requirements, our ability to enforce our contractual rights; trade restrictions, customs regulations, tariffs and price or exchange controls, and preferences of foreign nations for domestically manufactured products. For example, in China, which is a key market for us, certain products such as automobiles manufactured in the U.S. have become subject to a recently increased tariff imposed by the government. While such increase has been temporarily suspended, the tariff could remain in place for an undetermined length of time, be further increased in the future and/or lead consumers to postpone or choose another vehicle brand subject to lower tariffs or no tariffs. Moreover, recently increased import duties on certain components used in our products that are sourced from China may increase our costs and negatively impact our operating results.

Our vehicles and energy storage products make use of lithium-ion battery cells, which have been observed to catch fire or vent smoke and flame, and such events have raised concerns, and future events may lead to additional concerns, about the batteries used in automotive applications.

The battery packs that we produce make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. While we have designed the battery pack to passively contain any single cell's release of energy without spreading to neighboring cells, there can be no assurance that a field or testing failure of our vehicles or other battery packs that we produce will not occur, which could subject us to lawsuits, product recalls or redesign efforts, all of which would be time consuming and expensive. Also, negative public perceptions regarding the suitability of lithium-ion cells for automotive applications or any future incident involving lithium-ion cells such as a vehicle or other fire, even if such incident does not involve our vehicles or energy storage products, could seriously harm our business.

In addition, we store a significant number of lithium-ion cells at our facilities and are producing high volumes of cells and battery modules and packs at Gigafactory 1. Any mishandling of battery cells may cause disruption to the operation of our facilities. While we have implemented safety procedures related to the handling of the cells, there can be no assurance that a safety issue or fire related to the cells would not disrupt our operations. Such damage or injury could lead to adverse publicity and potentially a safety recall. Moreover, any failure of a competitor's electric vehicle or energy storage product may cause indirect adverse publicity for us and our products. Such adverse publicity could negatively affect our brand and harm our business, prospects, financial condition and operating results.

If we fail to effectively grow and manage the residual, financing and credit risks related to our vehicle financing programs, our business may suffer.

We offer financing arrangements for our vehicles in North America, Europe and Asia primarily through various financial institutions. We also currently offer Model S and Model X leasing directly through our local subsidiaries in the U.S. and Canada. Under a lease held directly by us, we typically receive only a very small portion of the total vehicle purchase price at the time of lease, followed by a stream of payments over the term of the lease. The profitability of any vehicles returned to us at the end of their leases depends on our ability to accurately project our vehicles' residual values at the outset of the leases, and such values may fluctuate prior to the end of their terms depending on various factors such as supply and demand of our used vehicles, economic cycles and the pricing of new vehicles. The leasing program also relies on our ability to secure adequate financing and/or business partners to fund and grow this program, and screen for and manage customer credit risk. We expect the availability of leasing and other financing options will be important for our vehicle customers. If we are unable to adequately fund our leasing program with internal funds, or partners or other external financing sources, and compelling alternative financing programs are not available for our customers, we may be unable to grow our sales. Furthermore, if our leasing business grows substantially, our business may suffer if we cannot effectively manage the greater levels of residual and credit risks resulting from growth. Finally, if we do not successfully monitor and comply with applicable national, state and/or local financial regulations and consumer protection laws governing lease transactions, we may become subject to enforcement actions or penalties, either of which may harm our business.

Moreover, we have provided resale value guarantees to customers and partners for certain financing programs, under which such counterparties may sell their vehicles back to us at certain points in time at pre-determined amounts. However, actual resale values, as with residual values for leased vehicles, are subject to similar fluctuations over the term of the financing arrangements. If the actual resale values of any vehicles resold or returned to us pursuant to these programs are materially lower than the pre-determined amounts we have offered, our operating results, profitability and/or liquidity could be negatively impacted.

The unavailability, reduction or elimination of, or unfavorable determinations with respect to, government and economic incentives in the U.S. and abroad supporting the development and adoption of electric vehicles, energy storage products or solar energy could have some impact on demand for our products and services.

We and our customers currently benefit from certain government and economic incentives supporting the development and adoption of electric vehicles. In the U.S. and abroad, such incentives include, among other things, tax credits or rebates that encourage the purchase of electric vehicles. In Norway, for example, the purchase of electric vehicles is not currently subject to import taxes, the 25% value added tax, or the carbon dioxide and weight-based purchase taxes that apply to the purchase of gas-powered vehicles. Notably, the quantum of incentive programs promoting electric vehicles is a tiny fraction of the amount of subsidies that are provided to gas-powered vehicles through the oil and gas industries. Nevertheless, even the limited benefits from such programs could be reduced, eliminated or exhausted. For example, under current regulations, a \$7,500 federal tax credit that was available in the U.S. for the purchase of our vehicles is being reduced in phases during, and will sunset at the end of, 2019. We believe the first reduction in this tax credit may have pulled forward some near-term demand in the U.S. into 2018, and could create similar pull-forwards in 2019 before each further step reduction in the federal tax credit. Moreover, in July 2018, a previously available incentive for purchases of Model 3 in Ontario, Canada was cancelled and Tesla buyers in Germany lost access to electric vehicle incentives for a short period of time beginning late 2017. In April 2017 and January 2016, respectively, previously available incentives in Hong Kong and Denmark that favored the purchase of electric vehicles expired, negatively impacting sales. Effective March 2016, California implemented regulations phasing out a \$2,500 cash rebate on qualified electric vehicles for high-income consumers. Such developments could have some negative impact on demand for our vehicles, and we and our customers may have to adjust to them.

In addition, certain governmental rebates, tax credits and other financial incentives that are currently available with respect to our solar and energy storage product businesses allow us to lower our installation costs and cost of capital and encourage customers to buy our products and investors to invest in our solar financing funds. However, these incentives may expire on a particular date when the allocated funding is exhausted, reduced or terminated as renewable energy adoption rates increase, often without warning. For example, the U.S. federal government currently offers a 30% ITC for the installation of solar power facilities and energy storage systems that are charged from a co-sited solar power facility. The ITC is currently scheduled to decline in phases, ultimately to 10% for commercial and utility systems and to 0% for customer-owned residential systems by January 2022. Likewise, in jurisdictions where net energy metering is currently available, our customers receive bill credits from utilities for energy that their solar energy systems generate and export to the grid in excess of the electric load they use. Several jurisdictions have reduced or eliminated the benefit available under net energy metering, or have proposed to do so. Such reductions in or termination of governmental incentives could adversely impact our results by making our products less competitive for potential customers, increasing our cost of capital and adversely impacting our ability to attract investment partners and to form new financing funds for our solar and energy storage assets. Additionally, the enactment of the Tax Cuts and Jobs Act in the U.S. could potentially increase the cost, and decrease the availability, of renewable energy financing, by reducing the value of depreciation benefits associated with, and the overall investor tax capacity needed to monetize, renewable energy projects. Such changes could lower the overall investment willingness and capacity for such projects available in the market.

Moreover, we and our fund investors claim the ITC and certain state incentives in amounts based on the fair market value of our solar and energy storage systems. Although we obtain independent appraisals to support the claimed fair market values, the relevant governmental authorities have audited such values and in certain cases have determined that they should be lower, and they may do so again in the future. Such determinations may result in adverse tax consequences and/or our obligation to make indemnification or other payments to our funds or fund investors.

Any failure by us to realize the expected benefits of our substantial investments and commitments with respect to the manufacture of PV cells and modules, including if we are unable to comply with the terms of our agreement with the Research Foundation for the State University of New York relating to our Gigafactory 2, could result in negative consequences for our business.

We own certain PV cell and module manufacturing and technology assets, and a build-to-suit lease arrangement with the Research Foundation for the State University of New York (the “SUNY Foundation”). This agreement with the SUNY Foundation provides for the construction of Gigafactory 2 in Buffalo, New York with the intended capacity to produce at least 1.0 GW of solar products annually. Under this agreement, we are obligated to, among other things, employ specified minimum numbers of personnel in the State of New York and spend or incur \$5.0 billion in combined capital, operational expenses, costs of goods sold and other costs in the State of New York during the 10-year period following the completion of all construction and related infrastructure, the arrival of manufacturing equipment, and the receipt of certain permits and other specified items at Gigafactory 2. If we fail in any year over the course of the term of the agreement to meet these obligations, we would be obligated to pay a “program payment” of \$41.2 million to the SUNY Foundation in such year. Any inability on our part to comply with the requirements of this agreement may result in the payment of significant amounts to the SUNY Foundation, the termination of our lease at Gigafactory 2, and/or the need to secure an alternative supply of PV cells and modules for our solar products. Moreover, if we are unable to utilize our manufacturing and technology assets in accordance with our expectations, we may have to recognize accounting charges pertaining to the write-off of such assets. Any of the foregoing events could have a material adverse effect on our business, prospects, financial condition and operating results.

If we are unable to attract and/or retain key employees and hire qualified personnel, our ability to compete could be harmed.

The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our vehicles and services, and negatively impact our business, prospects and operating results. In particular, we are highly dependent on the services of Elon Musk, our Chief Executive Officer, and Jeffrey B. Straubel, our Chief Technology Officer.

None of our key employees is bound by an employment agreement for any specific term and we may not be able to successfully attract and retain senior leadership necessary to grow our business. Our future success depends upon our ability to attract and retain executive officers and other key technology, sales, marketing, engineering, manufacturing and support personnel, especially to support our high-volume manufacture of vehicles and expansion plans, and any failure or delay in doing so could adversely impact our business, prospects, financial condition and operating results.

Key talent may leave Tesla due to various factors, such as a very competitive labor market for talented individuals with automotive or technology experience, or any negative publicity related to us. In California, Nevada and other regions where we have operations, there is increasing competition for individuals with skillsets needed for our business, including specialized knowledge of electric vehicles, software engineering, manufacturing engineering, and other skills such as electrical and building construction expertise. This competition affects both our ability to retain key employees and hire new ones. Moreover, we have in the past conducted reductions in force in order to optimize our organizational structure and reduce costs, and certain senior personnel have also departed for various reasons. Our continued success depends upon our continued ability to hire new employees in a timely manner, especially to support our expansion plans, and to retain current employees or replace departed senior employees with qualified and experienced individuals, which is typically a time-consuming process. Additionally, we compete with both mature and prosperous companies that have far greater financial resources than we do and start-ups and emerging companies that promise short-term growth opportunities. Difficulties in retaining current employees or recruiting new ones could have an adverse effect on our performance and results.

Finally, our compensation philosophy for all of our personnel reflects our startup origins, with an emphasis on equity-based awards and benefits in order to closely align their incentives with the long-term interests of our stockholders. Each of our current equity incentive plan and employee stock purchase plan provides for an “evergreen” provision that permits our board of directors to increase on an annual basis, subject to specified limits, the number of equity-based awards that may be granted to, and shares of our common stock that may be purchased by, our personnel thereunder. These plans are currently scheduled to expire in December 2019, and we will need to extend them or establish new plans in order to continue to compensate our employees following their expiration, which will require the approval of our stockholders. Moreover, there is no assurance that these plans as extended or any future plans will contain evergreen provisions, which would mean that we would have to periodically seek and obtain approval from our stockholders for future increases to the number of awards that may be granted and shares that may be purchased under such plans. If we are unable to obtain such stockholder approvals and compensate our personnel in accordance with our compensation philosophy, our ability to retain and hire qualified personnel would be negatively impacted.

We are highly dependent on the services of Elon Musk, our Chief Executive Officer.

We are highly dependent on the services of Elon Musk, our Chief Executive Officer and largest stockholder. Although Mr. Musk spends significant time with Tesla and is highly active in our management, he does not devote his full time and attention to Tesla. Mr. Musk also currently serves as Chief Executive Officer and Chief Technical Officer of Space Exploration Technologies Corp., a developer and manufacturer of space launch vehicles, and is involved in other emerging technology ventures.

We are continuously expanding and improving our information technology systems and use security measures designed to protect our systems against breaches and cyber-attacks. If these efforts are not successful, our business and operations could be disrupted and our operating results and reputation could be harmed.

We are continuously expanding and improving our information technology systems, including implementing new internally developed systems, to assist us in the management of our business. In particular, our volume production of multiple vehicles necessitates continued development, maintenance and improvement of our information technology systems in the U.S. and abroad, which include product data management, procurement, inventory management, production planning and execution, sales, service and logistics, dealer management, financial, tax and regulatory compliance systems. We also maintain information technology measures designed to protect us against intellectual property theft, data breaches and other cyber-attacks. The implementation, maintenance and improvement of these systems require significant management time, support and cost. Moreover, there are inherent risks associated with developing, improving and expanding our core systems as well as implementing new systems, including the disruption of our data management, procurement, manufacturing execution, finance, supply chain and sales and service processes. These risks may affect our ability to manage our data and inventory, procure parts or supplies or manufacture, sell, deliver and service vehicles, or achieve and maintain compliance with, or realize available benefits under, tax laws and other applicable regulations.

We cannot be sure that these systems or their required functionality will be effectively implemented, maintained or expanded as planned. If we do not successfully implement, maintain or expand these systems as planned, our operations may be disrupted, our ability to accurately and/or timely report our financial results could be impaired, and deficiencies may arise in our internal control over financial reporting, which may impact our ability to certify our financial results. Moreover, our proprietary information could be compromised or misappropriated and our reputation may be adversely affected. If these systems or their functionality do not operate as we expect them to, we may be required to expend significant resources to make corrections or find alternative sources for performing these functions.

Any unauthorized control or manipulation of our products' systems could result in loss of confidence in us and our products and harm our business.

Our products contain complex information technology systems. For example, our vehicles and energy storage products are designed with built-in data connectivity to accept and install periodic remote updates from us to improve or update their functionality. We have designed, implemented and tested security measures intended to prevent unauthorized access to our information technology networks, our products and their systems. However, hackers have reportedly attempted, and may attempt in the future, to gain unauthorized access to modify, alter and use such networks, products and systems to gain control of, or to change, our products' functionality, user interface and performance characteristics, or to gain access to data stored in or generated by our products. We encourage reporting of potential vulnerabilities in the security of our products via our security vulnerability reporting policy, and we aim to remedy any reported and verified vulnerability. Accordingly, we have received reports of potential vulnerabilities in the past and have attempted to remedy them. However, there can be no assurance that vulnerabilities will not be exploited in the future before they can be identified, or that our remediation efforts are or will be successful.

