



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

CLEVELAND BAKERS AND  
TEAMSTERS PENSION FUND,  
DANIEL HAZEN, and MICHAEL  
GIAMPIETRO, derivatively on behalf  
of Nominal Defendant TESLA, INC.,

Plaintiffs,

v.

ELON MUSK, ROBYN M.  
DENHOLM, IRA EHRENPREIS, JOE  
GEBBIA, JAMES MURDOCH,  
KIMBAL MUSK, JB STRAUBEL, and  
KATHLEEN WILSON-THOMPSON,

Defendants

and

TESLA, INC.,

Nominal Defendant.

C.A. No. 2024-\_\_\_\_\_

**VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT**

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Plaintiffs Cleveland Bakers and Teamsters Pension Fund, Daniel Hazen, and Michael Giampietro (“Plaintiffs”), on behalf of Nominal Defendant Tesla, Inc. (“Tesla” or the “Company”), bring the following Verified Stockholder Derivative Complaint alleging: (i) breaches of fiduciary duty against Defendants Elon Musk (“Musk”), Robyn M. Denholm (“Denholm”), Ira Ehrenpreis (“Ehrenpreis”), Joe Gebbia (“Gebbia”), James Murdoch (“Murdoch”), Kimbal Musk (“Kimbal”),<sup>1</sup> JB Straubel (“Straubel”), and Kathleen Wilson-Thompson (“Wilson-Thompson”) (the “Individual Defendants”); and (ii) unjust enrichment against Defendant Musk.

The allegations of the Complaint are based on Plaintiffs’ knowledge as to themselves, the investigation of counsel, and on information and belief as to all other matters.

## **INTRODUCTION**

1. Could the CEO of Coca-Cola loyally start a competing soft-drink company on the side, then divert scarce ingredients from Coca-Cola to the startup? Could the CEO of Goldman Sachs loyally start a competing financial advisory company on the side, then hire away key bankers from Goldman Sachs to the startup? Could the board of either company loyally permit such conduct without doing *anything* about it? Of course not.

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<sup>1</sup> This Complaint refers to Kimbal Musk as “Kimbal” solely to distinguish him from his brother, Elon Musk. No disrespect is intended.

2. The notion that the CEO of a major, publicly-traded Delaware corporation could—with the evident approval of his board—start a competing company, and then divert talent and resources from his corporation to the startup, is preposterous. No special rules apply to Tesla or Musk.<sup>2</sup> Yet, at Tesla, the preposterous has become reality.

3. For years, Tesla and Musk have touted artificial intelligence (“AI”) as the key to Tesla’s future and represented that Tesla is, above all else, an AI company. In Musk’s own words, “*Tesla is an AI/robotics company that appears to many to be a car company[,]*”<sup>3</sup> and “*Tesla is the biggest AI project on earth.*”<sup>4</sup> Tesla’s CFO has represented that investments in “*AI-related technologies*” are Tesla’s “*single most important priority.*”

4. Prominent investors and analysts have accepted Tesla’s framing and consistently highlighted the importance of Tesla’s AI endeavors to the current and future value of Tesla as a whole. Cathie Wood identified success in the AI space

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<sup>2</sup> See *Guth v. Loft*, 5 A.2d 503, 515 (Del. 1939) (“A genius in his line he may be, but the law makes no distinction between the wrong doing genius and the one less endowed.”).

<sup>3</sup> Elon Musk (@elonmusk), X (Jan. 3, 2024 12:51am), <https://x.com/elonmusk/status/1742423298217033776>.

<sup>4</sup> Elon Musk (@elonmusk), X (Apr. 27, 2024 8:13pm), <https://x.com/elonmusk/status/1784375472887066653>.

as a *multi-trillion-dollar* opportunity for Tesla.<sup>5</sup> Adam Jonas stressed the importance of AI to Tesla and cautioned that “[a]ny change . . . that impedes Tesla’s ability to participate in the development of AI could be detrimental to the . . . investment thesis.”<sup>6</sup>

5. Meanwhile, Musk—CEO, controller, director, and “Technoking” of Tesla—started X.AI Corp. (“xAI”), a separate AI company, began diverting scarce talent and resources from Tesla to xAI, and raised billions of dollars for xAI while touting xAI’s access to Tesla’s AI-related data.

6. xAI touts a “focus[] on the development of advanced AI systems that are truthful, competent, and maximally beneficial for all of humanity” and a “mission . . . to understand the true nature of the universe.”<sup>7</sup> Every public indication is that it is a general-purpose AI research and development company with a broad focus necessarily overlapping with Tesla’s own pursuits. Given the unique dynamics of the burgeoning AI industry—including extraordinarily intense

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<sup>5</sup> Evie Liu, *Cathie Wood Thinks Nvidia Has More to Prove. Her Favorite AI Stocks—and Why She Still Loves Tesla*, BARRON’S (Apr. 11, 2024), <https://www.barrons.com/articles/ark-invest-cathie-wood-nvidia-tesla-stock-bitcoin-aa4a5f78>.

<sup>6</sup> Tim Higgins, *Tesla Was Once About Climate Change, Driverless Cars, AI. Now What?* WALL ST. J. (Feb. 10, 2024), <https://www.wsj.com/business/autos/tesla-has-long-been-a-hope-stock-but-what-are-investors-hoping-for-now-7031171f>.

<sup>7</sup> xAI, <https://x.ai/blog/series-b>.

competition for talent and resources—Tesla and xAI are clear competitors. Musk has acknowledged that the “*talent war for AI is the craziest talent war I’ve ever seen*”<sup>8</sup> and the scarcity of processors in the AI industry has been widely reported.<sup>9</sup>

7. Already, Musk has diverted scarce talent and resources from Tesla to xAI. Before establishing xAI, Musk represented that “[c]onvincing the best AI talent to join Tesla is the sole goal.”<sup>10</sup> After founding xAI, Musk hired away numerous key AI-focused employees from Tesla to xAI.<sup>11</sup> In response to a suggestion that a prominent AI researcher should join Tesla, Musk publicly responded that he should join xAI instead.<sup>12</sup> In the “*craziest talent war*” in a generation, Musk should be Tesla’s general; instead, his priority appears to be xAI.

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<sup>8</sup> Elon Musk (@elonmusk), X (Apr. 3, 2024 6:00pm), <https://x.com/elonmusk/status/1775644544853221599>.

<sup>9</sup> See, e.g., Paresh Dave, *Nvidia Chip Shortages Leave AI Startups Scrambling for Computing Power*, WIRED (Aug. 24, 2023), <https://www.wired.com/story/nvidia-chip-shortages-leave-ai-startups-scrambling-for-computing-power/>.

<sup>10</sup> Elon Musk (@elonmusk), X (Jul. 29, 2021 12:51am), <https://x.com/elonmusk/status/1420607874762518528>.

<sup>11</sup> Becky Peterson, *Musk’s xAI is Poaching Engineers From Tesla*, THE INFORMATION (Apr. 3, 2024), <https://www.theinformation.com/articles/musks-xai-is-poaching-engineers-from-tesla>.

<sup>12</sup> Elon Musk (@elonmusk), X (Dec. 9, 2023 4:19am), <https://x.com/elonmusk/status/1733416090439451114>.

8. Similarly, before establishing xAI, Musk stated that Tesla needed more Nvidia H100 GPUs than Nvidia had available for sale, a common problem in the AI industry. Musk stated during a July 2023 earnings call that Tesla would “*take the hardware as fast as Nvidia will deliver it to us*” and bemoaned Nvidia’s inability to “*deliver us enough GPUs.*” After Musk established xAI, however, he began personally directing Nvidia to redirect GPUs from Tesla to xAI and X. According to an internal Nvidia memo, Musk in December 2023 was “*prioritizing X H100 GPU cluster deployment at X versus Tesla by redirecting 12k of shipped H100 GPUs originally slated for Tesla to X instead[.]*”<sup>13</sup> As CNBC later explained, “By ordering Nvidia to let privately held X jump the line ahead of Tesla, Musk pushed back the automaker’s receipt of more than \$500 million in graphics processing units, or GPUs, by months, likely adding to delays in setting up the supercomputers Tesla says it needs to develop autonomous vehicles and humanoid robots.”<sup>14</sup>

9. These striking events are the result of a conflict that Musk has long understood. Musk previously cofounded and served as a director of OpenAI, a prominent AI company. In 2018, as Tesla increased its focus on AI, Musk attempted to cause Tesla to acquire OpenAI—thereby acknowledging Tesla has an

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<sup>13</sup> Lora Kolodny, *Elon Musk Ordered Nvidia to Ship Thousands of AI Chips Reserved for Tesla to X and xAI*, CNBC (June 4, 2024), <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

<sup>14</sup> *Id.*



interest in or expectancy in similar business opportunities and that AI is within Tesla's line of business. When that effort failed, Musk resigned from OpenAI and acknowledged that Tesla and OpenAI are competitors. Specifically, in early 2019, he acknowledged publicly that "*Tesla was competing for some of the same people as OpenAI[.]*"<sup>15</sup> OpenAI also acknowledged the conflict, stating upon Musk's departure: "*As Tesla continues to become more focused on AI, this will eliminate a potential future conflict for Elon.*"<sup>16</sup>

10. Much has changed since 2018. Musk's recent public statements suggest that he consciously founded xAI to build *outside of Tesla* AI-related products that he previously intended to build *inside of Tesla*. Specifically, in January 2024, Musk posted on X: "*I am uncomfortable growing Tesla to be a leader in AI & robotics without having ~25% voting control . . . . Unless that is the case, I would prefer to build products outside of Tesla.*"<sup>17</sup> At the time of that remarkable post, Musk beneficially owned approximately 21% of Tesla, including the options he received pursuant to a 2018 compensation plan. Shortly thereafter, this Court

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<sup>15</sup> Elon Musk (@elonmusk), X (Feb. 16, 2019 11:27pm), <https://x.com/elonmusk/status/1096989482094518273>.

<sup>16</sup> Fred Lambert, *Elon Musk leaves Open AI's board due to potential conflict with Tesla's own AI effort*, ELECTREK (Feb. 21, 2018), <https://electrek.co/2018/02/21/elon-musk-leaves-open-ai-tesla-ai-effort/>.

<sup>17</sup> Elon Musk (@elonmusk), X (Jan. 15, 2024 3:55pm), <https://x.com/elonmusk/status/1746999488252703098>.

rescinded Musk's 2018 compensation plan in *Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024), reducing his beneficial ownership to 13%.

11. Following *Tornetta*, Musk's desire to increase his voting power to 25% or greater in the near-term was effectively foreclosed. Musk responded by ramping up operations at xAI. In March 2024, xAI poached its most significant former Tesla employee, Ethan Knight, who had led Tesla's computer vision team. In May 2024, xAI announced that it had completed its Series B funding round, through which it raised \$6 billion at a post-money valuation of \$24 billion.

12. Through all of this, Musk's fellow directors on the Tesla board of directors (the "Board") have done nothing. The Board has allowed Musk—the CEO and largest stockholder of Tesla—to found and lead another AI company; to plunder resources from Tesla and divert them to xAI; and to create billions in AI-related value at a company other than Tesla. Consistent with its long history of obsequiousness to Musk, the Tesla Board has utterly failed to even *attempt* to meet its unyielding fiduciary duty to protect the interests of Tesla and its stockholders in the face of Musk's brazen disloyalty.

13. Plaintiffs bring this action to hold Musk and his fellow directors liable for their disloyalty and to recover for Tesla the value that Musk has, with the tacit approval of the Board, expropriated from it. The value that has been diverted from Tesla must be returned.

## PARTIES

14. **Plaintiff Cleveland Bakers and Teamsters Pension Fund** is, and has been at all relevant times, a beneficial owner of shares of Tesla common stock.

15. **Plaintiff Michael Giampietro** is, and has been at all relevant times, a beneficial owner of shares of Tesla common stock.

16. **Plaintiff Daniel Hazen** is, and has been at all relevant times, a beneficial owner of shares of Tesla common stock.

17. **Defendant Elon Musk** has served as a director of Tesla since 2004 and as Tesla's CEO since October 2008, naming himself "Technoking" in March 2021. Musk also served as the Chairman of Tesla's Board from 2004 until September 2018. Musk is Tesla's largest stockholder, owning roughly 13% of Tesla's common stock through the Elon Musk Revocable Trust (excluding options).

18. Musk is also Tesla's controller. Indeed, this Court found in *Tornetta* that Musk "wielded the maximum influence that a manager can wield over a company."<sup>18</sup> The *Tornetta* Court identified several "sources of influence" that supported a finding that Musk controlled Tesla.<sup>19</sup> These factors apply with equal

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<sup>18</sup> *Tornetta*, 310 A.3d at 501.