Any unauthorized access to or control of our products or their systems or any loss of data could result in legal claims or proceedings. In addition, regardless of their veracity, reports of unauthorized access to our products, their systems or data, as well as other factors that may result in the perception that our products, their systems or data are capable of being "hacked," could negatively affect our brand and harm our business, prospects, financial condition and operating results. We have been the subject of such reports in the past.

We are subject to various environmental and safety laws and regulations that could impose substantial costs upon us and negatively impact our ability to operate our manufacturing facilities.

As a manufacturing company, including with respect to facilities such as the Tesla Factory, Gigafactory 1 and Gigafactory 2, we are subject to complex environmental, health and safety laws and regulations at numerous jurisdictional levels in the U.S. and abroad, including laws relating to the use, handling, storage, disposal and human exposure to hazardous materials. The costs of compliance, including remediating contamination if any is found on our properties and any changes to our operations mandated by new or amended laws, may be significant. We may also face unexpected delays in obtaining permits and approvals required by such laws in connection with our manufacturing facilities, which would hinder our operation of these facilities. Such costs and delays may adversely impact our business prospects and operating results. Furthermore, any violations of these laws may result in substantial fines and penalties, remediation costs, third party damages, or a suspension or cessation of our operations.

Our business may be adversely affected by any disruptions caused by union activities.

It is common for employees at companies with significant manufacturing operations such as us to belong to a union, which can result in higher employee costs and increased risk of work stoppages. Moreover, regulations in some jurisdictions outside of the U.S. mandate employee participation in industrial collective bargaining agreements and work councils with certain consultation rights with respect to the relevant companies' operations. Although we work diligently to provide the best possible work environment for our employees, they may still decide to join or seek recognition to form a labor union, or we may be required to become a union signatory. The United Automobile Workers ("UAW") has been engaged in a campaign to organize manufacturing operations at Tesla. As part of that campaign, the UAW has filed with the National Labor Relations Board ("NLRB") a series of unfair labor practice charges against Tesla on which a hearing recently concluded. We cannot predict the timing of the NLRB's decision, and an unfavorable outcome for Tesla may have a negative impact on the perception of Tesla's treatment of our employees. Furthermore, we are directly or indirectly dependent upon companies with unionized work forces, such as parts suppliers and trucking and freight companies, and work stoppages or strikes organized by such unions could have a material adverse impact on our business, financial condition or operating results. If a work stoppage occurs, it could delay the manufacture and sale of our products and have a material adverse effect on our business, prospects, operating results or financial condition.

Our products and services are subject to substantial regulations, which are evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business and operating results.

Motor vehicles are subject to substantial regulation under international, federal, state and local laws. We incur significant costs in complying with these regulations and may be required to incur additional costs to comply with any changes to such regulations, and any failures to comply could result in significant expenses, delays or fines. We are subject to laws and regulations applicable to the supply, manufacture, import, sale and service of automobiles internationally. For example, in countries outside of the U.S., we are required to meet standards relating to vehicle safety, fuel economy and emissions, among other things, that are often materially different from requirements in the U.S., thus resulting in additional investment into the vehicles and systems to ensure regulatory compliance in those countries. This process may include official review and certification of our vehicles by foreign regulatory agencies prior to market entry, as well as compliance with foreign reporting and recall management systems requirements.

Additionally, our vehicles are equipped with a suite of driver-assistance features called Autopilot, which help assist drivers with certain tedious and potentially dangerous aspects of road travel, but require drivers to remain engaged. There is a variety of international, federal and state regulations that may apply to self-driving vehicles, which include many existing vehicle standards that were not originally intended to apply to vehicles that may not have a driver. Such regulations continue to rapidly change, which increases the likelihood of a patchwork of complex or conflicting regulations, or may delay products or restrict self-driving features and availability, any of which could adversely affect our business.

Moreover, as a manufacturer and installer of solar generation and energy storage systems and a supplier of electricity generated and stored by the solar energy and energy storage systems we install for customers, we are impacted by federal, state and local regulations and policies concerning electricity pricing, the interconnection of electricity generation and storage equipment with the electric grid, and the sale of electricity generated by third-party owned systems. For example, existing or proposed regulations and policies would permit utilities to limit the amount of electricity generated by our customers with their solar energy systems, charge fees and penalties to our customers relating to the purchase of energy other than from the grid, adjust electricity rate designs such that the price of our solar products may not be competitive with that of electricity from the grid, restrict us and our customers from transacting under our PPAs or qualifying for government incentives and benefits that apply to solar power, and limit or eliminate net energy metering. If such regulations and policies remain in effect or are adopted in other jurisdictions, or if other regulations and policies that adversely impact the interconnection or use of our solar and energy storage systems are introduced, they could deter potential customers from purchasing our solar and energy storage products, threaten the economics of our existing contracts and cause us to cease solar and energy storage system sales and operations in the relevant jurisdictions, which could harm our business, prospects, financial condition and results of operations.

Failure to comply with various privacy and consumer protection laws to which we are subject could harm the Company.

Our privacy policy is posted on our website, and any failure by us or our vendor or other business partners to comply with it or with federal, state or international privacy, data protection or security laws or regulations could result in regulatory or litigation-related actions against us, legal liability, fines, damages and other costs. Substantial expenses and operational changes may be required in connection with maintaining compliance with such laws, and in particular certain emerging privacy laws are still subject to a high degree of uncertainty as to their interpretation and application. For example, in May 2018, the General Data Protection Regulation (the “GDPR”) began to fully apply to the processing of personal information collected from individuals located in the European Union. The GDPR has created new compliance obligations and has significantly increased fines for noncompliance. Although we take steps to protect the security of our customers’ personal information, we may be required to expend significant resources to comply with data breach requirements if third parties improperly obtain and use the personal information of our customers or we otherwise experience a data loss with respect to customers’ personal information. A major breach of our network security and systems could have negative consequences for our business and future prospects, including possible fines, penalties and damages, reduced customer demand for our vehicles and harm to our reputation and brand.

We may choose to or be compelled to undertake product recalls or take other similar actions, which could adversely affect our brand image and financial performance.

Any product recall with respect to our products may result in adverse publicity, damage our brand and adversely affect our business, prospects, operating results and financial condition. For example, certain vehicle recalls that we initiated have resulted from various causes, including a component that could prevent the parking brake from releasing once engaged, a concern with the firmware in the restraints control module in certain right-hand-drive vehicles, industry-wide issues with airbags from a particular supplier, Model X seat components that could cause unintended seat movement during a collision, and concerns of corrosion in Model S power steering assist motor bolts. Furthermore, testing of our products by government regulators or industry groups may require us to initiate product recalls or may result in negative public perceptions about the safety of our products. In the future, we may at various times, voluntarily or involuntarily, initiate a recall if any of our products or our electric vehicle powertrain components that we have provided to other vehicle OEMs, including any systems or parts sourced from our suppliers, prove to be defective or noncompliant with applicable laws and regulations, such as federal motor vehicle safety standards. Such recalls, whether voluntary or involuntary or caused by systems or components engineered or manufactured by us or our suppliers, could involve significant expense and could adversely affect our brand image in our target markets, as well as our business, prospects, financial condition and results of operations.

Our current and future warranty reserves may be insufficient to cover future warranty claims which could adversely affect our financial performance.

Subject to separate limited warranties for the supplemental restraint system, battery and drive unit, we provide four-year or 50,000-mile limited warranties for the purchasers of new Model 3, Model S and Model X vehicles and either a four-year or 50,000-mile limited warranty or a two-year or 100,000-mile maximum odometer limited warranty for the purchasers of used Model S or Model X vehicles certified and sold by us. The limited warranty for the battery and drive unit for new Model S and Model X vehicles covers the drive unit for eight years, as well as the battery for a period of eight years (or for certain older vehicles, 125,000 miles if reached sooner than eight years), although the battery's charging capacity is not covered under any of our warranties or Extended Service plans; the limited warranty for used Model S and Model X vehicles does not extend or otherwise alter the terms of the original battery and drive unit limited warranty for such used vehicles specified in their original New Vehicle Limited Warranty. For the battery and drive unit on our current new Model 3 vehicles, we offer an eight-year or 100,000-mile limited warranty for our standard or mid-range battery and an eight-year or 120,000-mile limited warranty for our long-range battery, with minimum 70% retention of battery capacity over the warranty period. In addition, customers of new Model S and Model X vehicles have the opportunity to purchase an Extended Service plan for the period after the end of the limited warranty for their new vehicles to cover additional services for up to an additional four years or 50,000 miles.

For energy storage products, we provide limited warranties against defects and to guarantee minimum energy retention levels. For example, we currently guarantee that each Powerwall 2 product will maintain at least 70 or 80% (depending on the region of installation) of its stated energy capacity after 10 years, and that each Powerpack 2 product will retain specified minimum energy capacities in each of its first 15 years of use. For our Solar Roof, we currently offer a warranty on the glass tiles for the lifetime of a customer's home and a separate warranty for the energy generation capability of the solar tiles. We also offer extended warranties, availability guarantees and capacity guarantees for periods of up to 20 years at an additional cost at the time of purchase, as well as workmanship warranties to customers who elect to have us install their systems.

Finally, customers who lease solar energy system leases or buy energy from us under PPAs are covered by warranties equal to the length of the agreement term, which is typically 20 years. Systems purchased for cash are covered by a workmanship warranty of up to 20 years. In addition, we pass through to our customers the inverter and panel manufacturers' warranties, which generally range from 10 to 25 years. Finally, we provide a performance guarantee with our leased solar energy systems that compensates a customer on an annual basis if their system does not meet the electricity production guarantees set forth in their lease. Under these performance guarantees, we bear the risk of production shortfalls resulting from an inverter or panel failure. These risks are exacerbated in the event the panel or inverter manufacturers cease operations or fail to honor their warranties.

If our warranty reserves are inadequate to cover future warranty claims on our products, our business, prospects, financial condition and operating results could be materially and adversely affected. Warranty reserves include our management's best estimate of the projected costs to repair or to replace items under warranty. These estimates are based on actual claims incurred to-date and an estimate of the nature, frequency and costs of future claims. Such estimates are inherently uncertain and changes to our historical or projected experience, especially with respect to products such as Model 3 and Solar Roof that we have recently introduced and/or that we expect to produce at significantly greater volumes than our past products, may cause material changes to our warranty reserves in the future.

Our insurance strategy may not be adequate to protect us from all business risks.

We may be subject, in the ordinary course of business, to losses resulting from products liability, accidents, acts of God and other claims against us, for which we may have no insurance coverage. As a general matter, we do not maintain as much insurance coverage as many other companies do, and in some cases, we do not maintain any at all. Additionally, the policies that we do have may include significant deductibles or self-insured retentions, and we cannot be certain that our insurance coverage will be sufficient to cover all future losses or claims against us. A loss that is uninsured or which exceeds policy limits may require us to pay substantial amounts, which could adversely affect our financial condition and operating results.

Our financial results may vary significantly from period-to-period due to fluctuations in our operating costs and other factors.

We expect our period-to-period financial results to vary based on our operating costs, which we anticipate will fluctuate as the pace at which we continue to design, develop and manufacture new products and increase production capacity by expanding our current manufacturing facilities and adding future facilities such as Gigafactory Shanghai may not be consistent or linear between periods. Additionally, our revenues from period-to-period may fluctuate as we introduce existing products to new markets for the first time and as we develop and introduce new products. As a result of these factors, we believe that quarter-to-quarter comparisons of our financial results, especially in the short term, are not necessarily meaningful and that these comparisons cannot be relied upon as indicators of future performance. Moreover, our financial results may not meet expectations of equity research analysts, ratings agencies or investors, who may be focused only on quarterly financial results. If any of this occurs, the trading price of our stock could fall substantially, either suddenly or over time.

Servicing our indebtedness requires a significant amount of cash, and there is no guarantee that we will have sufficient cash flow from our business to pay our substantial indebtedness.

As of December 31, 2018, we and our subsidiaries had outstanding \$11.00 billion in aggregate principal amount of indebtedness (see Note 13, *Long-Term Debt Obligations*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K). Our substantial consolidated indebtedness may increase our vulnerability to any generally adverse economic and industry conditions. We and our subsidiaries may, subject to the limitations in the terms of our existing and future indebtedness, incur additional debt, secure existing or future debt or recapitalize our debt.

Pursuant to their terms, holders of our 0.25% Convertible Senior Notes due 2019, 1.25% Convertible Senior Notes due 2021 and 2.375% Convertible Senior Notes due 2022 (collectively, the "Tesla Convertible Notes") may convert their respective Tesla Convertible Notes at their option prior to the scheduled maturities of the respective Tesla Convertible Notes under certain circumstances. Upon conversion of the applicable Tesla Convertible Notes, we will be obligated to deliver cash and/or shares in respect of the principal amounts thereof and the conversion value in excess of such principal amounts on such Tesla Convertible Notes. Moreover, our subsidiary's 1.625% Convertible Senior Notes due 2019 and Zero-Coupon Convertible Senior Notes due 2020 (together, the "Subsidiary Convertible Notes") are convertible into shares of our common stock at conversion prices ranging from \$300.00 to \$759.36 per share. Finally, holders of the Tesla Convertible Notes and the Subsidiary Convertible Notes will have the right to require us to repurchase their notes upon the occurrence of a fundamental change at a purchase price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest, if any, to, but not including, the fundamental change purchase date.

Our ability to make scheduled payments of the principal and interest on our indebtedness when due or to make payments upon conversion or repurchase demands with respect to our convertible notes, or to refinance our indebtedness as we may need or desire, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to satisfy our obligations under our existing indebtedness, and any future indebtedness we may incur, and to make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as reducing or delaying investments or capital expenditures, selling assets, refinancing or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance existing or future indebtedness will depend on the capital markets and our financial condition at such time. In addition, our ability to make payments may be limited by law, by regulatory authority or by agreements governing our future indebtedness. We may not be able to engage in any of these activities or engage in these activities on desirable terms or at all, which could result in a default on our existing or future indebtedness and have a material adverse effect on our business, results of operations and financial condition.