<sup>19</sup> *Id.*

force here. *First*, Musk remains Tesla’s single largest stockholder.<sup>20</sup> *Second*, Musk continues to exercise “managerial supremacy.”<sup>21</sup> Notably, in the wake of *Tornetta*, Musk managed to fully mobilize Tesla and the Board to support his plan to move Tesla to Texas and ask its stockholders to ratify his judicially rejected compensation package. *Third*, more than half of the Board remains beholden to Musk. *See* ¶¶103–137, *infra*.

19. Musk oversees at least six significant companies, including Tesla. Since May 2002, Musk has served as CEO, Chief Technology Officer and Chairman of Space Exploration Technologies Corporation (“SpaceX”), a private space exploration company. Musk also runs Neuralink (which aims to plant microchips in human brains), The Boring Company (a tunneling business), X (formerly Twitter), and xAI. Musk also served as Chairman of SolarCity Corporation (“SolarCity”) from July 2006 until Tesla acquired it in 2016.

20. **Defendant Robyn M. Denholm** has been a member of the Tesla Board since August 2014 and has served as the Chair of Tesla’s Board since November 2018. Denholm is also the Chair of the Audit Committee and the Disclosure Controls Committee, and serves as a member of Tesla’s Compensation Committee

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<sup>20</sup> Form DEF14A at 151 (April 29, 2024), [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15\\_def14a.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15_def14a.htm).

<sup>21</sup> *Tornetta*, 310 A.3d at 504.

and Nominating and Governance Committee. Prior to becoming the chairperson of Tesla, she served as the COO of Telstra Corporation Ltd. (“Telstra”), where in 2017 she earned a comparatively modest \$890,006 in total compensation. Denholm resigned from Telstra in connection with assuming the mantle of chairperson from Musk. Since January 2021, Denholm has been an operating partner of Blackbird Ventures, a venture capital firm. She is also the Inaugural Chair of the Technology Council of Australia.

21. **Defendant Kimbal Musk** is Musk’s brother and has been a member of the Tesla Board since 2004. Kimbal served as a Director of SpaceX since its founding in 2002 through January 2022.

22. **Defendant Ira Ehrenpreis** has been a member of the Tesla Board since May 2007 and is the Chair of Tesla’s Compensation Committee. Since 2014, Ehrenpreis has also been a Managing Partner and co-owner of venture capital firm DBL Partners, which he co-founded with fellow managing partner and co-owner Nancy Pfund (“Pfund”), and is a manager of DBL Partners Fund III (“DBL III”). Both Ehrenpreis and DBL III are investors in SpaceX. Ehrenpreis is an investor and member of the board of directors of Mapbox, Inc.

23. **Defendant Joe Gebbia** has been a member of the Tesla Board since 2022 and is a member of Tesla’s Audit Committee. Gebbia also co-founded Airbnb in 2008 and has served on Airbnb’s board of directors since 2009.

24. **Defendant Kathleen Wilson-Thompson** has been a member of the Tesla Board since December 2018. Wilson-Thompson is a member of Tesla's Nominating and Governance Committee, Compensation Committee, and Disclosure Controls Committee. From December 2014 to January 2021, she served as the Executive Vice President and Global Chief Human Resources Officer of Walgreens Boots Alliance, Inc. On information and belief, Wilson-Thompson does not have any employment other than service on other company boards.

25. **Defendant James Murdoch** has been a member of the Tesla Board since July 2017. Murdoch is also a member of Tesla's Nominating and Governance Committee, Audit Committee, and Disclosure Controls Committee. Since March 2019, Murdoch has also been the Chief Executive Officer of Lupa Systems, a private investment company that he founded.

26. **Defendant JB Straubel** has been a member of the Tesla Board since May 2023. Straubel co-founded the Company and served as Tesla's CTO from May 2005 to July 2019. Straubel also previously served on the board of SolarCity Corporation and as a member of its Nominating and Corporate Governance Committee from August 2006 until its acquisition by Tesla in November 2016.

27. The defendants identified in ¶¶17–26 are referred to collectively herein as the “Individual Defendants.” The Individual Defendants constituted the entirety of the Tesla Board at the time of the challenged conduct and continue to constitute

the entirety of the Tesla Board at present. They are also referred to collectively herein as the “Board.” The Individual Defendants, excluding Elon Musk, are referred to as the “Director Defendants.”

28. **Nominal Defendant Tesla, Inc.** is a Delaware corporation headquartered in Austin, Texas. Its stock trades on the NASDAQ Global Select Market under the ticker symbol “TSLA.” According to Musk, “Tesla is an AI/robotics company that appears to many to be a car company,”<sup>22</sup> and “the biggest AI project on earth.”<sup>23</sup> Tesla was founded in 2003, and the Company debuted its first product, the Roadster sports car, in 2008, followed by the Model S sedan in 2012, and the Model X SUV in 2015. It continues to design, develop, manufacture, and sell high-performance fully-electric vehicles and energy storage products. Tesla also produces three energy storage products—the Powerwall home battery, the Powerpack commercial-scale battery, and Megapack, for utility-scale installations—and describes itself as “the world’s first vertically-integrated sustainable energy company with the acquisition of SolarCity, the leading provider of solar power systems in the United States.” As described herein, Tesla has

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<sup>22</sup> Elon Musk (@elonmusk), X (Jan. 3, 2024 12:51am), <https://x.com/elonmusk/status/1742423298217033776>.

<sup>23</sup> Elon Musk (@elonmusk), X (Apr. 27, 2024 8:13pm), <https://x.com/elonmusk/status/1784375472887066653>.

increasingly focused on AI as a fundamental part of its business. For example, it is developing self-driving automobiles and a humanoid robot known as Optimus.

29. **Non-Party x.AI Corp.** is a Nevada corporation headquartered in San Francisco, California. xAI is a startup working in the area of AI and was founded by Musk in March 2023.

### **SUBSTANTIVE ALLEGATIONS**

#### **A. For Years, Musk and Tesla Consistently Tout AI As The Key To The Company's Future**

30. In February 2004, Musk became Tesla's largest stockholder through a funding round and joined the Company; he was named CEO in 2008. In its early years, Tesla was primarily focused on designing and manufacturing fully electric vehicles and electric vehicle powertrain components. Since its IPO in 2010, Tesla's stock has risen significantly, fueled by Musk's ambitions to build Tesla into a company focused on much more than just electric vehicles. During the years since its IPO, Tesla has expanded into solar energy systems, battery technology for buildings and homes, and AI technology—with a particular focus on AI-enabled autonomous vehicles.

31. In 2020, Tesla became the world's most valuable "automobile company" and the first to be valued at more than \$1 trillion. Telsa achieved this



outsized valuation because the Company’s investors treated it as a technology and AI company, not an automobile company.

32. Musk has had a longstanding interest in AI. In his biography of Musk, Walter Isaacson wrote that, in 2015, Musk:

realized that success in the field of artificial intelligence would come from having access to huge amounts of real-world data that the bots could learn from. One such gold mine, he realized at the time, was Tesla, which collected millions of frames of video each day of drivers handling different situations. ‘Probably Tesla will have more real-world data than any other company in the world,’ he said.<sup>24</sup>

33. For many years, Musk and Tesla have touted AI as the key to the Company’s future. In 2016, Musk described a future in which Tesla’s vehicles would be fully autonomous, evolving out of the Company’s Autopilot driver-assistance software—an endeavor that is only possible through sophisticated AI technology. Isaacson described a moment in March 2019, as Tesla was rapidly ramping up production and in “Production Hell,” when Musk was worried about the Company’s survival: “He needed to come up with a grand idea that would turn the narrative around and convince investors that Tesla would become the world’s most valuable car company.” That idea was full autonomy, which he demonstrated to the world on “Autonomy Day” in April 2019 with an autonomous Tesla that drove around Tesla’s headquarters, drove onto the highway, and made seven

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<sup>24</sup> Walter Isaacson, *Elon Musk*, 243 (Simon & Schuster, 2023) (“*Isaacson*”).

difficult turns. While the reception to Autonomy Day was mixed, Isaacson wrote, “[U]nderneath Musk’s hype and willful fantasy was a vision that he remained convinced would, like reusable rockets, someday transform our lives.”<sup>25</sup>

34. In Tesla’s 2019 10-K, filed on February 13, 2020, it began disclosing AI as a key component of the Company’s future:

We believe that a key factor in our success will be our Autopilot and FSD technologies that currently enable the driver-assistance features in our vehicles, and in which we are making significant strides through our proprietary and powerful FSD computer and remotely updateable *artificial intelligence* software. Ultimately, while we are subject to regulatory constraints over which we have no control, our goal is a fully autonomously-driven future that improves safety and provides our customers with convenience and additional income through participation in an autonomous Tesla ride-hailing network. This network, which will also include our own fleet of vehicles, will also allow us to access a new customer base even as modes of transportation evolve.<sup>26</sup>

Tesla has continued to tout its plans for an AI-based autonomous ride-hailing network (which it calls “Robotaxis”). The Airbnb-like service would allow Tesla owners to operate their vehicles as self-driving taxis when they are not personally using them, paying upfront or annual fees to the Company to access the Robotaxi software. AI would be essential to these plans.

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<sup>25</sup> *Id.* at 332–334.

<sup>26</sup>

Form 10-K at 13 (Feb. 13, 2020) [https://www.sec.gov/ix?doc=/Archives/edgar/data/0001318605/000156459020004475/tsla-10k\\_20191231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/0001318605/000156459020004475/tsla-10k_20191231.htm)

35. After a year of disappointing stock performance for Tesla, in April 2023, Musk doubled down on AI as the engine for Tesla’s growth. In an analyst call, Musk told investors that the Company’s future relied on AI software for autonomous driving, stating: “*We do believe we’re . . . laying the groundwork here, and that it’s better to ship a large number of cars at a lower margin, and, subsequently, harvest that margin in the future as we perfect autonomy.*” That July, Musk said, “*In the long-term, autonomy is going to just drive [sales] volume through the ceiling next level. And our Robotaxi products have quasi-infinite demand.*” Investors bought into that vision, with Tesla shares more than doubling in 2023. Internally, Musk said at a weekly Robotaxi meeting, “*This will be a historically mega-revolutionary product. It will transform everything. This is the product that makes Tesla a ten-trillion company. People will be talking about this moment in a hundred years.*”<sup>27</sup>

36. The Company’s SEC filings confirmed Tesla’s commitment to AI. In a section titled “Self-Driving and Artificial Intelligence,” Tesla’s 2022 10-K, filed on January 31, 2023, stated: “We are also applying our artificial intelligence learnings from self-driving technology to the field of robotics. For example, in 2022 we previewed Optimus, a robotic humanoid which is controlled by the same AI

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<sup>27</sup> *Isaacson*. at 503.

system.” The 10-K further stated: “*We are increasingly focused on products and services based on artificial intelligence, robotics and automation.*”<sup>28</sup>

37. Musk continued to link Tesla’s fortunes to AI throughout 2023. At Tesla’s annual general meeting in May, he stated:

I think Tesla’s going to play an important role in AI and AGI [artificial general intelligence], and I think I need to oversee that to make sure it’s good. That’s a thorny problem if there ever was one...Very few people, even in the AI community...appreciate just how much capability Tesla has in AI. It’s by far the most advanced real-world AI. There’s no one even close.

38. In 2023, at the World Artificial intelligence Conference in Shanghai, Tesla presented a prototype of Optimus, Tesla’s humanoid robot. Musk said that Tesla was working to develop Optimus using the technology behind its driverless cars, telling analysts in January 2024 that the project was “an extremely revolutionary product and something that I think has the potential to far exceed the value of everything else at Tesla combined.”

39. Over the last several years, Tesla has been building one of the world’s largest supercomputers, called “Dojo,” which will be used to process reams of video data from its vehicles to train AI systems for its cars and for the Optimus robot. In 2024, Tesla will spend \$10 billion on AI, including \$1 billion on Dojo. “Tesla will

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<sup>28</sup> Form 10-K at 32 (Jan. 31, 2020), <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001318605/000095017023001409/tsla-20221231.htm>.

spend more than that on Nvidia hardware this year,” Musk stated in January 2024. “The table stakes for being competitive in AI are at least several billion dollars per year at this point.”<sup>29</sup>

40. Tesla’s AI expenditures include substantial hardware purchases from Nvidia. In August 2023, Tesla engineer Tim Zaman revealed in a Tweet that Tesla would be launching a \$300 million AI computing cluster, which would employ 10,000 Nvidia H100 GPUs and be more powerful than the world’s third highest-performing supercomputer. “We’ll actually take the hardware as fast as Nvidia will deliver it to us,” Musk previously said. “If they could deliver us enough GPUs, we might not need Dojo, but they can’t because they’ve got so many customers.” An Oppenheimer analyst stated: “Tesla is significantly enhancing its computing capabilities to train its full self-driving technology faster,” a move that would accelerate its planned Robotaxi business.<sup>30</sup>

41. Musk explained on Tesla’s January 24, 2024 earnings call that the technologies developed for Tesla’s self-driving software—and the data collected by Teslas on the road—were translatable into other realms:

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<sup>29</sup> Elon Musk (@elonmusk), X (Jan. 26, 2024 4:39pm), <https://x.com/elonmusk/status/1750997027922567324>.