Our debt agreements contain covenant restrictions that may limit our ability to operate our business.

The terms of certain of our credit facilities, including our senior secured asset based revolving credit agreement, contain, and any of our other future debt agreements may contain, covenant restrictions that limit our ability to operate our business, including restrictions on our ability to, among other things, incur additional debt or issue guarantees, create liens, repurchase stock or make other restricted payments, and make certain voluntary prepayments of specified debt. In addition, under certain circumstances we are required to comply with a fixed charge coverage ratio. As a result of these covenants, our ability to respond to changes in business and economic conditions and engage in beneficial transactions, including to obtain additional financing as needed, may be restricted. Furthermore, our failure to comply with our debt covenants could result in a default under our debt agreements, which could permit the holders to accelerate our obligation to repay the debt. If any of our debt is accelerated, we may not have sufficient funds available to repay it.

We may need or want to raise additional funds and these funds may not be available to us when we need them. If we cannot raise additional funds when we need or want them, our operations and prospects could be negatively affected.

The design, manufacture, sale, installation and/or servicing of automobiles, energy storage products and solar products is a capital intensive business, and the specific timing of cash inflows and outflows may fluctuate substantially from period to period. Until we are consistently generating positive free cash flows, we may need or want to raise additional funds through the issuance of equity, equity-related or debt securities or through obtaining credit from financial institutions to fund, together with our principal sources of liquidity, the costs of developing and manufacturing our current or future vehicles, energy storage products and/or solar products, to pay any significant unplanned or accelerated expenses or for new significant strategic investments, or to refinance our significant consolidated indebtedness, even if not required to do so by the terms of such indebtedness. We need sufficient capital to fund our ongoing operations, ramp vehicle production, continue research and development projects, establish sales, delivery and service centers, build and deploy Superchargers, expand Gigafactory 1, ramp production at Gigafactory 2, build and commence Model 3 production at Gigafactory Shanghai and to make the investments in tooling and manufacturing capital required to introduce new vehicles, energy storage products and solar products. We cannot be certain that additional funds will be available to us on favorable terms when required, or at all. If we cannot raise additional funds when we need them, our financial condition, results of operations, business and prospects could be materially and adversely affected.

Additionally, we use capital from third-party investors to enable our customers' access to our solar energy systems with little or no upfront cost. The availability of this financing depends upon many factors, including the confidence of the investors in the solar energy industry, the quality and mix of our customer contracts, any regulatory changes impacting the economics of our existing customer contracts, changes in law (including tax law), risks or government incentives associated with these financings, and our ability to compete with other renewable energy companies for the limited number of potential investors. Moreover, while interest rates remain at low levels, they have risen in recent periods. If the rate of return required by investors rises as a result of a rise in interest rates, it will reduce the present value of the customer payment streams underlying, and therefore the total value of, our financing structures, increasing our cost of capital. If we are unable to establish new financing funds on favorable terms for third-party ownership arrangements, we may be unable to finance the installation of our solar energy systems for our lease or PPA customers' systems, or our cost of capital could increase and our liquidity may be negatively impacted, which would have an adverse effect on our business, financial condition and results of operations.

We could be subject to liability, penalties and other restrictive sanctions and adverse consequences arising out of certain governmental investigations and proceedings.

We are cooperating with certain government investigations as discussed in Note 17, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K. Aside from the settlement with the SEC discussed below relating to Elon Musk's statement that he was considering taking Tesla private, to our knowledge no government agency in any ongoing investigation has concluded that any wrongdoing occurred. However, we cannot predict the outcome or impact of any ongoing matters, and there exists the possibility that we could be subject to liability, penalties and other restrictive sanctions and adverse consequences if the SEC, the DOJ, or any other government agency were to pursue legal action in the future. Moreover, we expect to incur costs in responding to related requests for information and subpoenas, and if instituted, in defending against any governmental proceedings.

For example, on October 16, 2018, the U.S. District Court for the Southern District of New York entered a final judgment approving the terms of a settlement filed with the Court on September 29, 2018, in connection with the actions taken by the SEC relating to Mr. Musk's statement on August 7, 2018 that he was considering taking Tesla private. Pursuant to the settlement, we, among other things, paid a civil penalty of \$20 million, appointed an independent director as the Chair of the Board, appointed two additional independent directors to the Board, and made further enhancements to our disclosure controls and other corporate governance-related matters. Although we intend to continue to comply with the terms and requirements of the settlement, if there is a lack of compliance, additional enforcement actions or other legal proceedings may be instituted against us.

If we update or discontinue the use of our manufacturing equipment more quickly than expected, we may have to shorten the useful lives of any equipment to be retired as a result of any such update, and the resulting acceleration in our depreciation could negatively affect our financial results.

We have invested and expect to continue to invest significantly in what we believe is state of the art tooling, machinery and other manufacturing equipment for our various product lines, and we depreciate the cost of such equipment over their expected useful lives. However, manufacturing technology may evolve rapidly, and we may decide to update our manufacturing process with cutting-edge equipment more quickly than expected. Moreover, we are continually implementing learnings as our engineering and manufacturing expertise and efficiency increase, which may result in our ability to manufacture our products using less of our currently installed equipment. Alternatively, as we ramp production of Model 3 to higher levels, our learnings may cause us to discontinue the use of already installed equipment in favor of different or additional equipment. The useful life of any equipment that would be retired early as a result would be shortened, causing the depreciation on such equipment to be accelerated, and our results of operations could be negatively impacted.

We are exposed to fluctuations in currency exchange rates, which could negatively affect our financial results.

Our revenues and costs denominated in foreign currencies are not completely matched. As we have increased vehicle deliveries in markets outside of the U.S., we have much higher revenues than costs denominated in other currencies such as the euro, Canadian dollar, Chinese yuan and Norwegian krone. Any strengthening of the U.S. dollar would tend to reduce our revenues as measured in U.S. dollars, as we have historically experienced. In addition, a portion of our costs and expenses have been, and we anticipate will continue to be, denominated in foreign currencies, including the Japanese yen. If we do not have fully offsetting revenues in these currencies and if the value of the U.S. dollar depreciates significantly against these currencies, our costs as measured in U.S. dollars as a percent of our revenues will correspondingly increase and our margins will suffer. Moreover, while we undertake limited hedging activities intended to offset the impact of currency translation exposure, it is impossible to predict or eliminate such impact. As a result, our operating results could be adversely affected.

We may face regulatory limitations on our ability to sell vehicles directly which could materially and adversely affect our ability to sell our electric vehicles.

We sell our vehicles directly to consumers using means that we believe will maximize our reach, currently including through our website and our own stores. While we intend to continue to leverage our most effective sales strategies, we may not be able to sell our vehicles through our own stores in each state in the U.S., as some states have laws that may be interpreted to impose limitations on this direct-to-consumer sales model. In certain states in which we are not able to obtain dealer licenses, we have opened galleries, which are not full sales locations.

The application of these state laws to our operations continues to be difficult to predict. Laws in some states have limited our ability to obtain dealer licenses from state motor vehicle regulators and may continue to do so.

In addition, decisions by regulators permitting us to sell vehicles may be challenged by dealer associations and others as to whether such decisions comply with applicable state motor vehicle industry laws. We have prevailed in many of these lawsuits and such results have reinforced our continuing belief that state laws were not designed to prevent our distribution model. In some states, there have also been regulatory and legislative efforts by dealer associations to propose laws that, if enacted, would prevent us from obtaining dealer licenses in their states given our current sales model. A few states have passed legislation that clarifies our ability to operate, but at the same time limits the number of dealer licenses we can obtain or stores that we can operate. We have also filed a lawsuit in federal court in Michigan challenging the constitutionality of the state's prohibition on direct sales as applied to our business.

Internationally, there may be laws in jurisdictions we have not yet entered or laws we are unaware of in jurisdictions we have entered that may restrict our sales or other business practices. Even for those jurisdictions we have analyzed, the laws in this area can be complex, difficult to interpret and may change over time. Continued regulatory limitations and other obstacles interfering with our ability to sell vehicles directly to consumers could have a negative and material impact our business, prospects, financial condition and results of operations.

We may need to defend ourselves against intellectual property infringement claims, which may be time-consuming and could cause us to incur substantial costs.

Others, including our competitors, may hold or obtain patents, copyrights, trademarks or other proprietary rights that could prevent, limit or interfere with our ability to make, use, develop, sell or market our products and services, which could make it more difficult for us to operate our business. From time to time, the holders of such intellectual property rights may assert their rights and urge us to take licenses, and/or may bring suits alleging infringement or misappropriation of such rights. We may consider the entering into licensing agreements with respect to such rights, although no assurance can be given that such licenses can be obtained on acceptable terms or that litigation will not occur, and such licenses could significantly increase our operating expenses. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to cease making, selling or incorporating certain components or intellectual property into the goods and services we offer, to pay substantial damages and/or license royalties, to redesign our products and services, and/or to establish and maintain alternative branding for our products and services. In the event that we were required to take one or more such actions, our business, prospects, operating results and financial condition could be materially adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity and diversion of resources and management attention.

Tesla is a highly-visible public company whose products, business, results of operations, statements and actions are often scrutinized by critics whose influence could negatively impact the perception of our brand and the market value of our common stock.

Tesla is a highly-visible public company whose products, business, results of operations, statements and actions are well-publicized. Such attention includes frequent criticism of us by a range of third-parties. Our continued success depends on our ability to focus on executing on our mission and business plan while maintaining the trust of our current and potential customers, employees, stockholders and business partners. Any negative perceived actions of ours could influence the perception of our brand or our leadership by our customers, suppliers or investors, which could adversely impact our business prospects, operating results and the market value of our common stock.

Our facilities or operations could be damaged or adversely affected as a result of disasters.

Our corporate headquarters, the Tesla Factory and Gigafactory 1 are located in seismically active regions in Northern California and Nevada. If major disasters such as earthquakes or other events occur, or our information system or communications network breaks down or operates improperly, our headquarters and production facilities may be seriously damaged, or we may have to stop or delay production and shipment of our products. We may incur expenses relating to such damages, which could have a material adverse impact on our business, operating results and financial condition.

Risks Related to the Ownership of Our Common Stock

The trading price of our common stock is likely to continue to be volatile.

The trading price of our common stock has been highly volatile and could continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. Our common stock has experienced an intra-day trading high of \$387.46 per share and a low of \$244.59 per share over the last 52 weeks. The stock market in general, and the market for technology companies in particular, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. In particular, a large proportion of our common stock has been and may continue to be traded by short sellers which may put pressure on the supply and demand for our common stock, further influencing volatility in its market price. Public perception and other factors outside of our control may additionally impact the stock price of companies like us that garner a disproportionate degree of public attention, regardless of actual operating performance. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. Moreover, stockholder litigation like this has been filed against us in the past. While we are continuing to defend such actions vigorously, any judgment against us or any future stockholder litigation could result in substantial costs and a diversion of our management's attention and resources.

We may fail to meet our publicly announced guidance or other expectations about our business, which could cause our stock price to decline.

We provide guidance regarding our expected financial and business performance, such as projections regarding sales and production, as well as anticipated future revenues, gross margins, profitability and cash flows. Correctly identifying key factors affecting business conditions and predicting future events is inherently an uncertain process and our guidance may not ultimately be accurate. Our guidance is based on certain assumptions such as those relating to anticipated production and sales volumes (which generally are not linear throughout a given period), average sales prices, supplier and commodity costs, and planned cost reductions. If our guidance is not accurate or varies from actual results due to our inability to meet our assumptions or the impact on our financial performance that could occur as a result of various risks and uncertainties, the market value of our common stock could decline significantly.

Transactions relating to our convertible notes may dilute the ownership interest of existing stockholders, or may otherwise depress the price of our common stock.

The conversion of some or all of the Tesla Convertible Notes or the Subsidiary Convertible Notes would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any of such notes. Our Subsidiary Convertible Notes have been historically, and the other Tesla Convertible Notes may become in the future, convertible at the option of their holders prior to their scheduled terms under certain circumstances. If holders elect to convert their convertible notes, we could be required to deliver to them a significant number of shares of our common stock. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the convertible notes may encourage short selling by market participants because the conversion of such notes could be used to satisfy short positions, or anticipated conversion of such notes into shares of our common stock could depress the price of our common stock.

Moreover, in connection with each issuance of the Tesla Convertible Notes, we entered into convertible note hedge transactions, which are expected to reduce the potential dilution and/or offset potential cash payments we are required to make in excess of the principal amount upon conversion of the applicable Tesla Convertible Notes. We also entered into warrant transactions with the hedge counterparties, which could separately have a dilutive effect on our common stock to the extent that the market price per share of our common stock exceeds the applicable strike price of the warrants on the applicable expiration dates. In addition, the hedge counterparties or their affiliates may enter into various transactions with respect to their hedge positions, which could also cause or prevent an increase or a decrease in the market price of our common stock or the convertible notes.

Elon Musk has pledged shares of our common stock to secure certain bank borrowings. If Mr. Musk were forced to sell these shares pursuant to a margin call that he could not avoid or satisfy, such sales could cause our stock price to decline.

Certain banking institutions have made extensions of credit to Elon Musk, our Chief Executive Officer, a portion of which was used to purchase shares of common stock in certain of our public offerings and private placements at the same prices offered to third party participants in such offerings and placements. We are not a party to these loans, which are partially secured by pledges of a portion of the Tesla common stock currently owned by Mr. Musk. If the price of our common stock were to decline substantially and Mr. Musk were unable to avoid or satisfy a margin call with respect to his pledged shares, Mr. Musk may be forced by one or more of the banking institutions to sell shares of Tesla common stock in order to remain within the margin limitations imposed under the terms of his loans. Any such sales could cause the price of our common stock to decline further.

Anti-takeover provisions contained in our governing documents, applicable laws and our convertible notes could impair a takeover attempt.