<sup>30</sup> Al Root, *Tesla’s New Supercomputer Accelerates Its Ambition to Be an AI Play Alongside Nvidia*, BARRON’S (Aug. 29, 2023), <https://www.barrons.com/articles/tesla-nvidia-stock-ai-computer-ev-self-driving-119dc165>.

And the technologies that we're—the AI technologies we developed for the car translate quite well to a humanoid robot because the car is just a robot on four wheels. Tesla is arguably already the biggest robot maker in the world. It's just a four-wheeled robot. So, Optimus is a robot with—a humanoid robot with arms and legs. It's by far the most sophisticated humanoid robot that's being developed anywhere in the world.

42. In April 2024, Musk announced an August 2024 launch of Tesla's long-gestating Robotaxi business, which will rely on Tesla's AI-based Full Self-Driving Technology. He also said he wanted to harness the AI computational power of Tesla vehicles when they are not on the road. "It would seem like a waste not to use it," he said, adding that this could become the biggest part of the automaker's business, like Amazon's web service, AWS.<sup>31</sup>

43. In addition to the statements above, Musk and others at Tesla have consistently emphasized, in analyst calls and elsewhere, that Tesla is as much an AI company as it is a car company:

- **April 26, 2021, earnings call:** "[R]ight now people think of Tesla as—a lot of people think Tesla is a car company, or perhaps an energy company. *I think long term people will think of Tesla as much as an AI robotics company as we are a car company or an energy company. I think we are developing one of the strongest hardware and software AI teams in the world.*"
- **August 19, 2021, Tesla AI Day:** "[W]hat we want to show today is that Tesla is much more than an electric car company, that *we have deep AI activity* in hardware, on the inference level, on the training

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<sup>31</sup> Todd Lassa, *Would You Loan Out Your Tesla Like an Airbnb?* AUTOWEEK (Apr. 24, 2024), <https://www.autoweek.com/news/a60593652/elon-musk-tesla-fsd-like-airbnb/>.

level, and basically, *I think we're, I think, arguably the leaders in real-world AI as it applies to real-world.*"

- **October 7, 2021, Tesla Annual General Meeting:** “And then AI Day, I think it was important to change the fundamental perception of Tesla because people did—*they sort of think of Tesla as a car company and yes, we made cars. But the AI part of Tesla was not well understood. Tesla is as much a software company as it is a hardware company and we also do the chips.*”
- **August 4, 2022, Tesla Annual General Meeting:** “And I definitely want people out there, channels of people who are working on AI to consider working at Tesla because I think *we're solving just a very important part of AI* and one that can ultimately save millions of lives and prevent tens of millions of serious injuries by driving just an order of magnitude safer than people.”
- **October 18, 2022, Tesla AI Day:** “We really wanted to show the depth and breadth of Tesla in artificial intelligence, computer hardware, robotics actuators, and try to really shift the perception of the company away from a lot of people think we're like just a car company or we make cool cars, whatever, but they don't have have—most people have no idea that *Tesla is arguably the leader in real world AI hardware and software and that we're building what is arguably the first—the most radical computer architecture since the Cray-1 supercomputer.*”
- **October 19, 2022, earnings call:** “Our goal with that AI Day was recruiting, and we're seeing a massive influx of world-class artificial intelligence engineer and scientist resumes. So, it generated a tremendous amount of interest from some of the best AI researchers in the world. *I can't emphasize the importance of this enough, because I think it finally has become clear to the smartest AI technologists in the world that Tesla is among the very best.*”
- **January 25, 2023, earnings call:** “I think something that still a lot of people out there don't quite appreciate is that Tesla – of course, I like Tesla as much a software company as a hardware company, but *Tesla is really one of the world's leading AI companies.* ... [W]e're seeing

just a lot of world-class AI talent join the company. There's also the long-term potential of Optimus, where we're able to use our expertise in electric motors and electronics, batteries and advanced manufacturing to be able to make a humanoid robot that is actually useful and can be made in high volume with exceptional capabilities because of the Autopilot AI that we take the—because the car is like a robot on four wheels and the Optimus is a robot on legs. But the—as we get closer and closer to solving real-world AI, and we don't see anyone even close to us in achieving this. ... *[T]his is the thing that has order of magnitude potential market cap improvement for Tesla.*"

- **March 1, 2023, Tesla Investor Day:** "So as we solve real world AI, I don't think there's anyone even close to Tesla on solving real world AI. That same computer and software goes into Optimus."
- **July 19, 2023, earnings call:** "So the success in AI endeavors is a function of talent, sort of unique data and computing resources, and we have outstanding capabilities [in] all three arenas. And I really just don't know how anyone could do what we're doing, even if they had our software and had our computer if they did not have the training data. ... *Tesla is clearly at the cutting edge of AI development.*"

Zachary Kirkhorn (former Chief Financial Officer): "*[T]he single most important priority is to ensure we are continuing to invest heavily in the core technologies that will drive the long-term value of the business. This includes increasing spending on AI-related technologies such as Full Self-Driving, Optimus and Dojo.*"






- **October 18, 2023, earnings call:** "We remain focused on three main objectives, which is the cost reductions of our products, investments in artificial intelligence and other growth projects like Optimus, and continued free cash flow generation. ... *We'll continue to invest significantly in AI development, as this is really the massive game changer. And I mean, success in this regard in the long term, I think, has the potential to make Tesla the most valuable company in the world by far....The Tesla AI team is, I think, one of the world's best, and I think it is actually by far the world's best when it comes to real-world AI. I'll say that again, Tesla has the best real-world AI team on earth, period, and it's getting better.*"



- **January 24, 2024, earnings call:** *“I think Tesla’s probably the most efficient company in the world for AI inference....I see a path to creating an artificial intelligence and robotics juggernaut of truly immense capability and power....[P]eople think of Tesla as a car company when they should be thinking of Tesla as an AI/robotics company.”*
- **April 23, 2024, earnings call:** *“I think [technology investor] Cathie Wood said it best like really we should be thought of as an AI robotics company. If you value Tesla just like an auto company, you would just have to—fundamentally, it’s just the wrong framework.”*



44. Musk has also repeatedly posted about Tesla’s position as a leading AI company on X:



 **Elon Musk**    


@elonmusk

As Cathie Wood states, Tesla is the biggest AI project on Earth

 **Alex**  @alex\_avoigt · Apr 26

Cathie Wood 9 days ago: "Who is going to take the lions share of this market and its a winner takes most market"

"We believe that that the entire opportunity is going to generate **revenues of 8 to 10 Trillion Dollars** in 2030. Half of which will go to platforms like Tesla....  
[Show more](#)



8:13 PM · Apr 27, 2024 · **13.5M** Views

 **Elon Musk**    

@elonmusk

He has the wrong frame of reference. Tesla is an AI/robotics company.

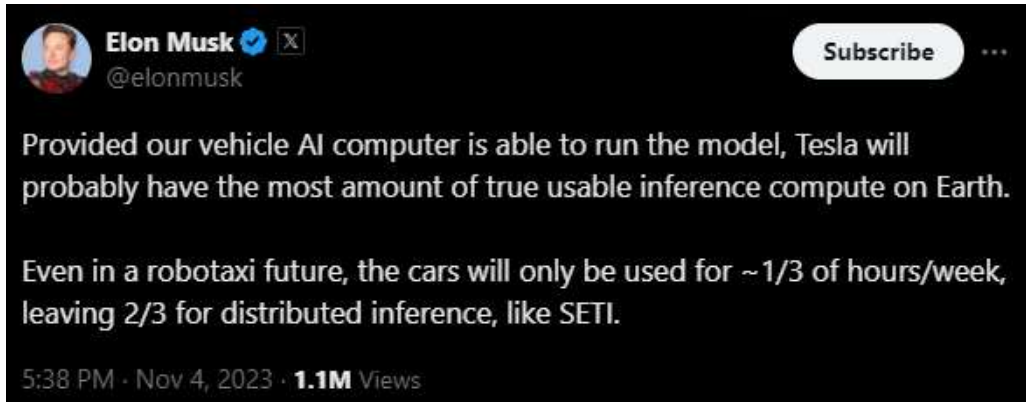
9:41 PM · Dec 27, 2023 · **645.9K** Views

 **Elon Musk**    

@elonmusk

Tesla is an AI/robotics and sustainable energy company

1:22 PM · Apr 6, 2024 · **702.9K** Views



**B. Musk Attempts to Merge OpenAI and Tesla, Then Resigns From OpenAI Because Of The Conflict Created By His Simultaneous Stewardship of Two AI Companies**

45. Musk’s history with the prominent AI company OpenAI demonstrates his recognition that Tesla’s AI efforts and ambitions create a conflict precluding him from simultaneously leading a separate general-purpose AI company.

46. In 2015, Musk, along with other prominent Silicon Valley investors and technology companies, established OpenAI as an AI research center to develop “digital intelligence” to benefit humanity. Musk and his co-investors purportedly planned to commit \$1 billion to the project long term, with OpenAI set up as a nonprofit that would “open source” all its research (*i.e.* share its underlying software

code with the public). In order to attract engineers, Musk unilaterally decided OpenAI should offer recruits equity in Tesla and SpaceX.<sup>32</sup>

47. As Tesla increased its own focus on AI, Musk’s simultaneous involvement with OpenAI created a clear conflict. Musk initially attempted to resolve his conflict by causing Tesla to acquire OpenAI—notably demonstrating his understanding that a general-purpose AI research and development company like OpenAI was within the scope of Tesla’s business ambitions and that Tesla had the capability to acquire and operate such a business. Musk’s fellow OpenAI directors, however, rejected his proposal for a merger between OpenAI and Tesla.<sup>33</sup>

48. With his proposed acquisition blocked, Musk resigned from OpenAI’s board in February 2018, recognizing the conflict inherent in his dual roles at Tesla and OpenAI.<sup>34</sup> Indeed, by that time, Tesla was already building its own AI project, Autopilot, and Musk had poached a key OpenAI employee. Sam Altman, OpenAI’s

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<sup>32</sup> Berber Jin et al., *How the Bromance Between Elon Musk and Sam Altman Turned Toxic*, WALL ST. J. (Mar. 6, 2024), <https://www.wsj.com/tech/ai/elon-musk-sam-altman-openai-lawsuit-8e6f1897>.

<sup>33</sup> See Cade Metz, *OpenAI Says Elon Musk Tried to Merge It With Tesla*, N.Y. TIMES (Mar. 5, 2024), <https://www.nytimes.com/2024/03/05/technology/openai-elon-musk-tesla.html>.

<sup>34</sup> Cade Metz et al., *Elon Musk Ramps Up A.I. Efforts, Even as He Warns of Dangers*, N.Y. TIMES (Apr. 27, 2023), <https://www.nytimes.com/2023/04/27/technology/elon-musk-ai-openai.html>.

CEO recalled: “*We realized that Tesla was going to become an AI company and would be competing for the same talent as OpenAI.*”<sup>35</sup>

49. Upon Musk’s resignation from the OpenAI board in February 2018, OpenAI published a blog post stating: “*As Tesla continues to become more focused on AI, this will eliminate a potential future conflict for Elon.*”<sup>36</sup>

50. In February 2019, Musk acknowledged that he left partly because “*Tesla was competing for some of the same people as OpenAI[.]*”<sup>37</sup>

**C. Musk Becomes “Uncomfortable Growing Tesla To Be a Leader in AI & Robotics Without Having ~25% Voting Control” and Develops a “Prefer[ence] to Build [AI] Products Outside of Tesla.”**

51. Musk’s history with OpenAI demonstrates that, at least as of 2018, he viewed Tesla as his priority and was prepared to resolve potential conflicts of interest created by his other business endeavors in favor of Tesla. As Musk’s equity ownership and voting power in Tesla declined, however, his priorities changed.

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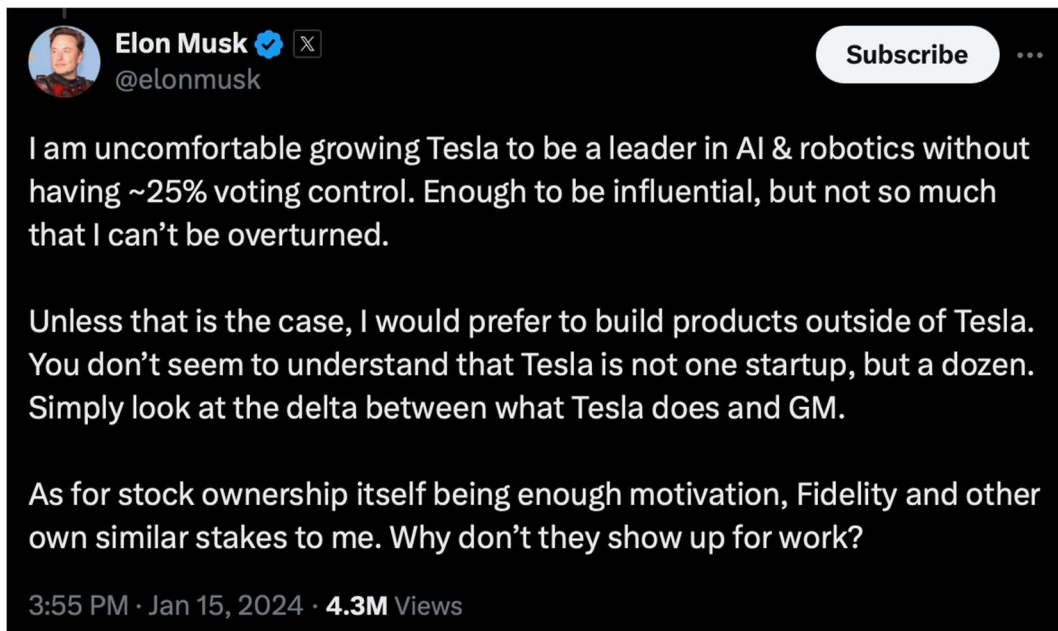
<sup>35</sup> Isaacson, 244. After OpenAI accepted a major investment from Microsoft, Musk called AI “the most powerful tool that mankind has ever created” and lamented that it was “now in the hands of a ruthless corporate monopoly.” *Id.* at 602.

<sup>36</sup> Fred Lambert, *Elon Musk leaves Open AI’s board due to potential conflict with Tesla’s own AI effort*, ELECTREK (Feb. 21, 2018), <https://electrek.co/2018/02/21/elon-musk-leaves-open-ai-tesla-ai-effort/>.

<sup>37</sup> Elon Musk (@elonmusk), X (Feb. 16, 2019 11:27pm), <https://x.com/elonmusk/status/1096989482094518273>.

52. As of 2018, Musk directly held approximately 21% of Tesla’s stock and voting power. During 2021 and 2022, however, Musk sold more than \$39 billion worth of his Tesla shares to cover taxes and help fund his purchase of Twitter. As a result, his direct holdings in Tesla (excluding options) fell to 13%.

53. Musk’s diminished interest in Tesla frustrated him and apparently affected his commitment to develop AI products inside of Tesla. Musk made this clear on January 15, 2024, when he made the following remarkable post on X:



54. In other words, Musk publicly threatened that he would divert corporate opportunities away from Tesla unless Tesla gave him substantial additional equity. The market clearly recognized this threat.

55. A *Wall Street Journal* columnist stated, “In essence, he wants to get paid a second time for AI promises that he’s been selling to Tesla investors for years

and that are already embodied in its share price. . . . [H]e wants to be compensated all over again for the magic beans he has yet to deliver.”<sup>38</sup>

56. Tesla’s stock price is closely tied to AI and the Company’s autonomous driving ambitions. In January 2024, Morgan Stanley analyst Adam Jonas attributed 22% of his price target for Tesla’s stock to the future value created by an autonomous car fleet of about 220,000 vehicles by 2030. But after Musk’s comment on X, he pulled back his expectations, stating, “Tesla is the only truly AI-enabling stock under our coverage. *Any change of organizational or legal structure that impedes Tesla’s ability to participate in the development of AI could be detrimental to the . . . investment thesis.*”<sup>39</sup> Other analysts agree that Tesla’s software and AI capabilities are key to the “long-term bull thesis” for the company.<sup>40</sup>

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<sup>38</sup> Holman W. Jenkins, Jr., *Lovable Elon Pulls a Fast One*, WALL ST. J. (Jan. 19, 2024), <https://www.wsj.com/articles/lovable-elon-pulls-a-fast-one-compensation-artificial-intelligence-x-post-bec08f67>.

<sup>39</sup> Tim Higgins, *Tesla Was Once About Climate Change, Driverless Cars, AI. Now What?*, WALL ST. J. (Feb. 10, 2024), <https://www.wsj.com/business/autos/tesla-has-long-been-a-hope-stock-but-what-are-investors-hoping-for-now-7031171f>.

<sup>40</sup> Alan Ohnsman, *Elon Musk’s Plan to Tout Tesla AI Comes As Tougher Scrutiny of the Company Looms*, FORBES (Aug. 18, 2021), <https://www.forbes.com/sites/alanohnsman/2021/08/18/elon-musks-plan-to-tout-tesla-ai-comes-as-tougher-scrutiny-of-the-company-looms/>.

57. The post irked several longstanding Tesla investors, including the company’s largest retail shareholder, Leo Koguan, and investment manager Ross Gerber of Gerber Kawasaki, who characterized Musk’s demand as “blackmail.”<sup>41</sup> In the days following the tweet, Tesla’s stock price fell approximately 3%.

**D. Acting On His Preference to “Build [AI] Products Outside of Tesla,” Musk Finds xAI and Begins Redirecting Scarce AI Resources From Tesla to xAI**

58. Musk’s January 2024 post on X was not an idle threat. By the time of that post, consistent with his newfound discomfort with “growing Tesla to be a leader in AI,” Musk had *already* founded a new startup AI company that would enable him to “build [AI] products outside of Tesla.” Specifically, in March 2023, Musk founded xAI as a separate independent entity.<sup>42</sup>

59. Musk admitted he was inspired to establish that venture shortly after the launches of Microsoft-backed OpenAI’s ChatGPT-4 and Google’s Bard chatbot products, which set the stage for a two-way “competition between OpenAI-

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<sup>41</sup> Lora Kolodny, *Elon Musk ordered Nvidia to ship thousands of AI chips reserved to X and xAI*, CNBC (Jun. 4, 2024), <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

<sup>42</sup> Madhumita Murgia et al., *Elon Musk Plans Artificial Intelligence Start-Up to Rival OpenAI*, FIN. TIMES (Apr. 14, 2023), <https://www.ft.com/content/2a96995b-c799-4281-8b60-b235e84ae4>.



Microsoft and DeepMind-Google to create products that could chat with humans in a natural way and perform an endless array of text-based intellectual tasks.”<sup>43</sup>

60. That worried Musk. He did not trust Microsoft and Google to nurture products free of “political[] indoctrinat[ion]” and infection from the “woke mind virus.”<sup>44</sup> He also worried that “self-learning AI systems might turn hostile to the human species.”<sup>45</sup> He determined that “[t]he two-way competition between OpenAI and Google needed . . . a third gladiator, one that would focus on AI safety and preserving humanity.”<sup>46</sup> Musk explained to Isaacson that focusing on xAI was among the best uses of his time:

With AI coming around, I’m sort of wondering whether it’s worth spending that much time thinking about Twitter. Sure, I could probably make it the biggest financial institution in the world. But I have only so many brain cycles and hours in the day. I mean, it’s not like I need to be richer or something. So what should my time be spent on? Getting Starship launched. Getting to Mars is now far more pressing. Also, I need to focus on making AI safe. That’s why I’m starting an AI company.<sup>47</sup>

61. That xAI was founded as a direct response to OpenAI’s success, and with the express intent of competing with OpenAI, was significant. Musk had

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<sup>43</sup> Isaacson at 601.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Musk quoted in Isaacson, at 604–05.

previously recognized that his simultaneous service at the helm of Tesla and OpenAI created a conflict. Now, he was content to lead what amounted to an OpenAI clone notwithstanding his duties to Tesla. What changed? Musk’s January 2024 post on X resolves any mystery: based on his own unique personal interests, he had become “uncomfortable growing Tesla to be a leader in AI” and developed a “prefer[ence] to build [AI] products outside of Tesla.”

62. At the time of its founding, Musk was xAI’s CEO and sole initial director; thereafter, he quickly began recruiting other investors and engineers.<sup>48</sup> Musk claimed he needed to establish xAI as a separate company because the AI “frenzy” made recruiting a challenge and, according to Musk, “[i]t w[ould] be easier to get [AI engineers] if they c[ould] become founders of a new company and get equity in it.”<sup>49</sup> According to the *Financial Times*, Musk had already secured thousands of high-powered GPU processors from Nvidia that were required to build

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<sup>48</sup> Madhumita Murgia *et al.*, *Elon Musk Plans Artificial Intelligence Start-Up to Rival OpenAI*, FIN. TIMES (Apr. 14, 2023), <https://www.ft.com/content/2a96995b-c799-4281-8b60-b235e84aefe4>. By that point he was now running six companies simultaneously—“three times as many as Steve Jobs (Apple, Pixar) at his peak,” per Isaacson. Isaacson at 605.

<sup>49</sup> Isaacson at 605.

out AI capabilities and intended to “tap Tesla for computing resources.”<sup>50</sup> Musk also publicly confirmed that both X and Tesla were also buying GPU processors.<sup>51</sup> Nvidia’s processors are generally in short supply and companies compete fiercely to secure deliveries.<sup>52</sup> Thus, from even before its inception, xAI (and X) has been a direct competitor with Tesla.

63. Musk knew that “he was starting off way behind OpenAI in creating a chatbot that could give natural-language responses to questions[.]” “But Tesla’s work on self-driving cars and Optimus the robot put it way ahead in creating the type of AI needed to navigate in the physical world. This meant that his engineers were actually ahead of OpenAI in creating full-fledged artificial general intelligence, which requires both abilities.”<sup>53</sup> These were Tesla’s engineers—not xAI’s—yet Musk treated them as one and the same. On information and belief, xAI is using both Tesla’s engineering and data to bridge the gap with its competitors.

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<sup>50</sup> Madhumita Murgia *et al.*, *Elon Musk Plans Artificial Intelligence Start-Up to Rival OpenAI*, FIN. TIMES (Apr. 14, 2023), <https://www.ft.com/content/2a96995b-c799-4281-8b60-b235e84aefe4>.

<sup>51</sup> *Id.*

<sup>52</sup> Paresh Dave, *Nvidia Chip Shortages Leave AI Startups Scrambling for Computing Power*, WIRED (Aug. 24, 2023), <https://www.wired.com/story/nvidia-chip-shortages-leave-ai-startups-scrambling-for-computing-power/>.

<sup>53</sup> Isaacson at 605.

Had Musk not improperly diverted Tesla resources to xAI, it would have taken years before xAI would launch its first chatbot—not mere months.

64. Development of AI depends on data, and Musk has two sources of data at his disposal—X and Tesla.<sup>54</sup> Tesla’s “data trove” was “160 billion frames per day of video that Tesla received and processed from the cameras on its cars. This data was different from the text-based documents that informed chatbots. It was video data of humans navigating in real-world situations. It could help create AI for physical robots, not just text-generating chatbots.”<sup>55</sup>

65. Tesla’s AI technology and related data were uniquely valuable and distinguished it from its competitors. Indeed, “[t]he holy grail of artificial general intelligence was building machines that could operate like humans in physical spaces, such as factories and offices and on the surface of Mars, not just wow us with disembodied chatting. Tesla and Twitter together could provide the data sets and the processing capability for both approaches: teaching machines to navigate in physical space and to answer questions in natural language.”<sup>56</sup>

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<sup>54</sup> *Id.* at 602.

<sup>55</sup> *Id.* at 603.

<sup>56</sup> *Id.*

66. “Tesla’s real-world AI is underrated,” Musk told Isaacson. “Imagine if Tesla and OpenAI had to swap tasks. They would have to make Self-Driving, and we would have to make large language-model chatbots. Who wins? We do.”<sup>57</sup>

67. Musk publicly launched xAI in July 2023 with eleven engineers under his leadership.<sup>58</sup> Musk poached one, Ross Nordeen, directly from Tesla, where he was a technical program manager in the supercomputing and machine learning division.<sup>59</sup> At the time, Musk stated xAI’s “current legal department is 0.”<sup>60</sup>

68. According to its initial website, xAI had the purported mission “to understand the true nature of the universe” and would work closely with both Tesla

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<sup>57</sup> *Id.* at 605.