Our certificate of incorporation and bylaws afford certain rights and powers to our board of directors that could contribute to the delay or prevention of an acquisition that it deems undesirable. We are also subject to Section 203 of the Delaware General Corporation Law and other provisions of Delaware law that limit the ability of stockholders in certain situations to effect certain business combinations. In addition, the terms of our convertible notes require us to repurchase such notes in the event of a fundamental change, including a takeover of our company. Any of the foregoing provisions and terms that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

EXHIBIT 5

From: [Crumpton, Cheryl](#)
To: [Bondi, Bradley J.](#); [Buchholz, Steven](#)
Cc: [Farina, Steve](#); [Schneider, Erin](#); [Buchholz, Steven](#); [Newell, Walker S](#); [Atwood, Barrett](#)
Subject: RE: Confidential: SEC v. Tesla, 1:18-cv-8947-AJN; SEC v. Musk, 1:18-cv-8865-AJN
Date: Sunday, February 24, 2019 10:28:54 AM

Dear Brad and Steve:

Thank you for your letter of February 22, 2019. Based on the information you provided in your letter, including the examples of statements made by Mr. Musk that were pre-approved, it does not appear that any of the tweets regarding Tesla that Mr. Musk has published since December 11, 2018, have been pre-approved before publication. Accordingly, we write to ask for additional information. We request that Mr. Musk and Tesla provide the following additional information to the staff before 5pm Pacific Time today:

1. After December 11, 2018, has Mr. Musk, in accordance with the pre-approval provisions of the mandatory polices implemented by Tesla pursuant to the final judgment entered in *SEC v. Tesla*, submitted any tweets for pre-approval before publishing them?
2. If so, please identify the tweets Mr. Musk submitted for pre-approval.
3. After December 11, 2018, has Tesla, in accordance with the pre-approval provisions of the mandatory polices implemented by Tesla pursuant to the final judgment entered in *SEC v. Tesla*, approved any of Mr. Musk's tweets before he published them?
4. If so, please identify which tweets Tesla approved before Mr. Musk published them and explain how they were pre-approved.

Best regards,
Cheryl

Cheryl L. Crumpton
Supervisory Trial Counsel
Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5985
202-551-4459
CrumptonC@sec.gov

From: Bondi, Bradley J. [<mailto:bbondi@cahill.com>]
Sent: Friday, February 22, 2019 2:30 PM
To: Buchholz, Steven; Crumpton, Cheryl
Cc: Bondi, Bradley J.; Steven M. Farina
Subject: Confidential: SEC v. Tesla, 1:18-cv-8947-AJN; SEC v. Musk, 1:18-cv-8865-AJN

Confidential Treatment Requested Under FOIA

Steve and Cheryl,

Please see the attached correspondence in response to your voluntary requests, dated February 20, 2019. A copy of the letters will be sent to you by FedEx.

Respectfully,
Brad Bondi

cc: Steven Farina (Counsel to Mr. Musk)

Bradley J. Bondi | Partner

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EXHIBIT 6

From: [Farina, Steve](#)
To: [MacDonald, Amanda](#); [Schiffmann, Eden](#)
Subject: FW: Confidential: SEC v. Tesla, 1:18-cv-8947-AJN; SEC v. Musk, 1:18-cv-8865-AJN
Date: Sunday, February 24, 2019 2:34:44 PM

Steven M. Farina

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725 Twelfth Street, N.W., Washington, DC 20005

(P) 202-434-5526 | (M) 202-746-9299

sfarina@wc.com | www.wc.com/sfarina

From: Bondi, Bradley J. [mailto:bbondi@cahill.com]

Sent: Sunday, February 24, 2019 5:27 PM

To: Crumpton, Cheryl <CrumptonC@sec.gov>

Cc: Buchholz, Steven <BuchholzS@sec.gov>; Farina, Steve <SFarina@wc.com>; Schneider, Erin <SchneiderE@sec.gov>; Newell, Walker S <newellw@sec.gov>; Atwood, Barrett <atwoode@sec.gov>

Subject: Re: Confidential: SEC v. Tesla, 1:18-cv-8947-AJN; SEC v. Musk, 1:18-cv-8865-AJN

Cheryl,

I am about to board a 6:00 pm flight back to DC following an all-day, out-of-town meeting at the US Attorney's Office relating to an ongoing trial in a different matter.

We will endeavor to provide answers as promptly as possible, but your deadline today is not realistic given above and also that it is Sunday and people aren't in the office.

We are looking into your questions and hope to be able to respond in full tomorrow.

Best regards,
Brad

[Bradley J. Bondi | Partner](#)

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On Feb 24, 2019, at 1:28 PM, Crumpton, Cheryl <CrumptonC@sec.gov> wrote:

Dear Brad and Steve:

Thank you for your letter of February 22, 2019. Based on the information you provided in your letter, including the examples of statements made by Mr. Musk that were pre-approved, it does not appear that any of the tweets regarding Tesla that Mr. Musk has published since December 11, 2018, have been pre-approved before publication. Accordingly, we write to ask for additional information. We request that Mr. Musk and Tesla provide the following additional information to the staff before 5pm Pacific Time today:

1. After December 11, 2018, has Mr. Musk, in accordance with the pre-approval provisions of the mandatory polices implemented by Tesla pursuant to the final judgment entered in *SEC v. Tesla*, submitted any tweets for pre-approval before publishing them?
2. If so, please identify the tweets Mr. Musk submitted for pre-approval.
3. After December 11, 2018, has Tesla, in accordance with the pre-approval provisions of the mandatory polices implemented by Tesla pursuant to the final judgment entered in *SEC v. Tesla*, approved any of Mr. Musk's tweets before he published them?
4. If so, please identify which tweets Tesla approved before Mr. Musk published them and explain how they were pre-approved.

Best regards,
Cheryl

Cheryl L. Crumpton
Supervisory Trial Counsel
Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5985
202-551-4459
CrumptonC@sec.gov

From: Bondi, Bradley J. [<mailto:bbondi@cahill.com>]
Sent: Friday, February 22, 2019 2:30 PM
To: Buchholz, Steven; Crumpton, Cheryl
Cc: Bondi, Bradley J.; Steven M. Farina
Subject: Confidential: SEC v. Tesla, 1:18-cv-8947-AJN; SEC v. Musk, 1:18-cv-8865-AJN

Confidential Treatment Requested Under FOIA

Steve and Cheryl,

Please see the attached correspondence in response to your voluntary requests, dated February 20, 2019. A copy of the letters will be sent to you by FedEx.

Respectfully,
Brad Bondi

cc: Steven Farina (Counsel to Mr. Musk)

Bradley J. Bondi | Partner

Cahill Gordon & Reindel LLP

1990 K Street, N.W., Suite 950, Washington, D.C. 20006

80 Pine Street, New York, NY 10005

t: +1.202.862.8910 | t: +1.212.701.3710 | f: +1.866.836.0501 | bbondi@cahill.com

www.cahill.com

* * * * *

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EXHIBIT 7



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

100 F STREET, N.E.
WASHINGTON, D.C. 20549

Cheryl L. Crumpton
Supervisory Trial Attorney
Direct Dial: 202-551-4459

February 26, 2019

Via Email (bbondi@cahill.com)

Tesla, Inc.
c/o Bradley J. Bondi, Esq.
Cahill Gordon & Reindel LLP

Re: *SEC v. Tesla, Inc.*, 1:18-cv-8947-AJN

Dear Mr. Bondi:

Thank you for the information you provided in response to our request dated February 20, 2019.

As we expressed on the telephone last week and reiterate today, we have serious concerns regarding Tesla, Inc.'s ("Tesla") compliance with the final judgment entered on October 16, 2018, in the above-captioned matter ("the Tesla Judgment"). Based on the representations in your February 22, 2019 letter and publicly-available information, it is our understanding that:

- Tesla's Designated Securities Counsel continually monitors Elon Musk's written communications after their publication on Twitter.
- Since December 11, 2018, Mr. Musk has published numerous tweets about Tesla. During this period, Mr. Musk has published Tesla-related tweets on a variety of topics, including (a) projections regarding Tesla's business, (b) Tesla production, (c) Tesla products, (d) Tesla safety, and (e) Tesla pricing.
- Based on the information you have provided to date, it appears that since Tesla's December 11, 2018 implementation of the mandatory policies, procedures, and controls required pursuant to the Tesla Judgment ("the Mandatory Procedures"), Mr. Musk has not submitted any proposed tweets for pre-approval and Tesla has not pre-approved any of Mr. Musk's tweets in accordance with the pre-approval provisions of the Mandatory Procedures.
- On February 19, 2019 at 7:15 pm Eastern Time, Mr. Musk published a tweet that

stated, “Tesla made 0 cars in 2011, but will make around 500k in 2019.” Mr. Musk did not submit this tweet for pre-approval, and Tesla did not pre-approve the tweet.

As you know, on February 24, 2019, we requested that Tesla voluntarily provide additional information regarding whether any of Mr. Musk’s tweets since December 11, 2018, have been pre-approved in accordance with the pre-approval provisions of the Mandatory Procedures. To date, we have not received a substantive response to our February 24 request.

In light of the above, we have concerns that Tesla has not complied—and will not comply in the future—with the requirements of the Tesla Judgment, especially regarding the pre-approval of Mr. Musk’s written communications.

Accordingly, we request that Tesla: (1) immediately provide the information originally sought in our February 24 request (re-printed for your convenience below); and (2) provide certain additional information enumerated below no later than 5:00 PM PT on February 28, 2019.

Information Originally Requested on February 24, 2019

1. After December 11, 2018, has Mr. Musk, in accordance with the pre-approval provisions of the Mandatory Procedures, submitted any tweets for pre-approval before publishing them?
2. If so, please identify the tweets Mr. Musk submitted for pre-approval.
3. After December 11, 2018, has Tesla, in accordance with the pre-approval provisions of the Mandatory Procedures, approved any of Mr. Musk’s tweets before he published them?
4. If so, please identify which tweets Tesla approved before Mr. Musk published them and explain how they were pre-approved.

Additional Information Requested on February 26, 2019

5. Please provide all talking points, scripts, Q&A, and/or similar documents that were pre-approved by Tesla in accordance with the pre-approval provisions of the Mandatory Procedures and that were used or reasonably expected to be used in or to prepare for Tesla’s Q4 2018 Financial Results and Q&A call and webcast held on January 30, 2019. Please explain how each written communication was pre-approved.
6. Please explain whether, as of the date of this letter, Tesla has revised its public guidance, as originally stated in Tesla’s Fourth Quarter & Full Year 2018 Update letter (“Q4 Letter”), that it is “expecting to deliver 360,000 to 400,000 vehicles in 2019.” If Tesla has revised this public guidance, please describe when this decision was made, how it was disseminated to the public, and whether such

public written communication was pre-approved pursuant to the Mandatory Procedures.

7. Please explain whether, as of the date of this letter, Tesla has revised its public guidance, as originally stated in the Q4 letter, that Tesla is “targeting annualized Model 3 output in excess of 500,000 units sometime between Q4 of 2019 and Q2 of 2020.” If Tesla has revised this public guidance, please describe when this decision was made, how it was disseminated to the public, and whether such public written communication was pre-approved pursuant to the Mandatory Procedures.
8. Has Tesla’s internal audit function reported any exceptions to the Mandatory Procedures implemented by Tesla pursuant to the Tesla Judgment to Tesla’s Disclosure Controls Committee? If so, please identify the exceptions reported.
9. Have Tesla’s Disclosure Controls Committee, General Counsel, and/or Disclosure Counsel, pursuant to the Mandatory Procedures, provided guidance to Mr. Musk in connection with their periodic review of past written communications? If so, please summarize all guidance provided.
10. Has Tesla’s Disclosure Controls Committee recommended to Tesla’s Board of Directors any action to be taken due to non-compliance with the Mandatory Procedures? If so, please explain the action(s) recommended and/or taken.
11. What additional steps, if any, does Tesla intend to take going forward to implement and/or enforce the Mandatory Procedures to ensure, among other things, that Mr. Musk, and any other Authorized Executive, submits written communications for pre-approval in accordance with the terms of the Tesla Judgment?

Please send responsive information and documents to:

U.S. Securities and Exchange Commission
Attn: Cheryl L. Crumpton
Supervisory Trial Attorney
Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5985
CrumptonC@sec.gov

If you have any questions or would like to discuss this matter, you may call me at 202-551-4459.

Sincerely,

s/ Cheryl L. Crumpton

EXHIBIT 8

WILMERHALE

March 11, 2019

Matthew T. Martens

+1 202 663 6921 (t)
+1 202 663 6363 (f)
matthew.martens@wilmerhale.com

Cheryl L. Crumpton
Supervising Trial Attorney
Division of Enforcement
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-5985
CrumptonC@sec.gov

Re: *SEC v. Tesla, Inc.*, 1:18-cv-8947-AJN

Dear Ms. Crumpton:

I write on behalf of Tesla, Inc. (“Tesla” or the “Company”) in response to your letter dated February 26, 2019. In your letter, you made eleven specific Requests for Information from Tesla. Tesla has addressed each request in Appendix A to this letter. I would also like to take this opportunity to respond to your concerns regarding Tesla’s oversight of Mr. Musk’s Twitter communications pursuant to the Final Judgment entered as to Tesla in the above-referenced matter on October 16, 2018 (“Final Judgment”).

Tesla takes seriously its obligations under the Final Judgment. This commitment is evidenced by the significant enhancements to governance that the Company has made since the entry of the Final Judgment. With regard to Mr. Musk’s communications, Tesla is obligated by the Final Judgment to implement mandatory procedures and controls to oversee all of Elon Musk’s communications regarding the Company made in any format, and to implement procedures and controls to pre-approve certain of his written communications. In accordance with these requirements, Tesla issued its Senior Executives Communications Policy (“Communications Policy”), dated December 11, 2018. Tesla sought and addressed comments from the Staff of the Securities and Exchange Commission on the Communications Policy before it was issued, and Tesla provided a copy of the final policy to the Staff on December 13, 2018.

Under the Communications Policy, and consistent with the Final Judgment, Mr. Musk is not required to obtain pre-approval of all written communications. Indeed, Mr. Musk need not even obtain pre-approval of all written communications *about Tesla*. Rather, only those written communications “that contain, or reasonably could contain, information material to the Company or its shareholders” are subject to mandatory pre-approval. The Communications Policy provides examples of topics that “may” be material to Tesla or its stockholders depending on the significance of the information in question, and the policy vests discretion in its Authorized Executives, including Mr. Musk, to make a judgment in the first instance about whether the information contained in a written communication meets that applicable standard. If it does meet

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Cheryl L. Crumpton
March 11, 2019
Page 2

that standard, Mr. Musk is to submit the statement to Tesla's designated Disclosure Counsel and General Counsel, who will review it, including for accuracy and timing.

The Communications Policy does not rely entirely on the exercise of discretion of the Authorized Executives, of course. The Policy states that, among other things, the Company will "periodically review" past communications of Authorized Executives and "provide guidance," contemplating that the Company will provide constructive feedback where needed. With respect to Mr. Musk's statements posted on Twitter, Tesla did much more than a "periodic review." Senior Tesla officers monitored Mr. Musk's Twitter feed in real-time. This allowed Tesla to assure that Mr. Musk was exercising his discretion appropriately in submitting for pre-clearance those communications that "contain, or reasonably could contain, information material to the Company or its shareholders," in accordance with the Communications Policy, and to provide additional guidance to him where appropriate.

The Communications Policy also contains a provision stating that if an Authorized Executive receives pre-approval for a written communication but wishes to release it more than two days later, the Authorized Executive must re-confirm the pre-approval. This provision addresses the time frame in which a pre-approved communication must be released in order for the pre-approval to remain effective, not whether a communication is subject to mandatory pre-approval in the first instance. Under the Communications Policy, whether a communication is subject to mandatory pre-approval turns on whether it "contains, or reasonably could contain, information material to Tesla or its stockholders." And that determination depends on, among other things, the total mix of information in the public domain at the time of the communication.

We understand that the Staff has concerns about Mr. Musk's February 19 tweet, made after NASDAQ trading hours, in which he stated: "Tesla made 0 cars in 2011, but will make around 500k in 2019." Tesla believes that Mr. Musk's decision not to submit that statement for pre-approval under the Communications Policy was reasonable and appropriate. The statement was a comparative one, plainly meant to do nothing more than celebrate how far the Company has come in such a short period of time. The post was added to a tweet thread featuring a photo of Tesla cars "loading ... for Europe," reinforcing the cheerleading aspect of the message. As for the shorthand phrase, "around 500k in 2019," it was non-specific, not even referencing any particular Tesla model or models. What is more, that expected rate of production was previously disseminated, with additional context, in Tesla's recent "Fourth Quarter & Full Year 2018 Update" and management's perspectives on that guidance provided during the Company's related earnings call, both on January 30, 2019. Even if a reader of the tweet understood Mr. Musk to be referring to total vehicle production in 2019, the estimated range of "around 500k" for 2019 was consistent with information previously disclosed by Tesla. Merely reiterating recently disseminated information in a shorthand way as part of a statement reasonably understood to convey nothing more than that Tesla has accomplished much in a relatively short time period is not remotely material. No reasonable investor would understand that comparative

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Cheryl L. Crumpton
March 11, 2019
Page 3

statement of corporate pride in what Tesla has accomplished to significantly alter the total mix of information already in the public domain.

Nonetheless, as with all of Mr. Musk's tweets, this tweet was monitored by Tesla in real-time. Even though the tweet was not material, Mr. Musk, after consulting with Tesla's Disclosure Counsel, issued a clarifying tweet just a few hours later out of an abundance of caution in order to avoid even the possibility of confusion about what the "around 500k" figure referred to. The subsequent tweet indicated that "around 500k" referenced "annualized production rate at the end of 2019, ie 10k cars/week." This was consistent with the recent January 30 guidance and Mr. Musk's gloss on that guidance during the January 30 earnings call, in which he expressed confidence that Tesla would "get to the 10,000 vehicles a week rate or very close to it by the end of the year."

From Tesla's perspective, Mr. Musk's February 19 tweet, made outside NASDAQ trading hours, followed by a prompt clarification designed to eliminate even the possibility for confusion about what was being communicated, demonstrates Tesla's and Mr. Musk's good faith and their commitment to compliance generally and to fulfilling their obligations under the Final Judgment specifically. Mr. Musk cited information previously disseminated by Tesla in making a general statement of corporate pride and optimism. As part of the discretion vested in him to make an initial judgment regarding the materiality of a communication, Mr. Musk reasonably determined that the tweet did not require pre-approval. Tesla monitored his tweets and, with Mr. Musk, took a conservative approach when this communication was made: Mr. Musk promptly issued a clarifying tweet intended to address even the possibility of any confusion about the figure he had referenced. Both tweets were posted outside of NASDAQ trading hours and neither caused any harm to investors. Thus, even if the Staff disagrees in hindsight with Mr. Musk's and Tesla's good faith determinations regarding materiality, any possible issue regarding those judgments was remedied and addressed promptly with the subsequent communication by Mr. Musk. As a matter of sound public policy, the Commission should not take an approach here that could suggest that good faith efforts by public companies to clarify information will be punished.

We trust that this letter, as well as Tesla's responses in the attached to your inquiries, will allay your concerns. Tesla values its dialogue with the Staff and would welcome further discussion on any of these topics. If after reviewing these responses, you continue to have concerns or questions, please do not hesitate to contact me.

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Cheryl L. Crumpton
March 11, 2019
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Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew T. Martens". The signature is fluid and cursive, with a large loop at the end.

Matthew T. Martens

Enclosure

APPENDIX A

Tesla, Inc. Responses to February 26, 2019 Requests for Information

Information Requests 1 – 4

Under the Final Judgment entered on October 16, 2018, in *SEC v. Tesla, Inc.*, 1:18-cv-8947-AJN, Tesla is obligated to implement mandatory procedures and controls to oversee all of Elon Musk's communications regarding the Company made in any format, and to implement mandatory procedures and controls to pre-approve certain written communications. In accordance with these requirements, Tesla issued its Senior Executives Communications Policy ("Communications Policy"), dated December 11, 2018.

Tesla's Communications Policy has several important components, including: (a) mandatory pre-approval of written communications that contain, or reasonably could contain, information material to Tesla or its stockholders; (b) monitoring of senior executives' communications and guidance; (c) auditing by Tesla's Internal Audit function of compliance with the Communications Policy; and (d) oversight of the Communications Policy by the Disclosure Controls Committee of Tesla's Board of Directors, including through reports to the Committee by the Company's designated Disclosure Counsel and Internal Audit.

Tesla has applied each of these components of the Communications Policy to Mr. Musk's Tesla-related written communications, especially his Twitter communications, since the adoption of the Policy. As most relevant to these information requests, each of the then-current General Counsels and the designated Disclosure Counsel have monitored Mr. Musk's Tesla-related tweets on a real-time basis. Since the entry of the Final Judgments, Mr. Musk has approached his Tesla-related communications—especially Twitter communications—with heightened awareness. An examination of Mr. Musk's Twitter feed during the months of May, June, and July 2018, compared to Mr. Musk's Twitter feed during the three months following the entry of the Final Judgments (November and December 2018 and January 2019) shows that Mr. Musk's average monthly Tesla-related tweets were cut nearly in half. This dramatic decrease in Mr. Musk's Tesla-related Twitter activity reflects Tesla's and Mr. Musk's commitments to adhering to the Communications Policy.

From December 11, 2018, when the Communications Policy became effective, until the Commission's extraordinary Court filing following Mr. Musk's February 19, 2019 tweet, Mr. Musk did not seek pre-approval for any of his Twitter communications.¹ The Company believes that Mr. Musk has exercised reasonable and appropriate judgment under the Communications Policy in deciding that the tweets neither contained, nor reasonably could contain, information that is material to Tesla or its stockholders. Mr. Musk's Tesla-related Twitter communications since December 11 have (i) reiterated information previously disclosed by the Company; (ii) consisted of immaterial customer relations; and/or (iii) dealt with clearly immaterial matters. Tesla does not believe that there was a substantial likelihood that the information contained in Mr. Musk's tweets could reasonably be viewed by a reasonable investor as having "significantly

¹ Following the Commission's contempt proceeding against Mr. Musk on February 25, 2019, and although not required by the Communications Policy, Mr. Musk has sought pre-approval for a wide range of Tesla-related proposed tweets, even those that are clearly immaterial.

altered the total mix of information” available to the public concerning the Company. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). As such, under the terms of the Communications Policy, Mr. Musk was not required to seek pre-approval for any of his post-December 11 tweets to date before they were posted. To the extent the Staff disagrees with the Company’s judgments in this regard or has specific concerns about any of Mr. Musk’s written communications during this timeframe, Tesla would appreciate the opportunity to discuss the issue further and explain the Company’s perspective concerning the immateriality of Mr. Musk’s post-December 11 tweets.

Although the Company does not believe that any of Mr. Musk’s post-December 11 tweets required pre-approval pursuant to the Communications Policy, Mr. Musk’s Twitter communications have been subject to significant and robust monitoring and attention by Tesla during this period, reflecting Tesla’s and Mr. Musk’s commitment to fulfilling their obligations under the Final Judgments. Indeed, through this real-time monitoring, on February 19, 2019, Tesla’s designated Disclosure Counsel identified the tweet that the Staff has inquired about and followed-up on it. Even though the tweet was not material, after consulting with Disclosure Counsel, Mr. Musk promptly issued a clarifying tweet in order to avoid even the possibility of confusion. Both the original tweet and the clarifying tweet were posted outside NASDAQ trading hours and caused no investor harm.

Tesla has devoted and continues to devote considerable time and attention to the effective operation and implementation of the Communications Policy. At all times, Tesla has been committed to assuring its proper functioning and to fulfilling its obligations under the Final Judgments.

Information Request 5

The materials that were pre-approved by Tesla in accordance with the Communications Policy and that were used in connection with Tesla’s Q4 2018 Financial Results and Q&A call and webcast held on January 30, 2019 are the January 30, 2019 shareholder and the January 30 Script, consisting of a set of talking points. Tesla will provide both documents to the Staff under separate cover.

The January 30 shareholder letter was prepared with the active participation of Tesla’s Management Disclosure Committee, which includes the General Counsel and designated Disclosure Counsel. In that process, on January 30, the Management Disclosure Committee, of which the General Counsel and Disclosure Counsel were members, approved the final document for dissemination. The January 30 Script was prepared under a similar process. Also on January 30, the Management Disclosure Committee approved the content of the January 30 Script for use in connection with the January 30 Q&A call and webcast.

Information Requests 6 & 7

As of the date of your letter, February 26, Tesla had not revised its public guidance, as originally stated in Tesla’s Fourth Quarter & Full Year 2018 Update letter (“Q4 Letter”), that it is “expecting to deliver 360,000 to 400,000 vehicles in 2019.” Nor had Tesla, as of that date, revised its public guidance, as originally stated in the Q4 letter, that Tesla is “targeting

annualized Model 3 output in excess of 500,000 units sometime between Q4 of 2019 and Q2 of 2020.”

Mr. Musk’s initial tweet on February 19 – stating “Tesla made 0 cars in 2011, but will make around 500k in 2019” – was intended only to recapitulate the Company’s recently-issued guidance and Mr. Musk’s gloss on that guidance during the earnings call, and did not amount to a change in guidance. His tweet was comparative, employed the word “around,” and did not even reference any specific Tesla model. It was intended only to convey and celebrate how far the Company has come in a short period of time. Mr. Musk’s subsequent clarifying tweet, issued only a few hours later, made clear that the initial tweet was not a change in guidance. Mr. Musk wrote: “Meant to say annualized production rate at end of 2019 probably around 500k, ie 10 cars/week. Deliveries for year still estimated to be about 400k.” This tweet reinforced that Tesla’s recent January 30 guidance remained in effect and had not been revised. Nor did this tweet, referencing “about” 400k deliveries, alter Tesla’s guidance regarding expected vehicle delivery in 2019.

Information Requests 8-10

Tesla has made substantial changes to its governance since the entry of Final Judgments on October 16, 2018. Tesla appointed a new independent Chair of the Board of Directors on November 7, 2018, and appointed two new independent directors to the Board of Directors on December 28, 2018. Tesla created a permanent, independent Disclosure Controls Committee of the Board of Directors, as of December 11, 2018, to oversee the matters set forth in the Final Judgments. Also on December 11, 2018, the Board approved the Company’s Communications Policy, which states that the Committee will provide oversight over the Policy and specifies that the Policy may be amended only by action of the Committee. And on December 18, 2018, Tesla designated a Disclosure Counsel whose qualifications are not unacceptable to the Staff of the Securities Exchange Commission; indeed, the Staff met with the candidate by telephone before he was appointed.

In the short period of time between the formation of the Disclosure Controls Committee and Mr. Musk’s February 19 tweet that prompted the present inquiries, the Disclosure Controls Committee has taken appropriate steps to oversee the matters set forth in the Final Judgments, including the procedures concerning mandatory pre-approval of certain written communications. The Committee’s directors have heard multiple reports on the operation of the Communications Policy. The directors of the Committee, who each also serve on the Audit Committee, heard a report from the designated Disclosure Counsel to the Audit Committee on January 29, 2019. In addition, the Disclosure Controls Committee convened on February 14, 2019. During that meeting, the directors received a second report from the Disclosure Counsel. Also in that meeting, the Committee received a report from Internal Audit on the operation of the Policy, and Internal Audit did not report any exceptions. The Disclosure Controls Committee has not made any recommendations to the Board to address any non-compliance with the Communications Policy because no instances of non-compliance have been identified.

Following the Staff’s inquiries to Tesla, the full Board has met and discussed these matters, including in executive session. The Disclosure Controls Committee also has been actively monitoring these matters. The directors have received regular reports from the

Disclosure Counsel, and the Committee convened on March 8 and 11. The Board and the Disclosure Controls Committee will continue to monitor these matters closely going forward.

In further response to this question, Tesla declines to waive its attorney-client privilege to disclose the content of any advice provided by Tesla's General Counsel or designated Disclosure Counsel.

Information Request 11

Tesla and Mr. Musk remain committed to ensuring full compliance with their obligations under the Final Judgments, including their obligations related to pre-approval of certain of Mr. Musk's written communications. The Disclosure Controls Committee will be evaluating the effectiveness of the Communications Policy and its operation and will make any enhancements or changes to the Policy that it deems warranted. Tesla also welcomes any input the Staff may have on these matters.