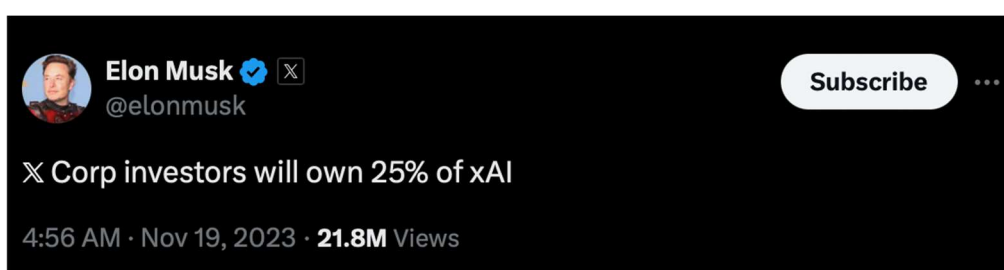
<sup>58</sup> Anirban Ghoshal, *Elon Musk Launches xAI to Take on ChatGPT-maker OpenAI*, COMPUTERWORLD (July 13, 2023), <https://www.computerworld.com/article/1631425/elon-musk-launches-xai-to-take-on-chatgpt-maker-openai.html>.

<sup>59</sup> Sissi Cao, *Elon Musk Announces xAI: Who’s On the 12-Man Founding Team?*, OBSERVER (July 12, 2023), <https://observer.com/2023/07/elon-musk-launches-xai/> It was not the first time Musk ransacked Telsa for engineering talent. He detailed more than fifty Tesla engineers from the assisted driving program to Twitter soon after he acquired it in 2022. Victor Tangermann, *Elon Musk Pulling Engineers From Tesla Autopilot to Work on Twitter*, FUTURISM (Nov. 1, 2022), <https://futurism.com/elon-musk-engineers-tesla-autopilot-twitter>; *Tornetta*, 310 A.3d at 506. “Similarly, in 2020, Musk directed Tesla management to send Tesla’s ‘smartest micro grid designer [ ] with a bunch of Powerpacks to [SpaceX][.]’” *Id.* (alterations in original).

<sup>60</sup> Ben Schreckinger, *Elon Musk’s Liberal-Trolling AI Plan Has a Core Audience*, POLITICO (July 17, 2023), <https://www.politico.com/news/2023/07/17/ai-musk-chatgpt-xai-00106672>.

and X.<sup>61</sup> xAI’s current website states that it is “working on building artificial intelligence to accelerate human scientific discovery. We are guided by our mission to advance our collective understanding of the universe.”<sup>62</sup>

69. In November 2023, xAI launched Grok, its first generative AI chatbot and offered it to certain X users.<sup>63</sup> Around the same time, Musk announced that X investors, not Tesla investors, will own 25% of xAI:



70. The following month, December 2023, Musk ordered Nvidia to redirect a swath of AI processors initially earmarked for Tesla to X and xAI, kneecapping Tesla’s ability to advance in AI in favor of his closely held company.

71. According to an internal Nvidia memo, “Elon [was] prioritizing X H100 GPU cluster deployment at X versus Tesla by redirecting 12k of shipped

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<sup>61</sup> Anirban Ghoshal, *Elon Musk Launches xAI to Take on ChatGPT-maker OpenAI*, COMPUTERWORLD (July 13, 2023), <https://www.computerworld.com/article/1631425/elon-musk-launches-xai-to-take-on-chatgpt-maker-openai.html>.

<sup>62</sup> X.ai, <https://x.ai/about>.

<sup>63</sup> Paul Hill, *Elon Musk Gives a Glimpse at xAI’s Grok Chatbot*, NEOWIN (Nov. 4, 2023), <https://www.neowin.net/news/elon-musk-gives-a-glimpse-at-xais-grok-chatbot/>.

H100 GPUs originally slated for Tesla to X instead .... In exchange, original X orders of 12k H100 slated for Jan and June to be redirected to Tesla.”<sup>64</sup>

72. As CNBC later explained, “By ordering Nvidia to let privately held X jump the line ahead of Tesla, Musk pushed back the automaker’s receipt of more than \$500 million in graphics processing units, or GPUs, by months, likely adding to delays in setting up the supercomputers Tesla says it needs to develop autonomous vehicles and humanoid robots.”<sup>65</sup> A former Tesla supply chain analyst told CNBC that the redirected shipment was “extreme, given the scarcity of Nvidia’s technology.”<sup>66</sup> For his part, Musk dubiously claimed in a post on X following the publication of the CNBC report that, contrary to his prior public representations about Tesla’s appetite for Nvidia hardware, “Tesla had no place to send the Nvidia chips to turn them on, so they would have just sat in a warehouse.”<sup>67</sup>

73. All the while, despite xAI’s December 5, 2023 disclosure in an SEC filing that it had already raised \$135 million from investors and was seeking to raise

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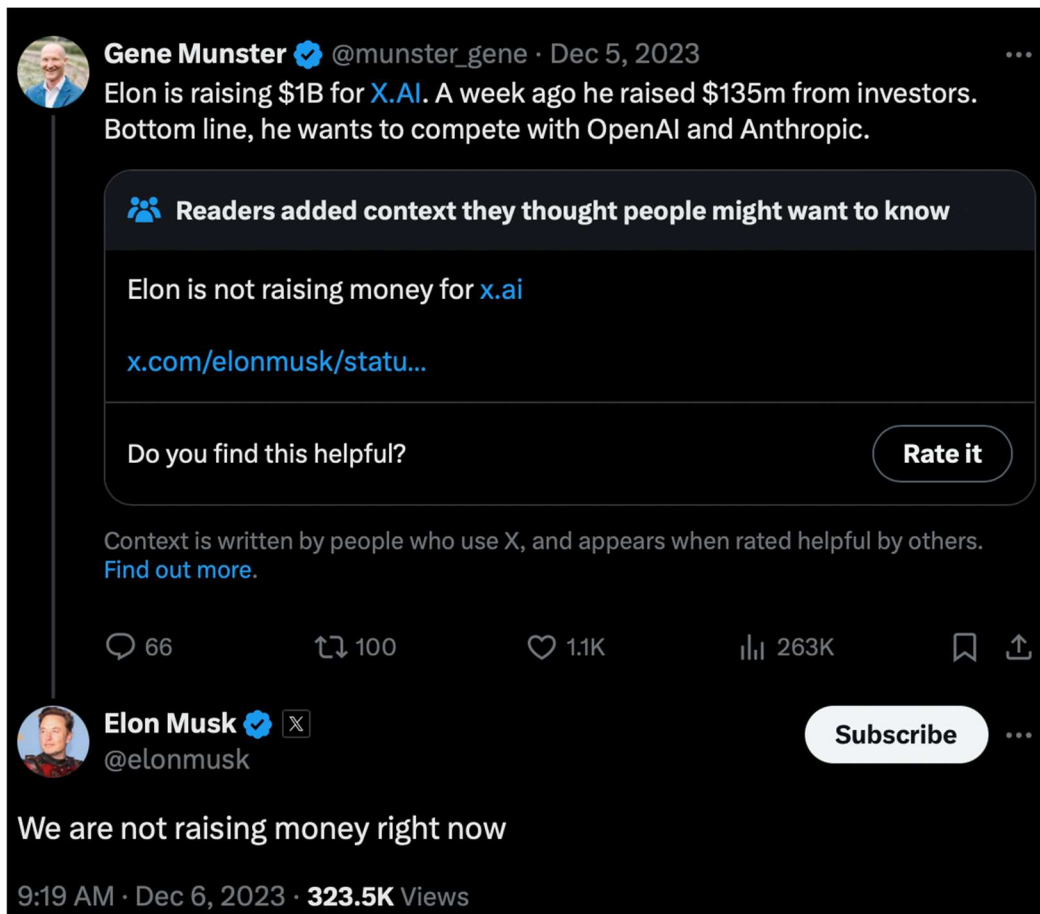
<sup>64</sup> Lora Kolodny, *Elon Musk Ordered Nvidia to Ship Thousands of AI Chips Reserved for Tesla to X and xAI*, CNBC (June 4, 2024), <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Elon Musk (@elonmusk), X (June 4, 2024 11:03am), <https://x.com/elonmusk/status/1798007748728365503>.

a total of \$1 billion,<sup>68</sup> Musk claimed the next day that xAI was not raising money “right now”:



74. On December 5, 2023, after an X user posted an article reporting that OpenAI co-founder Ilya Suskever had become “invisible at the company, with his

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<sup>68</sup> X.ai Corp., Notice of Exempt Offering of Securities (Form D) (Dec. 5, 2023), [https://www.sec.gov/Archives/edgar/data/2002695/000200269523000002/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/2002695/000200269523000002/xslFormDX01/primary_doc.xml).



future uncertain,” and suggested that he “come work at Tesla,” Musk replied, “Or xAI,” suggesting his preferred destination for AI talent.<sup>69</sup>

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<sup>69</sup> Elon Musk (@elonmusk), X (Dec. 9, 2023 4:19am), <https://x.com/elonmusk/status/1733416090439451114>.



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Ilya should come work at Tesla!

# OpenAI cofounder Ilya Sutskever has become invisible at the company, with his future uncertain, insiders say

Kali Hays, Ashley Stewart, Darius Rafieyan, and Shona Ghosh  
Dec 8, 2023, 8:38 AM PST



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53



49



997



22



Post your reply

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Elon Musk  
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139

107

1.7K

71K

75. On January 6, 2024, in response to news reports, Musk again publicly proclaimed that “xAI is not raising capital and I have had no conversations with anyone in this regard.”<sup>70</sup>

**E. After This Court Rescinds Musk’s Pay Package and Reduces His Stake in Tesla, Musk Accelerates the Growth of xAI, Raising Billions of Dollars and Poaching at Least *Eleven* Employees From Tesla**

76. On January 30, 2024, the Court of Chancery issued a post-trial opinion in *Tornetta v. Musk*, in which it held that Musk’s 2018 compensation package was unfair to Tesla and ordered that it be rescinded.<sup>71</sup> Without the rescinded options, Musk’s beneficial ownership of Tesla dropped from approximately 21% to approximately 13%. Musk, therefore, no longer had close to the voting power over Tesla that he asserted he needed in order to be comfortable growing Tesla into an AI leader. After the *Tornetta* ruling, Musk accelerated his efforts to grow xAI.

77. In March 2024, Musk began discussions with the City of Memphis to build a supercomputer there to support xAI’s operations.<sup>72</sup> Later that month, xAI announced the introduction of Grok-1.5, xAI’s latest AI model capable of long

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<sup>70</sup> Elon Musk (@elonmusk), X (Jan. 26, 2024 4:33pm), <https://x.com/elonmusk/status/1750995501560807465>.

<sup>71</sup> 310 A.3d at 445.

<sup>72</sup> Meghan Bobrowsky & Berber Jin, *Elon Musk’s xAI Plans to Build Supercomputer in Memphis*, WALL ST. J. (June 5, 2024), <https://www.wsj.com/tech/ai/elon-musks-xai-plans-to-build-supercomputer-in-memphis-ecee78fb>.

context understanding and advanced reasoning.<sup>73</sup> On April 12, 2024, xAI announced the introduction of Grok-1.5V, a multimodal model that processes visual information in addition to text.<sup>74</sup>

78. Meanwhile, xAI pillaged talent from Tesla. xAI currently has at least eleven employees who joined directly from Tesla. The most significant—Ethan Knight, who led Tesla’s computer vision team—was hired in March 2024, when he became the “third Tesla engineer to leave the car company for xAI, the startup’s website shows.”<sup>75</sup> Musk claimed that “Ethan was going to join OpenAI ... so it was either xAI or them.”<sup>76</sup> But he did not explain why Tesla could not persuade Knight to stay, or why xAI was not a part of Tesla to begin with. When noted “reply guy” Sawyer Merritt referred to Knight as Tesla’s “computer vision chief,” Musk was determined to diminish the import of the move, posting that “Ethan is very talented, but ‘vision chief’ would be overstating things.”<sup>77</sup> Shortly after that

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<sup>73</sup> X.ai, <https://x.ai/blog/grok-1.5>.

<sup>74</sup> X.ai, <https://x.ai/blog/grok-1.5v>.

<sup>75</sup> Becky Peterson, *Musk’s xAI is Poaching Engineers From Tesla*, THE INFORMATION (Apr. 3, 2024), <https://www.theinformation.com/articles/musks-xai-is-poaching-engineers-from-tesla>.

<sup>76</sup> Noor Al-Sibai, *Elon Musk is Poaching Tesla Engineers for XAI. Wait, What?*, FUTURISM (Apr. 5, 2024), <https://futurism.com/the-byte/elon-musk-poaching-tesla-xai>.

<sup>77</sup> Elon Musk (@elonmusk), X (Apr. 3, 2024 6:00pm), <https://x.com/elonmusk/status/1775644544853221599>.

episode, in an apparent effort to obscure the extent to which Tesla AI employees were being diverted to xAI, xAI dropped the section of its website listing its technical employees.

79. On Tesla’s Q1 2024 earnings call, held April 23, 2024, Musk told investors that Tesla planned to increase the number of active Nvidia H100S GPUs from 35,000 to 85,000, and posted on X that Tesla would spend \$10 billion through 2024 on “combined training and inference AI.”<sup>78</sup> But an internal Nvidia email observed that Musk’s earnings-call comment “conflicts with bookings,” and that his X post “conflicts [with] bookings and FY 2025 forecasts.”<sup>79</sup>

80. On May 18, 2024, Musk again threatened Tesla and its stockholders by confirming that he would only build an AI and robotics business within Tesla if Tesla gave him at least 25% voting power:

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<sup>78</sup> Tesla, Q1 2024 Earnings Call Transcript, <https://www.fool.com/earnings/call-transcripts/2024/04/23/tesla-tsla-q1-2024-earnings-call-transcript/>.

<sup>79</sup> Lora Kolodny, *Elon Musk Ordered Nvidia to Ship Thousands of AI Chips Reserved for Tesla to X and xAI*, CNBC (June 4, 2024), <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.



81. This post also confirmed that Tesla has the capability to operate an AI business, that AI and robotics ventures are within Tesla’s line of business, and that Tesla has an interest and expectancy in the opportunity.

82. Nonetheless, in May 2024, xAI raised \$6 billion in a Series B funding round that valued xAI at \$24 billion.<sup>80</sup> Investors included, among others, Valor

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<sup>80</sup> Eric Revell, *Elon Musk’s xAI Gets \$6B in New Funding and Announces Valuation*, FOXBUSINESS (May 27, 2024), <https://www.foxbusiness.com/technology/elon-musks-xai-gets-6-billion-new-funding-announces-valuation>.

Equity Partners, Vy Capital, Andreessen Horowitz, Sequoia Capital, Fidelity Management & Research Company, Prince Alwaleed Bin Talal, and Kingdom Holding.<sup>81</sup> Musk himself personally invested \$750 million and X invested \$250 million in computing resources.<sup>82</sup> Although xAI appears to have provided equity to Musk-controlled X for its in-kind contributions, on information and belief, xAI has not provided Tesla any equity for its own significant contributions to the company.

83. Reflecting the immense investment interest in both the AI industry and in Musk himself, Musk and xAI originally aimed to raise only \$3 billion in this financing round at a targeted \$18 billion valuation.<sup>83</sup> But “strong demand” allowed Musk to double his original goal at a 33% higher valuation.<sup>84</sup>

84. A pitch deck to potential investors in the Series B round stated that xAI intended to harvest data from X and Tesla to help xAI catch up to AI companies

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<sup>81</sup> X.ai, <https://x.ai/blog/series-b>. Notably, many of these same investors—including Vy Capital, Andreessen Horowitz, Sequoia Capital, Fidelity, and Prince Alwaleed Bin Talal—were also investors in Musk’s ill-fated acquisition of Twitter in 2022. Offering them the opportunity to invest in xAI helped make up for the losses from Twitter.

<sup>82</sup> Berber Jin *et al.*, *Elon Musk’s xAI Valued at \$24 Billion After Latest Fundraising Round*, WALL ST. J (May 27, 2024), [https://www.wsj.com/tech/ai/elon-musks-xai-will-raise-6-billion-in-latest-fundraising-round-fcdd722d?mod=article\\_inline](https://www.wsj.com/tech/ai/elon-musks-xai-will-raise-6-billion-in-latest-fundraising-round-fcdd722d?mod=article_inline).

<sup>83</sup> Id.

<sup>84</sup> Id.

OpenAI and Anthropic.<sup>85</sup> X would provide data from social media users, and Tesla would provide video data from its cars.<sup>86</sup> As discussed herein, Musk has repeatedly lauded the value of the base data set of information currently owned by Tesla for AI products.

85. It is apparent that Musk has pitched prospective investors in xAI partly by exploiting information owned by Tesla. On information and belief, Musk has already or intends to have xAI harvest data from Tesla without appropriately compensating Tesla even though X has already been provided xAI equity for its data contributions. None of this would be necessary if Musk properly created xAI as a subsidiary of Tesla.

86. In its announcement of the Series B funding, xAI made clear that it intended to significantly grow its product offerings and work force:

xAI will continue on this steep trajectory of progress over the coming months, with multiple exciting technology updates and products soon to be announced. The funds from the round will be used to take xAI's first products to market, build advanced infrastructure, and accelerate the research and development of future technologies.

xAI is primarily focused on the development of advanced AI systems that are truthful, competent, and maximally beneficial for all of humanity. The company's mission is to understand the true nature of the universe.

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<sup>85</sup> Kia Kokalitcheva, *Elon's AI Venture Being Sold as Part of a "Muskonomy,"* AXIOS (May 18, 2024), <https://www.axios.com/2024/05/18/elon-musk-xai-fundraising>.

<sup>86</sup> *Id.*



xAI is hiring for numerous roles and seeks talented individuals ready to join a small team focused on making a meaningful impact on the future of humanity. Those interested can apply today at [x.ai/careers](https://x.ai/careers).<sup>87</sup>

87. Investors in the funding round were aware that xAI was currently behind its rivals and would have to spend billions of dollars on chips and infrastructure to catch up, further indicating that xAI will continue to raise money and grow.<sup>88</sup>

88. xAI moved quickly to begin deploying its new capital. In June 2024, Ted Townsend, the President of Memphis’s Chamber of Commerce, announced that xAI will build a supercomputer in the city.<sup>89</sup>

**F. The Board Permits Musk to Create and Grow xAI, Hindering Tesla’s AI Development Efforts and Diverting Billions of Dollars in Value from Tesla to xAI**

89. The Tesla Board has done *nothing* as Musk has diverted value, personnel, data, and resources from Tesla to xAI. The Board’s failure to act

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<sup>87</sup> X.ai, <https://x.ai/blog/series-b>.

<sup>88</sup> George Hammond & Tabby Kinder, *Elon Musk’s xAI Secures New Backing From Andreessen, Lightspeed, Sequoia and Tribe*, FIN. TIMES (May 23, 2024), <https://www.ft.com/content/0b6f634e-dbf0-4238-a319-1dc1bbc0b62e>.

<sup>89</sup> Meghan Bobrowsky & Berber Jin, *Elon Musk’s xAI Plans to Build Supercomputer in Memphis*, WALL ST. J. (June 5, 2024), <https://www.wsj.com/tech/ai/elon-musks-xai-plans-to-build-supercomputer-in-memphis-ecee78fb>.

constitutes an obvious breach of its members' unyielding fiduciary duty to protect the interests of Tesla and its stockholders.

90. Even without considering the financial harm caused by Musk's competing AI companies, Musk violated Tesla's own Code of Business Ethics by creating and leading xAI, and the Board has allowed Musk to continue to violate this Code unimpeded. Musk's actions with respect to xAI run afoul of multiple examples of conflicts of interest that Tesla's own Code of Business Ethics provides, including "working for a competitor;" "looking for opportunities that should otherwise go to Tesla first;" "developing or helping to develop outside inventions that relate to existing or future Tesla products or your job at Tesla;" and "having a substantial interest in a competitor or investing in another company if you can influence Tesla's relationship with that company."<sup>90</sup> By founding and developing xAI, Musk is actively engaged in each of these improper actions.

91. And by doing so, Musk is diverting enormous value away from Tesla. At an implied \$24 billion valuation, xAI is the second most valuable AI company, behind only OpenAI, which arguably pioneered the industry with its now-famous ChatGPT platform.

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<sup>90</sup> Tesla, Code of Business Ethics at 6 (available at <https://digitalassets.tesla.com/tesla-content/image/upload/IR/business-code-of-ethics>).

92. Musk is creating enormous value at xAI—potentially worth hundreds of billions of dollars in the near future—at Tesla’s expense. At this pace, xAI’s value is poised to continue to increase rapidly—and if xAI is able to replicate OpenAI’s early success, its value could be substantially higher still. OpenAI is now valued at approximately \$80 billion, despite the nascency of the company and the AI industry as a whole. As acknowledged above, Musk himself has publicly stated that he has “never seen anything grow faster than AI. Not even close.”<sup>91</sup>

93. Musk himself publicly acknowledged that it would be appropriate for xAI to exist within Tesla. Because Tesla is the “biggest AI project on earth” and xAI is an eponymous AI company, these two Musk-controlled entities compete directly for what can be viewed as the raw materials of AI development: GPUs and human talent.

94. These basic AI resources are as vital as they are scarce, and the conflict between Tesla and xAI in this regard is apparent. Tesla, for example, is building an extension to its Texas factory that will house 50,000 Nvidia GPUs to develop Tesla’s “full self-driving” software,<sup>92</sup> while xAI is building its own supercomputer in Memphis, as described above. The fundamental and unavoidable approach to

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<sup>91</sup> Elon Musk (@elonmusk), X (Jan. 4, 2024 1:56pm), <https://x.com/elonmusk/status/1742983369296916762>.

<sup>92</sup> Elon Musk (@elonmusk), X (June 4, 2024 11:03am), <https://x.com/elonmusk/status/1798007748728365503>.

developing AI models—building large computing centers using GPUs that can process vast amounts of data—places Tesla and xAI in direct competition with one another.

95. As described in Sections D–E, *supra*, Musk has already diverted substantial resources and personnel from Tesla to xAI, in part because xAI is far behind in the AI arms race. In the most blatant example of Musk shuffling resources to Tesla’s detriment, Musk personally delayed a shipment of vital Nvidia GPUs meant for Tesla, diverting them to xAI instead.

96. Thus, Musk abused his control over Tesla to jump his personally favored AI company, xAI, ahead of Tesla in the ever-growing queue for skilled AI engineers and Nvidia’s vital GPUs. Given the immense competitive pressure Tesla currently faces and Musk’s own admissions that AI is critical to Tesla’s future, Musk’s decision to put xAI ahead of Tesla’s AI efforts is simply inexcusable for any fiduciary—let alone the fiduciary that controls Tesla. And this conduct reflects equally poorly upon the rest of the Tesla Board, that has done nothing to manage this conflict or to prevent Musk from unfairly favoring xAI’s interests over Tesla’s.

97. For his part, Musk has publicly admitted that he did indeed divert these GPUs from Tesla. In a post on X on June 4, 2024, Musk explained his decision by writing: “Tesla had no place to send the Nvidia chips to turn them on, so they would

have just sat in a warehouse.”<sup>93</sup> Musk’s explanation makes little sense. As an initial matter, this controversy could not have surfaced at a worse time for Musk, with CNBC’s reporting becoming public only days before Tesla stockholders vote on Musk’s \$56 billion compensation package.

98. But beyond Musk’s obvious motive to downplay the significance of his misconduct, Musk’s explanation makes little sense. Amidst great competitive pressure and falling profits, why would Tesla order Nvidia’s expensive and highly sought-after GPUs if it had no use for them? And more importantly, why was Tesla—described by Musk himself as “an AI, robotics company”—unprepared to make use of these GPUs, while X and xAI were ready to take delivery immediately? Considering that Tesla has been developing autonomous technology for its cars for years, while xAI was founded only months before Musk diverted GPUs from Tesla to xAI, Musk’s explanation seems particularly dubious. Even if true, it would appear to reflect a sudden and troubling shift in Musk-led AI development activities from Tesla to X and xAI. Moreover, even if Tesla itself could not use the chips immediately, it could have stored these valuable assets until it could use them.

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<sup>93</sup> Elon Musk (@elonmusk), X (June 4, 2024 11:03am), <https://x.com/elonmusk/status/1798007748728365503>.

99. Tesla’s Board members who have allowed this blatant conflict to fester unsupervised for months have also sought to downplay the controversy. Even though Musk publicly admitted that he diverted the GPU shipment from Tesla to xAI, Denholm insisted that the claim was “just not true.”<sup>94</sup> Denholm stated that Tesla is building a new data center that is due to come online in August 2024, and that Tesla adjusted its purchase order with Nvidia to “line up with the data center build.”<sup>95</sup> But Denholm—who received “life-changing” compensation through her tenure at Tesla<sup>96</sup>—said nothing about the Board supervising or approving this decision. And most tellingly, when asked to provide a “good example of something where Elon wanted to do something and you said no,” Denholm could not identify a single specific example.<sup>97</sup> Rather, Denholm simply replied that Musk and the Board engage in “positive, constructive dialogue.”<sup>98</sup> This reflects the reality at Tesla: it is Musk’s company, and the Board is unwilling or unable to meaningfully oversee him.

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<sup>94</sup> Form DEFA14A (June 6, 2024), [https://www.sec.gov/Archives/edgar/data/1318605/000110465924069150/tm2413800d21\\_defa14a.htm](https://www.sec.gov/Archives/edgar/data/1318605/000110465924069150/tm2413800d21_defa14a.htm).

<sup>95</sup> *Id.*

<sup>96</sup> *Tornetta*, 310 A.3d at 509.