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DECLARATION OF ELON R. MUSK

I, Elon R. Musk, declare as follows:

1. I am the co-founder and Chief Executive Officer at Tesla, Inc. (“Tesla”). I have personal knowledge of the facts set forth in this Declaration and, if called to testify, I could and would testify competently thereto.

2. I submit this Declaration in support of the Response To Order To Show Cause Why Defendant Elon Musk Should Not Be Held In Contempt For Violating The Court’s Final Judgment.

3. On September 28, 2018, I was party to a Consent Motion for Entry of Final Judgment in the matter of *Securities & Exchange Commission v. Musk*, 18-cv-08865-AJN. This Court entered Final Judgment on October 16, 2018 (the “Order”). The Order requires, among other things, that I comply with certain “mandatory procedures” implemented by Tesla. These procedures include “the pre-approval” of “written communications that contain, or reasonably could contain, information material to” Tesla or its shareholders.

4. As required by the Order, Tesla subsequently developed a policy for the “pre-approval” of written communications, referred to as the Senior Executives Communications Policy (the “Policy”). The Policy went into effect on December 11, 2018.

5. The Policy tracks the language of the Order, providing that any “Authorized Executive” must submit to Tesla’s General Counsel and Disclosure Counsel for pre-approval “Written Communications” that “contain, or reasonably could contain, information material to Tesla or its stockholders.” As Tesla’s CEO, I am an Authorized Executive, and I understand I must abide by the Policy.

6. The Order and the Policy vest the relevant Authorized Executive with discretion to determine in good faith whether a Written Communication “contain[s], or reasonably could contain,” material information, and thus whether it requires pre-approval. Accordingly, when I issue a written statement (including a tweet), I exercise, in good faith, the discretion granted to me to determine whether the statement contains, or reasonably could contain, material information. This grant of discretion was carefully negotiated with the Securities and Exchange Commission

1 (the “SEC”). I did not and would not consent to a court order or to a policy that operated as a gag
2 or prior restraint on my ability to speak about Tesla. But because the Order and the Policy allow
3 me to make good-faith determinations of the materiality of my communications before publication,
4 I agreed to them.

5 7. I have taken my obligation to comply with the Order and the Policy seriously.
6 Among other things, I have dramatically decreased the amount that I tweet about Tesla. Compared
7 to the months of May, June, and July 2018, during the three months following the entry of the
8 Order (November and December 2018 and January 2019), I have cut my average monthly Tesla-
9 related tweets nearly in half. This is not because I am concerned about non-compliance, but rather
10 because I want to err on the side of caution to avoid unnecessary disputes with the SEC. I have
11 also taken steps to ensure that, when I do tweet information, I am compliant with the Order and the
12 Policy. The Disclosure Counsel and other members of Tesla’s legal department have reviewed the
13 updated controls and procedures with me on multiple occasions. With my knowledge and
14 approval, Tesla’s General Counsel and Disclosure Counsel have been reviewing all tweets
15 promptly in real time upon publication to double-check compliance with the Policy and to ensure
16 that any errors are caught and rectified quickly. Additionally, since the entry of the Order and the
17 enactment of the Policy, I have not tweeted information that I believe is, or could reasonably be,
18 material.

19 8. At 7:15 p.m. Eastern Time on February 19, 2019, I posted a tweet that celebrated
20 Tesla’s success since 2011 and exhibited pride for what Tesla anticipated achieving in 2019. The
21 7:15 tweet was part of the same chain as a 7:02 p.m. Eastern Time tweet, which showed a picture
22 of thousands of Tesla cars headed from San Francisco to Europe. Those two tweets are reproduced
23 here:

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Elon Musk  @elonmusk · Feb 19 ▼

4000 Tesla cars loading in SF for Europe






 5.5K  19K  228K

Elon Musk  @elonmusk Follow ▼

Tesla made 0 cars in 2011, but will make around 500k in 2019

4:15 PM - 19 Feb 2019

10,407 Retweets **145,005** Likes 

 2.6K  10K  145K

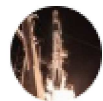
9. The 7:15 tweet reflected information that had already been publicly disclosed in Tesla’s Form 8-K, published on January 2, 2019; Tesla’s Fourth Quarter and Full Year 2018 Update, published on January 30, 2019; the associated earnings call, also on January 30, 2019; and

1 Tesla’s Annual Report (Form 10-K), filed with the SEC the same day as the tweet (February 19,
2 2019).

3 10. Because the 7:15 tweet only repeated publicly-disclosed information, and was a
4 reflection of my pride in Tesla’s success and its future, I did not believe that it contained, or
5 reasonably could contain, any information material to Tesla or its shareholders.

6 11. To be clear, notwithstanding the SEC’s contempt motion, I continue to believe that
7 the 7:15 tweet did not contain any information material to Tesla or its shareholders. If I believed
8 otherwise, I would not have issued the tweet without pre-approval under the Policy.

9 12. After the 7:15 tweet, I spoke with Tesla’s Disclosure Counsel. After consultation, I
10 continued to believe that the 7:15 tweet neither contained, nor reasonably could contain, material
11 information. However, out of an abundance of caution and because pundits and others were
12 consistently looking for any reason to criticize me or Tesla, I posted another tweet at 11:41 p.m.
13 Eastern Time. That tweet is reproduced here:



Elon Musk ✓

@elonmusk

Follow

16 Meant to say annualized production rate
17 at end of 2019 probably around 500k, ie
18 10k cars/week. Deliveries for year still
19 estimated to be about 400k.

20 8:41 PM - 19 Feb 2019

21 1,848 Retweets 52,286 Likes



22 23 24 1.6K 1.8K 52K

25 13. There is no doubt that I have been a vocal critic of the SEC’s approach to protecting
26 shareholders, as I believe that they materially and disproportionately favor short-term over long-
27 term constituencies. However, there can also be no doubt that I am tirelessly working, along with
28 my team at Tesla, on creating value for our shareholders and attempting to accelerate the world’s

1 transition to sustainable energy. That is, the shareholder protection goal that should be at the heart
2 of the SEC's mission is one that I share emphatically.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed on this 11th day of March, 2019, at Los Angeles, California.

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Elon R. Musk

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION**

Plaintiff,

v.

ELON MUSK

Defendant.

No. 1:18-cv-8865-AJN-GWG

DECLARATION OF CHRISTOPHER F. NOE, PH.D.

March 11, 2019

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I. QUALIFICATIONS

1. I am a Senior Lecturer in Accounting at the Massachusetts Institute of Technology's Sloan School of Management. I have taught at MIT Sloan since 2005 and have been a full-time member of the faculty since 2011. My teaching focuses on accounting principles, financial statement analysis, disclosure, forecasting, and valuation. Between 1995 and 2000, I served on the faculty of the Harvard Business School where I taught similar subjects. During the course of my academic career, I have published articles in peer-reviewed journals as well as authored teaching case studies. My peer-reviewed academic articles include the use of event studies to examine how various corporate disclosures affect stock prices.
2. I received a B.A. in Economics from Emory University in 1990, an M.S. in Applied Economics from the University of Rochester in 1993, and a Ph.D. in Business Administration from the University of Rochester in 1996.
3. In addition to my academic experience, I worked at Charles River Associates, an economics, finance, and business consulting firm, between 2000 and 2011. My consulting assignments at Charles River dealt primarily with the fields of financial accounting and corporate finance, primarily in the context of securities litigation. While at Charles River, I came to lead the firm's securities litigation marketing efforts, which included overseeing the development of a software product for analyzing daily stock price movements in the context of securities lawsuits.

4. A copy of my curriculum vitae, which includes my publications and a list of all matters in which I have provided expert testimony, is attached as **Appendix A**.

II. CASE BACKGROUND AND SUMMARY OF ALLEGATIONS

5. Elon Musk (“Defendant”) is the Chief Executive Officer of Tesla, Inc. (“Tesla”), a publicly traded company since June 29, 2010.¹ Tesla’s stock is currently listed on the NASDAQ Stock Market (“NASDAQ”).
6. In 2018, Tesla produced 254,530 vehicles and delivered 245,506 vehicles.²
7. On January 2, 2019, Tesla filed a Form 8-K, reporting its Fourth Quarter 2018 production numbers. Tesla stated that production in Q4 grew to 86,555 vehicles, including 61,394 Model 3 vehicles and 25,161 Model S and X vehicles.³
8. In an update letter that the company released on January 30, 2019, Tesla announced that it expected to deliver 360,000 to 400,000 vehicles in 2019.⁴ In that same letter, Tesla also disclosed that it aimed to raise the annualized output for the Model 3, one of three vehicles that the company currently offers, to over 500,000 units between Q4 of 2019 and Q2 of 2020, “[b]arring unexpected challenges with Gigafactory Shanghai.”⁵
9. On February 19, 2019, Tesla filed its Form 10-K for fiscal year 2018. Tesla stated that its goal is to produce 10,000 Model 3 vehicles per week on a sustained

¹ Tesla, Form 10-K for the fiscal year ended December 31, 2018, pp. 27, 39.

² Tesla, Form 10-K for the fiscal year ended December 31, 2018, p. 42.

³ Tesla, Form 8-K filed January 2, 2019.

⁴ Tesla, “Tesla Fourth Quarter & Full Year 2018 Update,” January 30, 2019.

⁵ Tesla, “Tesla Fourth Quarter & Full Year 2018 Update,” January 30, 2019; Tesla, Form 10-K for the fiscal year ended December 31, 2018, p. 1.

basis, with an annualized output rate in excess of 500,000 Model 3 vehicles sometime between the fourth quarter of 2019 and second quarter of 2020.⁶

10. After the close of NASDAQ's regular market trading on February 19, 2019,⁷ Defendant posted a message on Twitter at 7:15 PM ET ("7:15 PM Tweet") regarding Tesla's production capacity:⁸

Tesla made 0 cars in 2011, but will make around 500k in 2019.

11. Later at 11:41 PM ET on the same day, Defendant posted another message on Twitter ("11:41 PM Tweet"):⁹

Meant to say annualized production rate at end of 2019 probably around 500k, ie 10k cars/week. Deliveries for year still estimated to be about 400k.

12. After the close of NASDAQ's regular market trading on February 25, 2019, several news sources reported that the Securities and Exchange Commission ("SEC" or "Plaintiff") filed a motion ("Contempt Motion"), requesting that the United States District Court for the Southern District of New York hold Defendant in contempt over the 7:15 PM Tweet.¹⁰ The SEC alleges that the 7:15 PM Tweet was "inaccurate" and that Defendant violated the terms of his October 2018 settlement with the SEC, under which Defendant is required to seek pre-

⁶ Tesla, Form 10-K for the fiscal year ended December 31, 2018, p. 16.

⁷ "NASDAQ Trading Schedule," available at <<https://www.nasdaq.com/about/trading-schedule.aspx>>, accessed March 7, 2019.

⁸ Twitter, available at <<https://twitter.com/elonmusk/status/1098013283372589056>>, accessed March 10, 2019.

⁹ Twitter, available at <<https://twitter.com/elonmusk/status/1098080063801585664>>, accessed March 10, 2019.

¹⁰ This news was first reported by Bloomberg at 6:10 PM ET. See "SEC Asks Judge To Hold Elon Musk In Contempt For Violating Deal," *Bloomberg*, February 25, 2019; see also "SEC Asks Manhattan Federal Court to Hold Elon Musk in Contempt," *The Wall Street Journal*, February 25, 2019; *United States Securities And Exchange Commission v. Elon Musk*, United States Securities and Exchange Commission's Motion and Memorandum of Law in Support of an Order to Show Cause, February 25, 2019, p. 1.

approval from Tesla officials for any written statements that “contain[] or reasonably could contain information material to Tesla or its shareholders.”¹¹

III. ASSIGNMENT AND COMPENSATION

13. I have been retained by counsel for Defendant to evaluate whether the 7:15 PM Tweet contained material information for Tesla’s shareholders. A list of documents that I have relied upon in this declaration is provided in **Appendix B**. Staff from Analysis Group, operating under my direction, have provided me with research assistance in preparing this declaration. My billing rate in this matter is \$700 per hour. My compensation is not contingent upon my findings or the outcome of this proceeding.

IV. SUMMARY OF OPINIONS

14. Based on my review of stock price and trading volume data, news articles, and analyst reports, I have reached the following conclusions:

- (i) The 7:15 PM Tweet did not contain material information for Tesla’s shareholders;
- (ii) More specifically, the lack of meaningful price reaction and relatively low trading volume following the 7:15 PM Tweet (and the lack of meaningful price reaction and relatively low trading volume following the 11:41 PM Tweet, which the SEC alleges “correct[ed]” the 7:15 PM Tweet¹²) indicate

¹¹ Contempt Motion, p. 1; *see also* “SEC Asks Manhattan Federal Court to Hold Elon Musk in Contempt,” *The Wall Street Journal*, February 25, 2019.

¹² Contempt Motion, pp. 5, 6.

that the 7:15 PM Tweet had no material impact on the price of Tesla's common stock;

(iii) My review of market commentary following the 7:15 PM Tweet indicates that analysts did not view information contained in this disclosure as material, consistent with the lack of meaningful price reaction and relatively low trading volume;

(iv) On the other hand, the market did react, based on price reaction, trading volume, and market commentary, in response to the filing of the SEC's Contempt Motion.

V. THE 7:15 PM TWEET DID NOT CONTAIN MATERIAL INFORMATION FOR TESLA'S SHAREHOLDERS

A. Materiality

15. From an economic perspective, the materiality of a statement to the value of an actively traded security (such as Tesla stock) can be assessed through the market reaction to that statement. Information that is considered material to investors in their decision as to whether to buy or sell a security tends to generate responsive movements in trading volume and stock price as investors react to that information. These trends are observable through an analysis of trading data.