<sup>97</sup> Form DEFA14A (June 6, 2024), [https://www.sec.gov/Archives/edgar/data/1318605/000110465924069150/tm2413800d21\\_defa14a.htm](https://www.sec.gov/Archives/edgar/data/1318605/000110465924069150/tm2413800d21_defa14a.htm).

<sup>98</sup> *Id.*

100. The Board has freely allowed Musk—the CEO and largest stockholder of Tesla, an AI company—to found and lead another AI company; to plunder resources from Tesla and divert them to X and xAI; and to create billions in AI-related value at a company other than Tesla. Worst of all, the Board has allowed Musk to do this in the face of Musk’s overt threat to develop AI products outside Tesla if he is not given a 25% stake in the Company. Musk has made abundantly clear that he is willing to develop AI products outside Tesla, and is now making good on that threat. The conflicted Board has failed in its fiduciary duty to prevent Musk from doing so.

### **DERIVATIVE ALLEGATIONS**

101. Plaintiffs bring this action derivatively on behalf of Tesla to redress injuries suffered by the Company. Plaintiffs are currently beneficial owners of Tesla common stock and have continuously owned Tesla common stock at all relevant times.

102. Plaintiffs will adequately and fairly represent the interests of Tesla in enforcing and prosecuting its rights and have retained counsel competent and experienced in stockholder derivative litigation.

## DEMAND IS EXCUSED AS FUTILE

103. Plaintiffs did not make a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand is excused as a matter of law. Tesla’s board currently consists of eight directors: Defendants Musk, Denholm, Kimbal, Ehrenpreis, Murdoch, Wilson-Thompson, Gebbia, and Straubel (the “Demand Board”). A majority of the Demand Board is incapable of considering a litigation demand impartially, as detailed below.

104. Demand is excused as futile with respect to a director who: (1) received a material personal benefit from the alleged misconduct that is the subject of the litigation demand (“*Zuckerberg* Prong 1”); (2) faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand (“*Zuckerberg* Prong 2”); or (3) lacks independence from someone who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand (“*Zuckerberg* Prong 3”).<sup>99</sup> Plaintiffs have adequately alleged that demand is futile here.

105. *First*, demand is excused as futile under *Zuckerberg* Prong 1 as to Musk. As alleged herein, Musk inappropriately founded and personally invested at

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<sup>99</sup> *United Food and Commercial Workers v. Zuckerberg*, 262A.3d 1034, 1059 (Del. 2021).



least \$750 million<sup>100</sup> in a key Tesla AI competitor and has diverted and continues to divert valuable talent and resources from Tesla to that competitor. Musk is xAI's founder and leader. Although the exact value and nature of Musk's stake in xAI is not publicly available, Musk certainly has voting and managerial control over xAI and likely has a majority economic stake. Musk's misconduct has enhanced and will continue to enhance the value of his material personal stake in xAI.

106. For these reasons, demand is excused as futile as to Musk because he received—and continues to receive—a material personal benefit from the alleged misconduct.

107. *Second*, demand is excused as futile under *Zuckerberg* Prong 2 as to Musk and each of the Director Defendants.

108. Musk faces a substantial likelihood of liability for breaching his fiduciary duties as Tesla's controlling stockholder and as a Tesla officer and director by creating a startup that competes directly with Tesla and diverting billions of dollars of value in the form of talent and resources from Tesla to that startup. In *Tornetta*, the Court determined that, at Tesla, Musk "held some of the most influential corporate positions (CEO, Chair, and founder), enjoyed thick ties with

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<sup>100</sup> Berber Jim, Meghan Bobrowsky, Kimberley Kao, *Elon Musk's xAI Valued at \$24 Billion After Latest Fundraising Round*, WALL ST. J. (May 27, 2024), <https://www.wsj.com/tech/ai/elon-musks-xai-will-raise-6-billion-in-latest-fundraising-round-fcdd722d>.

the directors tasked with negotiating on behalf of Tesla, . . . dominated the process that led to board approval of his compensation plan[, and that *a]t least* as to [Musk’s compensation plan], Musk controlled Tesla.”<sup>101</sup> Every available indicator states that Musk also controls Tesla both generally and with respect to the diversion of Tesla’s value to xAI and X, as he alone has made decisions to redirect talent, resources, and valuable GPUs to those competitors. Musk’s disloyal actions have harmed and continue to harm Tesla and are a breach of the duties he owes as Tesla’s controlling stockholder and as a Tesla officer and director.

109. Demand is, thus, excused as futile as to Musk because he faces a substantial likelihood of liability for breaching his fiduciary duties as Tesla’s controlling stockholder and as a Tesla officer and director.

110. Each of the Director Defendants (constituting the entirety of the Demand Board excluding Musk) also faces a substantial likelihood of liability for breaching their fiduciary duties by failing to act independently of Musk.

111. Musk is “the paradigmatic Superstar CEO[.]”<sup>102</sup> He co-founded Tesla, is its largest stockholder, serves as its Technoking and CEO, and is a director on Tesla’s Board. Throughout the entire period that Musk set up and favored xAI,

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<sup>101</sup> *Tornetta*, 310 A.3d at 446 (emphasis added).

<sup>102</sup> *Id.*

Musk led Tesla’s management team. As discussed *supra*, Musk also founded xAI and serves as its sole director and team leader.

112. Musk’s Superstar CEO status has created a “distortion field” that interfered and continues to interfere with the Board’s oversight and imperiled and continues to imperil the Board’s ability to act independent of Musk.<sup>103</sup> As discussed in Section F, *supra*, Musk’s fellow directors, in thrall to Musk’s “distortion field,” have done *nothing* to respond to the existential threat xAI poses to Tesla, even as Musk has diverted billions of dollars in value in the form of talent and resources away from Tesla to his new competing artificial intelligence company.

113. In fact, Musk’s “distortion field” is so powerful that its impacts extend beyond the financial and well into intimate aspects of Board members’ personal lives. The “distortion field” permeates the Board so thoroughly that its members **feel pressured to take drugs with Musk**. The *Wall Street Journal* reports that:

In the culture Musk has created around him, some friends, **including directors**, feel there is an expectation to consume drugs with him because they think refraining could upset the billionaire, who has made them a lot of money, some of the people said. More so, they don’t want to risk losing the social capital that comes from being close to Musk, which for some feels akin to having proximity to a king.<sup>104</sup>

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<sup>103</sup> *Id.* at 507.

<sup>104</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4> (emphasis added).

114. A board that feels peer pressure to take drugs with a controller cannot be reasonably expected to act independently of that controller.

115. For these reasons, demand is excused as futile as to each of the Director Defendants under *Zuckerberg* Prong 2 because they face a substantial likelihood of liability for breaching their fiduciary duty of loyalty by allowing Musk to divert value from Tesla to xAI and X without doing anything about it.

116. *Third*, demand is excused as futile under *Zuckerberg* Prong 3 because each of the Director Defendants (constituting the entirety of the Demand Board excluding Musk) lacks independence from Musk, who received a material personal benefit from the alleged misconduct that would be the subject of the litigation demand and who faces a substantial likelihood of liability on the claims that would be the subject of the litigation demand.

117. **Kimbal is incapable of considering a demand against Musk.** The Court has already concluded in *Tornetta* that Kimbal “lacked independence from Musk.”<sup>105</sup> Kimbal is Musk’s brother, and, in a concession to his lack of independence from Musk, recused himself from discussion of or voting on the stock grant at issue in *Tornetta*.<sup>106</sup> What’s more, the *Wall Street Journal* has reported that

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<sup>105</sup> *Tornetta*, 310 A.3d at 510.

<sup>106</sup> *Id.* at 508 n.636.

Kimbal has “consumed drugs with [Musk], according to people who have witnessed the drug use and others with knowledge of it.”<sup>107</sup> On information and belief, Kimbal has done nothing to address Musk’s recreational use of illicit substances.

118. The Court’s prior conclusion, the familial relationship between Kimbal and Musk, Kimbal’s prior recusal, and Kimbal’s consumption of drugs with Musk support the conclusion that Kimbal has a deep relationship with his brother, is beholden to him, and is incapable of considering a demand against him.

119. **Murdoch is incapable of considering a demand against Musk.** The Court has already concluded in *Tornetta* that “Murdoch lacked independence due to [his] personal connection with Musk. He was a long-time friend of Musk before he joined the Board and they repeatedly vacationed together with their respective families. It was during one such trip that Musk, Kimbal, and [former Board member Antonio Gracias] recruited Murdoch to the Board.”<sup>108</sup> The nature and depth of Murdoch’s social relationship with Musk suggests that Murdoch feels pressure to take drugs with Musk. On information and belief, Murdoch has done nothing to address Musk’s recreational use of illicit substances.

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<sup>107</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>108</sup> *Tornetta*, 310 A.3d at 510.

120. What's more, Murdoch has received millions of dollars in compensation for his service on the Board. He received over \$1.9 million for his 2017 service<sup>109</sup> and over \$9 million for his 2018 service.<sup>110</sup> Outsized director compensation can compromise a director's independence.<sup>111</sup> Tesla "pays its directors . . . far more than the average compensation for boards at most U.S. companies."<sup>112</sup> Murdoch's compensation as a Tesla director vastly outstrips the average total compensation for board members in the largest 200 U.S. companies, which, in 2023, was \$329,352[.]<sup>113</sup>

121. The Court's prior conclusion, Murdoch's long-time friendship with Musk prior to Murdoch's appointment to the Board, and the repeated family vacations support the conclusion that Murdoch has a deep relationship with Musk, is beholden to him, and is incapable of considering a demand against him.

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<sup>109</sup> Form DEF 14A at 43, (April 26, 2018), [https://www.sec.gov/Archives/edgar/data/1318605/000156459018009339/tsla-def14a\\_20180606.htm](https://www.sec.gov/Archives/edgar/data/1318605/000156459018009339/tsla-def14a_20180606.htm).

<sup>110</sup> Form DEF 14A at 66, (April 30, 2019), [https://www.sec.gov/Archives/edgar/data/1318605/000156459019014268/tsla-def14a\\_20190611.htm](https://www.sec.gov/Archives/edgar/data/1318605/000156459019014268/tsla-def14a_20190611.htm).

<sup>111</sup> *Tornetta*, 310 A.3d at 509-10.

<sup>112</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>113</sup> *Id.*

**122. Ehrenpreis is incapable of considering a demand against Musk.**

Ehrenpreis’s financial life is intertwined with Musk’s. Ehrenpreis and the venture-capital firm he founded and of which he is managing partner have invested tens of millions of dollars in Musk-controlled companies.<sup>114</sup> He has acknowledged that his role as a Tesla director was “a real benefit in fundraising” for his funds.<sup>115</sup>

123. Outsized director compensation can compromise a director’s independence.<sup>116</sup> Tesla “pays its directors . . . far more than the average compensation for boards at most U.S. companies.”<sup>117</sup> Ehrenpreis was granted 865,790 Tesla options during part of his tenure on the Board and, in 2021, netted over \$200 million by exercising less than a quarter of those options.<sup>118</sup> This

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<sup>114</sup> *Tornetta*, 310 A.3d at 455; Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>115</sup> *Tornetta*, 310 A.3d at 455.

<sup>116</sup> *Id.* at 509–10.

<sup>117</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>118</sup> *Tornetta*, 310 A.3d at 455.

compensation vastly outstrips the average total compensation for board members in the largest 200 U.S. companies, which, in 2023, was \$329,352[.]”<sup>119</sup>

124. Ehrenpreis further has a significant social relationship with Musk. He, Musk, and Kimbal have known each other for over fifteen years, and, as Ehrenpreis has acknowledged, “his personal and professional relationship with the Musk brothers has had a ‘significant influence on his professional career[.]’”<sup>120</sup> Ehrenpreis and Musk’s brother Kimbal have known each other since at least 1999.<sup>121</sup> Ehrenpreis attended Kimbal’s destination wedding in Spain and invested in Kimbal’s restaurant company The Kitchen Group.<sup>122</sup> On information and belief, Ehrenpreis has done nothing to address Musk’s recreational use of illicit substances.

125. The Court has already concluded that Ehrenpreis’ relationship with Musk was “weighty,” and, in the context of Ehrenpreis’ role as Chair of the Compensation Committee with respect to the stock grant at issue in *Tornetta*, that it was “too weighty.”<sup>123</sup> Ehrenpreis’ relationship with Musk is, with respect to the

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<sup>119</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>120</sup> *Tornetta*, 310 A.3d at 455.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 509.



wholesale diversion of billions of dollars of value from Tesla to xAI, again, “too weighty.” Ehrenpreis’ web of social and financial connections with Musk, including Ehrenpreis’ outsized Tesla compensation, supports the conclusion that Ehrenpreis has a deep relationship with Musk, is beholden to him, and is incapable of considering a demand against him.