B. Opening Price and Trading Volume of Tesla's Common Stock on February 20, 2019

16. As discussed above, Tesla's common stock is traded on NASDAQ, for which regular trading hours begin at 9:30 AM ET and end at 4:00 PM ET on each

trading day.¹³ The 7:15 PM Tweet and 11:41 PM Tweet (collectively, the “February 19 Tweets”) were both published after regular trading hours, i.e., after 4:00 PM ET. If the February 19 Tweets contained material information to Tesla’s shareholders, one would expect this information to be reflected in its stock price at the open of regular trading on the next trading day.¹⁴

17. I find that Tesla’s stock price declined by only 0.4 percent from \$305.64 per share at the close of regular trading on February 19, 2019 to \$304.41 per share at the open of regular trading on February 20, 2019.¹⁵ To put this price reaction in context, **Exhibit 1** shows Tesla’s daily stock price movements for September 2018 through February 2019. As this exhibit shows, a 0.4 percent change is small in comparison to the general volatility of Tesla’s stock price over this six-month period. In addition, the average absolute value of Tesla’s close-to-open stock returns between September 2018 and February 2019 is 1.53 percent, nearly four times greater than 0.4 percent. In contrast, following the filing of the SEC’s Contempt Motion, Tesla’s stock price declined by 2.2 percent from the close of regular trading hours on February 25, 2019 (\$298.77 per share) to the open of regular trading hours on February 26, 2019 (\$292.22 per share).¹⁶

18. Tesla’s small stock price change from the close of regular trading on February 19, 2019 to the open of regular trading on February 20, 2019 was roughly in line with

¹³ “NASDAQ Trading Schedule,” available at <<https://www.nasdaq.com/about/trading-schedule.aspx>>, accessed March 7, 2019.

¹⁴ I also reviewed stock price and trading volume data outside of regular trading hours, which I discuss later in this declaration.

¹⁵ Bloomberg.

¹⁶ Bloomberg.

a small contemporaneous change in the NASDAQ Composite Index.¹⁷

Furthermore, Tesla's stock price remained stable within the first hour after the open of regular trading on February 20, 2019, fluctuating between \$303.00 per share and \$305.84 per share. Thus, I conclude that the February 19 Tweets had no material impact on Tesla's stock price.

19. The trading volume of Tesla's stock on February 20, 2019 is lower than the average daily volume over the six-month period from September 2018 through February 2019.¹⁸ The lack of meaningful price reaction up to an hour after the open of regular trading on February 20, 2019 coupled with relatively low trading volume throughout the day indicates that the February 19 Tweets did not contain material information for Tesla's shareholders.¹⁹

C. After-Market Trading of Tesla's Common Stock on February 19, 2019

20. Investors have the option to trade stocks outside of regular trading hours. For stocks listed on NASDAQ, investors can trade after the close of regular trading

¹⁷ The NASDAQ Composite Index is a capitalization-weighted index of stocks in all three NASDAQ tiers: Global Select, Global Market and Capital Market. See "CCMP Quote - NASDAQ Composite Index", available at <<https://www.bloomberg.com/quote/CCMP:IND>>, accessed March 10, 2019. According to data from Bloomberg, the NASDAQ Composite Index increased by 0.05 percent from 7486.77 at the close of regular trading on February 19, 2019 to 7490.31 at the opening of regular trading on February 20, 2019.

¹⁸ The trading volume of Tesla's stock on February 20, 2019 is 7,142,117, and the average daily trading volume over the six-month period from September 2018 through February 2019 is 8,738,667. The daily trading volume reported by Bloomberg includes only trading activities during regular trading hours.

¹⁹ I note that other news related to Tesla was disclosed after the close of regular trading on February 19, 2019 and before the open of regular trading on February 20, 2019. First, *Electrek* reported at 7:15 PM ET on February 19, 2019 that Tesla was preparing to offer leasing options for its Model 3 vehicles. Second, *The Wall Street Journal* reported at 8:00 AM ET on February 20, 2019 that Tesla's general counsel had left the company. To the extent that information from either of these news events were material to Tesla shareholders, the trading activities attributable to the February 19 Tweets would be even lower in magnitude. See "Tesla is preparing to offer Model 3 leasing to boost demand," *Electrek*, February 19, 2019; see also "Tesla Replaces Top Lawyer After Two Months in Latest Major Departure," *The Wall Street Journal*, February 20, 2019.

between the hours of 4:00 PM ET and 8:00 PM ET (“After-Market Hours”) or prior to the open of regular trading between the hours of 4:00 AM ET and 9:30 AM ET (“Pre-Market Hours”).²⁰ These expanded trading windows provide investors with the potential to respond quickly to news and events that occur outside of regular trading hours.²¹ Thus, I reviewed Tesla’s stock price and trading volume during After-Market Hours on February 19, 2019 and Pre-Market Hours on February 20, 2019 to assess the materiality of the 7:15 PM Tweet.²²

21. On February 19, 2019, investors had the opportunity to trade following the 7:15 PM Tweet during After-Market Hours between 7:15 PM and 8:00 PM. As shown in **Exhibit 2**, Tesla’s stock price declined by only 0.09 percent during this 45-minute interval, from \$307.10 per share at 7:13 PM ET²³ to \$306.82 per share at 7:59 PM ET. In contrast, as shown in **Exhibit 3**, Tesla’s stock price fell by 3.4 percent following news of the filing of the SEC’s Contempt Motion at 6:10 PM ET on February 25, 2019,²⁴ from \$298.02 per share at 6:09 PM ET to \$287.87 per share at 7:59 PM ET.

22. The trading volume during the 45-minute time window between the 7:15 PM Tweet and the end of After Market Hours trading totaled 9,973 shares, which represents less than 0.01 percent of the total shares outstanding of Tesla’s

²⁰ “NASDAQ Trading Schedule,” available at <<https://www.nasdaq.com/about/trading-schedule.aspx>>, accessed March 7, 2019.

²¹ “Extended Hours Trading,” available at <<https://www.nasdaq.com/extended-trading/>>, accessed March 7, 2019.

²² While trading activities outside regular trading hours tend to be limited, an assessment of the market reaction during this time may be informative.

²³ There were no trading activities at 7:14 PM ET on February 19, 2019.

²⁴ “SEC Asks Judge To Hold Elon Musk In Contempt For Violating Deal,” *Bloomberg*, February 25, 2019, 6:10 PM ET.

common stock.²⁵ Average trading volume per hour during After-Market Hours prior to the 7:15 PM Tweet (21,087 shares per hour) is higher than afterwards (13,297 shares per hour). By comparison, average trading volume during After-Market Hours following news of the filing of the SEC's Contempt Motion is 222,674 shares per hour, which is nearly seventeen times higher than the hourly trading volume after the 7:15 PM Tweet.

23. The lack of meaningful price reaction and relatively low trading volume during After-Market Hours on February 19, 2019 following the 7:15 PM Tweet (and before the 11:41 PM Tweet was posted) is evidence that the 7:15 PM Tweet did not contain material information for Tesla's shareholders.

D. Pre-Market Trading of Tesla's Common Stock on February 20, 2019

24. The 11:41 PM Tweet occurred after the conclusion of After-Market Hours trading on February 19, 2019. Investors had the opportunity to trade following the 11:41 PM Tweet during Pre-Market Hours on February 20, 2019. The SEC describes the 11:41 PM Tweet as "correcting" the 7:15 PM Tweet.²⁶ Were that so, I would expect to see a noticeable change in stock price or trading volume during the Pre-Market Hours on February 20, 2019.
25. That did not occur. As shown in **Exhibit 2**, Tesla's stock price declined during Pre-Market Hours by only 0.8 percent, from \$306.82 per share at 7:59 PM ET on

²⁵ According to Tesla's Form 10-K for the fiscal year ended December 31, 2018, there were 172,721,487 shares of Tesla's common stock outstanding as of February 12, 2019.

²⁶ Contempt Motion, p. 5.

February 19, 2019 to \$304.41 per share at the open of regular trading on February 20, 2019.

26. The even more relevant window for observing any reaction to the supposedly corrective 11:41 PM Tweet is from 7:59 PM ET on February 19, 2019 to 7:59 AM ET on February 20, 2019 because the departure of Tesla's General Counsel was announced at 8:00 AM ET that morning, which caused its own stock price reaction.²⁷ As shown in **Exhibit 2**, Tesla's stock price increased by only 0.7 percent from \$306.82 per share at 7:59 PM ET on February 19, 2019 to \$308.81 per share at 7:59 AM ET on February 20, 2019.
27. The trading volume during the four-hour time window during Pre-Market Hours prior to 8:00 AM ET totaled 23,993 shares, which represents approximately 0.01 percent of the total shares outstanding of Tesla's common stock.²⁸ By comparison, average trading volume per hour during Pre-Market Hours on February 20, 2019 prior to 8:00 AM ET (5,998 shares per hour) is far lower than the average trading volume per hour during Pre-Market Hours on February 26, 2019 (52,876 shares per hour).
28. The lack of meaningful price reaction to the 11:41 PM Tweet and the relatively low trading volume during Pre-Market Hours prior to 8:00 AM ET on February 20, 2019 provides further evidence that the 7:15 PM Tweet did not contain material information for Tesla's shareholders.

²⁷ "Tesla Replaces Top Lawyer After Two Months in Latest Major Departure," *The Wall Street Journal*, February 20, 2019.

²⁸ As previously noted, there were 172,721,487 shares of Tesla's common stock outstanding as of February 12, 2019.

E. Market Reaction to SEC's Contempt Motion Was Greater Than to February 19 Tweets

29. As discussed above and shown in **Exhibit 2**, there was a minimal price or volume reaction in After-Market Hours trading of Tesla stock on February 19, 2019 following the 7:15 PM Tweet. The next morning, during Pre-Market Hours trading, there was similarly minimal price or volume reaction to the 11:41 PM Tweet.

30. In contrast, as discussed above and shown in **Exhibit 3**, when the news of the SEC's Contempt Motion became public, there was an immediate negative reaction as Tesla's stock price fell 3.4 percent between the news release (at 6:10 PM ET) and the end of After-Market Hours trading. On an hourly basis, 13,297 shares traded per hour after the 7:15 PM Tweet on February 19, 2019 while 222,674 shares traded per hour after the 6:10 PM ET news on February 25, 2019, nearly a seventeen fold difference. This response demonstrates that a material event can be perceived in the trading activities during After-Market or Pre-Market Hours if one occurs.

VI. MARKET COMMENTARY

31. I reviewed market commentary regarding the February 19 Tweets and find that it is consistent with my conclusions discussed above. If the information contained in the February 19 Tweets was material to investors, one would expect equity analysts following Tesla to publish reports commenting on the information. I found a total of three analyst reports published between February 20 and February 24, 2019 available through Thomson One. None of the three reports mentioned

the February 19 Tweets, indicating that the analysts did not consider these as new material information. Two of the analyst reports, one by Jefferies and one by New Constructs, commented on the Form 10-K that Tesla had filed before the open of regular trading on February 19, 2019.²⁹ The other report by CFRA mentioned the departure of Tesla's general counsel and that Tesla had planned to start leasing its Model 3 vehicles.³⁰

32. In contrast, I found a total of 13 analyst reports published between February 26 and February 27, 2019 available through Thomson One. Analysts' commentary indicate that they viewed the SEC's action as negative news. For example, analysts from J.P. Morgan commented that they "see a negative reaction in TSLA shares to these developments."³¹ Similarly, analysts from Cowen expected Tesla's stock to "trade down."³² Moreover, some analysts expressed concerns over the potential consequences. For example, analysts from Wedbush commented that "now this latest tweet (which most investors shrugged off at the time) represents a wild card that could potentially bring this tornado of uncertainty back into the Tesla story until resolved."³³ Analysts from J.P. Morgan noted that "[i]f the SEC were to seek Mr. Musk's removal (perhaps subject to yet

²⁹ Jefferies, "Estimates and Views Confirmed Post 10-K," February 20, 2019; New Constructs, "Stock Option Liabilities Add Risk in Today's Filing Season Find," February 21, 2019.

³⁰ CFRA, "Tesla, Inc.," February 20, 2019.

³¹ J.P. Morgan, "See Negative Reaction to Further SEC Allegations Against Tesla CEO Elon Musk — Reiterate UW," February 26, 2019.

³² Cowen, "SEC Asks Judge To Hold Elon Musk In Contempt For Violating Settlement," February 26, 2019.

³³ Wedbush, "SEC Asks Court to Hold Musk in Contempt; Uncertainty Will Weigh on Shares," February 26, 2019.

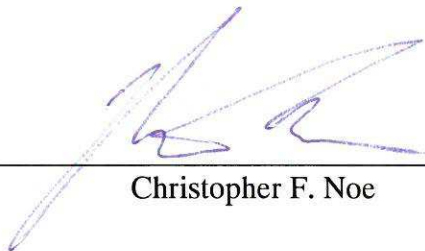
another settlement), we believe the shares may approach the mid-\$200 levels seen in the aftermath of the earlier SEC suit.”³⁴

33. The lack of commentary on the February 19 Tweets indicates that equity analysts did not view information contained in these disclosures as material, consistent with the lack of meaningful price reaction and low trading volume.

VII. CONCLUSION

34. Based on my review of stock price and trading volume data, news articles, and analyst reports, it is my opinion that the 7:15 PM Tweet did not contain material information for Tesla’s shareholders. There was no meaningful price reaction and relatively low trading volume in Tesla’s shares following the 7:15 PM Tweet. Nor was there any meaningful price reaction or noticeable change in trading volume after what the SEC refers to as the “corrective” 11:41 PM Tweet. Moreover, no equity analysts commented on the February 19 Tweets.

Executed on this 11th day of March, 2019, at 4:49 pm.



Christopher F. Noe

³⁴ J.P. Morgan, “See Negative Reaction to Further SEC Allegations Against Tesla CEO Elon Musk — Reiterate UW,” February 26, 2019.

Appendix A



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EMPLOYMENT

2005- *Senior Lecturer*, Sloan School of Management, Massachusetts Institute of Technology

2008-11 *Vice President*, Charles River Associates

2005-08 *Principal*, Charles River Associates

2003-05 *Associate Principal*, Charles River Associates

2000-03 *Senior Associate*, Charles River Associates

1995-2000 *Assistant Professor*, Harvard Business School, Harvard University

EDUCATION

Ph.D. Accounting, William E. Simon Graduate School of Business Administration, University of Rochester, 1996

M.S. Applied Economics, William E. Simon Graduate School of Business Administration, University of Rochester, 1993

B.A. Economics, Emory University, 1990

RESEARCH

Duarte-Silva, T., H. Fu, C. Noe, and K. Ramesh, 2013, How Do Investors Interpret Announcements of Earnings Delays?, *Journal of Applied Corporate Finance* 25, 66-73.

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Report, rebuttal reports, and deposition testimony on behalf of defendants in City of Ann Arbor Employees' Retirement System, et al. v. Sonoco Products Co., et al., United States District Court, District of South Carolina, 4:08-cv-02348-TLW-SVH, 2010-11.

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Affidavit on behalf of individuals from KPMG LLP in CVS Corp. before the United States Securities and Exchange Commission, B-02164, 2006.

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AWARDS & HONORS

MIT Sloan Teacher of the Year 2015-16

MISCELLANEOUS

Friends of Brookline Rowing, Treasurer 2018-

Temple Israel of Boston, Treasurer 2009-13, Vice President 2013-15, President 2015-17

The Two Dollar Bill Documentary film credit http://www.imdb.com/title/tt4083126/?ref_=ttfc_fc_tt, 2015

Appendix B
Documents Relied Upon

Legal Filing

United States Securities And Exchange Commission v. Elon Musk, United States Securities and Exchange Commission’s Motion and Memorandum of Law in Support of an Order to Show Cause, February 25, 2019.

News Articles

“SEC Asks Judge To Hold Elon Musk In Contempt For Violating Deal,” *Bloomberg*, February 25, 2019.

“SEC Asks Manhattan Federal Court to Hold Elon Musk in Contempt,” *The Wall Street Journal*, February 25, 2019.

“Tesla is preparing to offer Model 3 leasing to boost demand,” *Electrek*, February 19, 2019.

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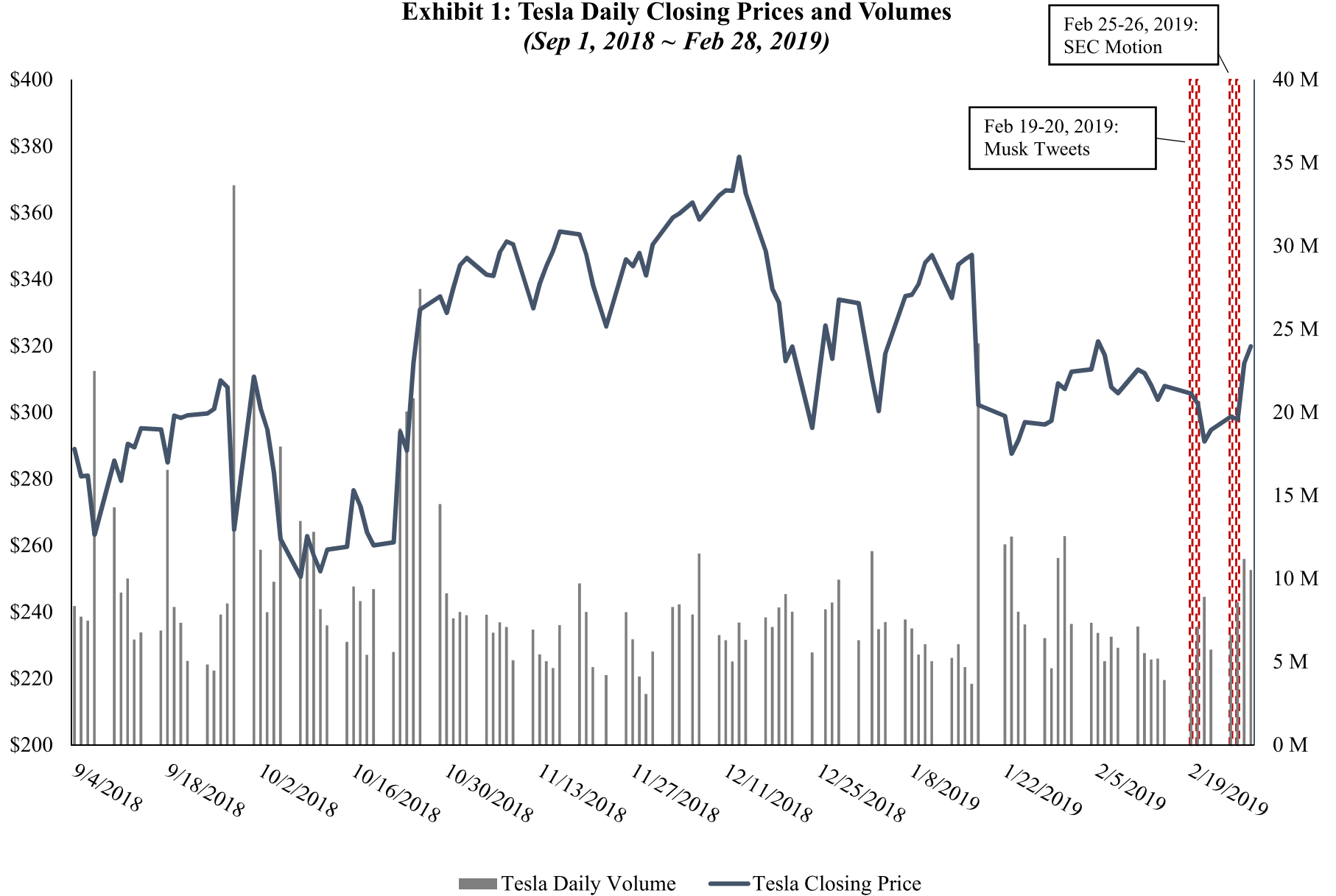
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Thomson One.

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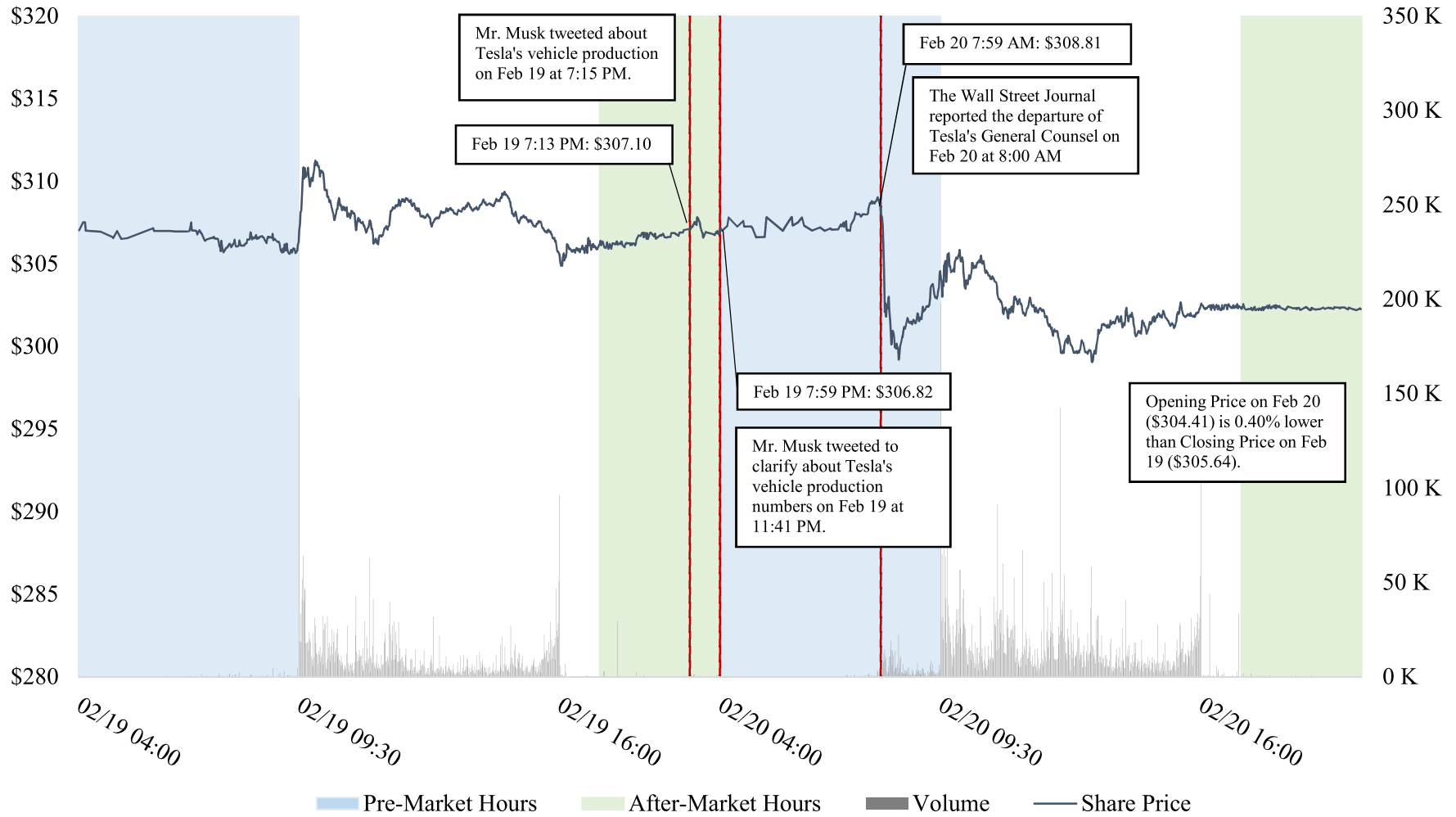
Twitter, available at <<https://twitter.com/elonmusk/status/1098080063801585664>>, accessed March 10, 2019.

Exhibit 1: Tesla Daily Closing Prices and Volumes
(Sep 1, 2018 ~ Feb 28, 2019)



Source: Bloomberg

Exhibit 2: Tesla Price and Volume by Minute (Feb 19, 2019 ~ Feb 20, 2019)

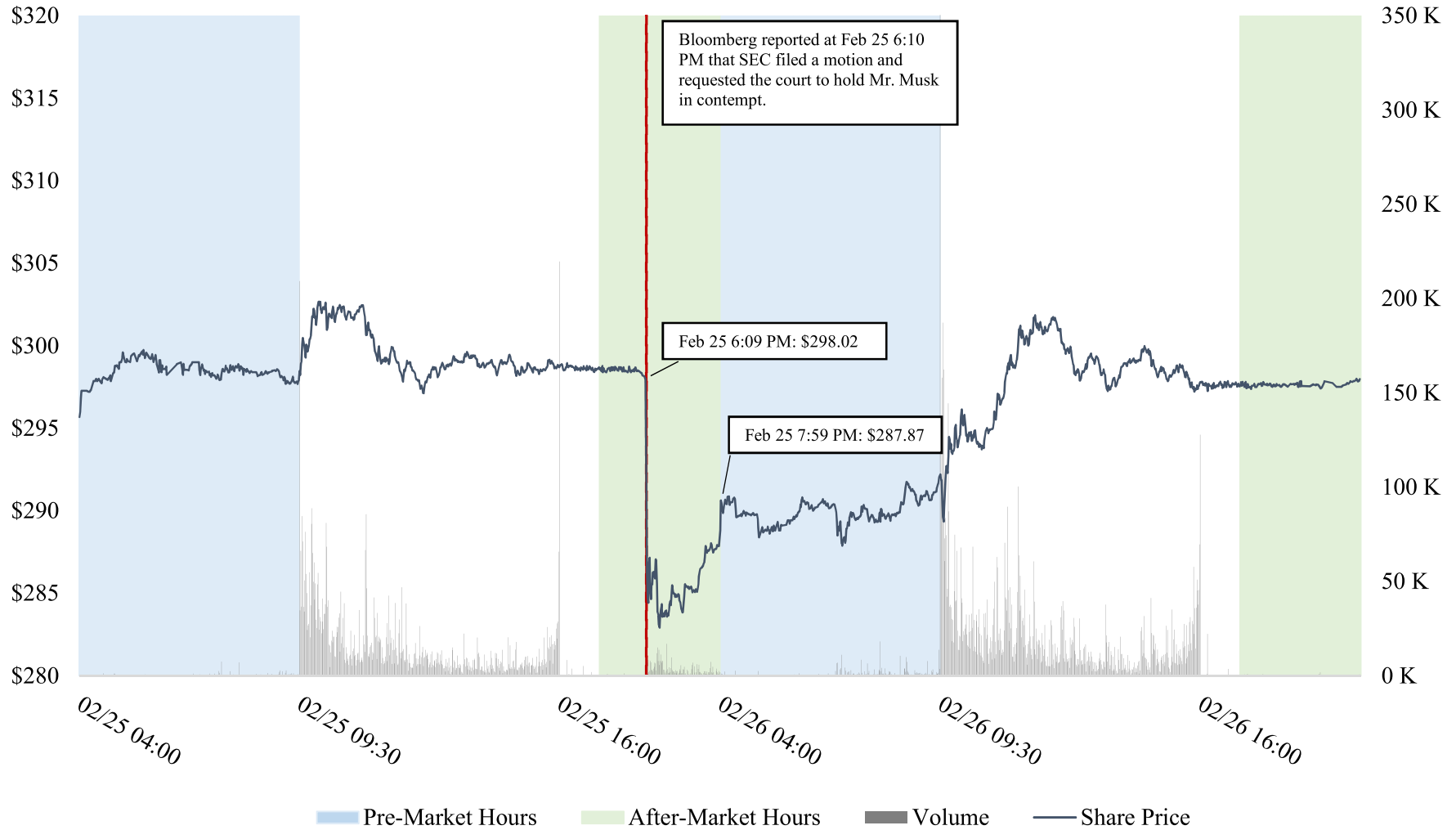


Notes:

- [A] NASDAQ regular trading hours are from 9:30 am - 4:00 pm. Pre-Market Hours cover 4:00 am - 9:30am. After-Market Hours cover 4:00 pm - 8:00 pm.
- [B] Share Price is calculated as the simple average price of all trades recorded with positive volume within each minute. Volume is the aggregated trade size within each minute.
- [C] All times are in ET.

Source: Bloomberg

**Exhibit 3: Tesla Price and Volume by Minute
(Feb 25, 2019 ~ Feb 26, 2019)**



Notes:

- [A] NASDAQ regular trading hours are from 9:30 am - 4:00 pm. Pre-Market Hours cover 4:00 am - 9:30am. After-Market Hours cover 4:00 pm - 8:00 pm.
- [B] Share Price is calculated as the simple average price of all trades recorded with positive volume within each minute. Volume is the aggregated trade size within each minute.
- [C] All times are in ET.

Source: Bloomberg