126. **Denholm is incapable of considering a demand against Musk** because she has received hundreds of millions of dollars in compensation through her work at Tesla and is beholden to Musk, as Tesla’s controller, for this “life-changing” amount of wealth.<sup>124</sup> On information and belief, Denholm has also done nothing to address Musk’s recreational use of illicit substances.

127. Denholm “runs Tesla board meetings as informal, family-style occasions [at which d]irectors sometimes ask softball questions of Musk, such as future Tesla product colors.”<sup>125</sup> Denholm’s soft touch is unsurprising; Musk has said that he “handpicked” her and that the idea that “Denholm would watch over him was ‘not realistic[.]’”<sup>126</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>126</sup> *Id.*

128. Since Musk anointed her to the Tesla Board in 2018, Denholm has earned hundreds of millions of dollars in compensation, primarily through the award and exercise of Tesla stock options. In 2021 and 2022 alone, for example, Denholm realized some \$280 million by exercising just a fraction of the Tesla options she had received as compensation.<sup>127</sup> This year, she already has received more than \$50 million by selling stock she was granted as a Tesla director.<sup>128</sup> Denholm’s Tesla compensation far exceeded the compensation she received from other sources.<sup>129</sup> It is therefore no surprise that Denholm herself described the compensation she has received through Tesla as “life-changing.”<sup>130</sup> Outsized director compensation can compromise a director’s independence.<sup>131</sup>

129. Denholm’s lack of independence from Musk is made all the more apparent by her conduct following the Court’s decision in *Tornetta*. Since *Tornetta* was decided, Denholm has spearheaded Tesla’s—in reality, Musk’s—efforts to reanimate the compensation plan that the Board originally awarded Musk in 2018.

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<sup>127</sup> *Tornetta*, 309 A.3d at 457.

<sup>128</sup> Lora Kolodny, *Tesla Chairwoman Robyn Denholm has sold over \$50 million worth of stock in 2024*, CNBC (May 7, 2024), <https://www.cnbc.com/2024/05/07/tesla-chair-robyn-denholm-sold-over-50-million-in-stock-this-year.html>.

<sup>129</sup> *Tornetta*, 309 A.3d at 457.

<sup>130</sup> *Id.* at 509.

<sup>131</sup> *Id.* at 509–10.

Immediately after *Tornetta* was issued, Musk tweeted: “Never incorporate your company in the state of Delaware.”<sup>132</sup> Musk’s rationale was plain: he was infuriated by the Court’s decision and the loss of his \$56 billion pay package, and wished that Tesla was incorporated in a state that takes a much more lax approach to fiduciary conduct than Delaware does.

130. Soon after Musk’s tweet, Tesla announced that it would hold a stockholder vote to “ratify” Musk’s compensation plan, and to approve redomesticating Tesla in Texas. Tesla’s redomestication proposal is clearly Musk’s redomestication proposal, and it is Musk—as Tesla’s largest and controlling stockholder—who stands to benefit the most from Tesla operating free of Delaware’s governance norms. Denholm has led the public relations campaign to make Musk’s dream a reality and to reinstate his \$56 billion in compensation. In a letter to stockholders issued with Tesla’s April 13, 2024 Proxy statement, Denholm declared that the Court “struck down one of your votes and rescinded the pay package that an overwhelming majority of you voted to grant to our CEO, Elon Musk, in 2018.”<sup>133</sup> This was misleading at best, as only a majority of the disinterested shares that were actually voted at the 2018 meeting were voted in favor

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<sup>132</sup> Elon Musk (@elonmusk), X (Jan. 30, 2024 5:14pm), <https://x.com/elonmusk/status/1752455348106166598>.

<sup>133</sup> Form DEF 14A at 14 (April 29, 2024), [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15\\_def14a.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15_def14a.htm).

of the compensation package. The 2018 compensation package failed to receive the support of a majority of Tesla’s outstanding disinterested shares.

131. Nonetheless, Denholm further decried that “Elon has not been paid for any of his work for Tesla for the past six years,” and that this struck her and the Board as “fundamentally unfair.”<sup>134</sup> Ultimately, Denholm pitched the vote on the redomestication proposal as “a matter of fundamental fairness and respect to our CEO.”<sup>135</sup>

132. Denholm’s decision to serve as the spokeswoman for Musk’s multi-billion-dollar payday—entirely unfazed by the Court’s criticism of her conduct in *Tornetta*—demonstrates that her allegiance lies with Musk before it does with Tesla. Given the “life-changing,” outsized compensation she has received through Musk-controlled Tesla, her conduct as a Tesla director, and her spearheading of Musk’s compensation and redomestication campaigns, Denholm is incapable of considering a demand against Musk.

133. **Gebbia is incapable of considering a demand against Musk.** Gebbia has reportedly attended social gatherings with Musk where “Musk took

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

ketamine recreationally through a nasal spray bottle multiple times.”<sup>136</sup> Gebbia has, on information and belief, done nothing to address Musk’s recreational use of illicit substances and inferably feels pressure to take drugs with Musk. Further, Gebbia was initially a member of the purportedly independent special committee formed after *Tornetta* was issued that was charged with evaluating redomestication and Musk’s pay package. Gebbia stepped down from that committee because “Musk had discussed purchasing a house from [Gebbia’s] start-up” and Gebbia was “concerned their friendship could be seized on to attack the committee’s independence.”<sup>137</sup> Gebbia’s concerns are well-founded. Discussions of a deal between Gebbia’s start-up and Musk, considered alongside Gebbia’s reportedly drug-fueled friendship with Musk, support the conclusion that Gebbia has a deep relationship with Musk, is beholden to him, and is incapable of considering a demand against him.

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<sup>136</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>137</sup> Rachael Levy, *Exclusive: Tesla director Gebbia says he discussed selling house to Musk*, REUTERS, (June 3, 2024), <https://www.reuters.com/business/tesla-director-gebbia-says-he-discussed-selling-house-musk-2024-06-03/>; *see also* Form DEF 14A at 19, (April 29, 2024), [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15\\_def14a.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15_def14a.htm).

**134. Straubel is incapable of considering a demand against Musk.**

Straubel co-founded Tesla alongside Musk and served as Tesla’s Chief Technology Officer for over fourteen years. In addition to his service on the Board, Straubel is the Founder and Chief Executive Officer of Redwood Materials Inc. (“Redwood”). Redwood “offer[s] large-scale sources of” important materials “from recycled batteries.”<sup>138</sup> Tesla and Redwood are parties to an agreement with respect to the supply of “certain scrap materials” under which “Redwood incurred expenses of approximately \$11.5 million in 2023 and approximately \$6 million through February 2024.”<sup>139</sup> It is reasonable to assume that this agreement is material to Redwood, and, therefore, to Straubel. Further, as discussed *supra*, Straubel served on the board of SolarCity Corporation, which Musk founded with his cousins and that Musk caused Tesla to acquire in 2016.<sup>140</sup> On information and belief, Straubel has also done nothing to address Musk’s recreational use of illicit substances.

135. Straubel’s material business relationship and role as a SolarCity Corporation director, his long history as a key member of Tesla’s management team, and his status as a Tesla co-founder, support the conclusion that Straubel has

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<sup>138</sup> Form DEF 14A at 14 (April 29, 2024), [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15\\_def14a.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15_def14a.htm).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

a deep relationship with Musk, is beholden to him, and is incapable of considering a demand against him.

136. **Wilson-Thompson is incapable of considering a demand against Musk.** As noted, outsized director compensation can compromise a director’s independence.<sup>141</sup> Wilson-Thompson “has realized a pre-tax total of approximately \$62 million from the exercise of equity awards received for her service on the Board” and currently owns 771,255 shares worth well over \$100 million.<sup>142</sup> Tesla admits that this constitutes “a meaningful portion of [Wilson-Thompson’s] net worth.”<sup>143</sup> This compensation vastly outstrips the average total compensation for board members in the largest 200 U.S. companies, which, in 2023, was \$329,352[.]”<sup>144</sup> Further, on information and belief, Wilson-Thompson has done nothing to address Musk’s recreational use of illicit substances. Wilson-Thompson’s outsized Tesla compensation supports the conclusion that Wilson-

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<sup>141</sup> *Tornetta*, 310 A.3d at 509-10.

<sup>142</sup> Form DEF 14A at E-28 (April 29, 2024), [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15\\_def14a.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000110465924053333/tm2326076d15_def14a.htm).

<sup>143</sup> *Id.*

<sup>144</sup> Kirsten Grind, Emily Glazer, Rebecca Elliott, Coulter Jones, *The Money and Drugs That Tie Elon Musk to Some Tesla Directors*, WALL ST. J. (Feb. 3, 2024), <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

Thompson is beholden to Musk and is incapable of considering a demand against him.

137. Under these circumstances, the Board cannot be expected to bring the claims asserted herein, and the actions of the Board challenged herein cannot enjoy protection from judicial scrutiny. Demand is therefore excused.

### **COUNTS**

#### **COUNT I: DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST MUSK AS A DIRECTOR, OFFICER, AND CONTROLLER**

138. Plaintiffs incorporate by reference and reallege each and every allegation above, as though fully set forth herein.

139. Musk, as a director, Chief Executive Officer, and controlling stockholder of Tesla, has been a fiduciary of the Company at all relevant times. As such, he owed the Company the highest duties of loyalty and care.

140. Musk breached these duties by founding and operating rival AI company xAI and, *inter alia*: (i) hiring AI employees away from Tesla, (ii) diverting microchips from Tesla to X and xAI, and (iii) using Tesla's data to develop xAI's own software/hardware, all without compensation to Tesla.

141. xAI operates in the same line of business as Tesla. Tesla has the financial capability to operate xAI. Tesla has an interest and expectancy in the



opportunity to operate an AI business. Musk created a conflict of interest by founding and operating xAI separately from Tesla.

142. Tesla's Amended and Restated Certificate of Incorporation contains no reference to any waiver of any corporate opportunities

143. As a result of Musk's actions, which took valuable AI opportunities from Tesla, Musk—through xAI—usurped corporate opportunities from Tesla. Accordingly, Musk's disloyal actions have caused significant harm to Tesla.

144. Plaintiffs and the Company have no adequate remedy at law. Accordingly, this Court has subject matter jurisdiction.

**COUNT II:**  
**DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY**  
**AGAINST THE DIRECTOR DEFENDANTS**

145. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

146. The Director Defendants, as Tesla directors, are fiduciaries of the Company. As such, they owe the Company the highest duties of loyalty and care.

147. The Director Defendants breached their duty of loyalty by consciously disregarding their duties to Tesla and its public common stockholders in connection with Musk's founding and operating rival AI company xAI.

148. The Director Defendants' failure to exercise appropriate oversight of Musk, and other breaches of fiduciary duty, has resulted in, *inter alia*: (i) Musk

founding and operating xAI independently of Tesla; (ii) xAI hiring AI employees away from Tesla, (iii) the diversion of microchips from Tesla to X and xAI, and (iv) xAI's use of Tesla's data to develop xAI's own software/hardware, all without compensation to Tesla. Accordingly, the Company has been harmed by the Director Defendants' breaches of fiduciary duty.

149. Plaintiffs and the Company have no adequate remedy at law. Accordingly, this Court has subject matter jurisdiction.

**COUNT III:**  
**DERIVATIVE CLAIM FOR UNJUST ENRICHMENT AGAINST MUSK**

150. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

151. As detailed herein, Musk's founding and operation of rival AI company xAI is unfair to Tesla, is the product of breaches of fiduciary duty by the Individual Defendants, and has resulted in *inter alia*: (i) xAI hiring AI employees away from Tesla, (ii) the diversion of microchips from Tesla to X and xAI, and (iii) xAI's use of Tesla's data to develop xAI's own software/hardware, all without compensation to Tesla.

152. Musk was—and continues to be—the direct recipient of the improper and valuable benefits flowing from the usurpation of corporate opportunities described herein. Those benefits were derived by unlawful means.

153. Under these circumstances, it would be unconscionable to permit Musk to retain the improper benefits received pursuant to these breaches of fiduciary duty.

154. Plaintiffs and the Company have no adequate remedy at law. Accordingly, this Court has subject matter jurisdiction.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of Tesla, request judgment as follows:

- A. Finding the Individual Defendants liable for breaching their fiduciary duties owed to the Company as directors—and, in Musk’s case, an officer and controller—of the Company;
- B. Finding that demand on the Tesla Board is excused as futile;
- C. Awarding Tesla the amount of damages Tesla sustained as a result of the Defendants’ breaches of fiduciary duties, including rescissory damages;
- D. Awarding Tesla the amount of damages Tesla sustained as a result of Musk’s unjust enrichment;
- E. Disgorging Musk’s equity stake in xAI to Tesla;
- F. Imposing a constructive trust over Musk’s interest in xAI; and
- G. Awarding such other and further relief as this Court may deem just and proper.

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*(pro hac vice motions forthcoming)*

Dated: June 13, 2024

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