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

## FORM 10-K

**(Mark One)**

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

For the fiscal year ended December 31, 2020

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO**

Commission File Number 001-37788

# WAITR HOLDINGS INC.
(Exact name of Registrant as specified in its Charter)

| | |
|---|---|
| **Delaware**<br>(State or other jurisdiction of incorporation or organization) | **26-3828008**<br>(I.R.S. Employer Identification No.) |
| **214 Jefferson Street, Suite 200**<br>**Lafayette, Louisiana**<br>(Address of principal executive offices) | **70501**<br>(Zip Code) |

Registrant's telephone number, including area code: **1-337-534-6881**

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|---|---|
| Common Stock, Par Value $0.0001 Per Share | WTRH | The Nasdaq Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ☐ NO ☒

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. YES ☐ NO ☒

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

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

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☒ |
| Non-accelerated filer | ☐ | Smaller reporting company | ☐ |
| Emerging growth company | ☐ | | |

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on The Nasdaq Stock Market on June 30, 2020, was $269,266,004.

The number of shares of Registrant's Common Stock outstanding as of March 3, 2021 was 111,523,854.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required to be disclosed in Part III of this report is incorporated by reference from the registrant's definitive proxy statement or an amendment to this report, which will be filed with the SEC not later than 120 days after the end of the fiscal year covered by this report.

## Table of Contents


| | | Page |
|---|---|---|
| **PART I** | | |
| Item 1. | Business | 1 |
| Item 1A. | Risk Factors | 7 |
| Item 1B. | Unresolved Staff Comments | 28 |
| Item 2. | Properties | 28 |
| Item 3. | Legal Proceedings | 28 |
| Item 4. | Mine Safety Disclosures | 29 |
| **PART II** | | |
| Item 5. | Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities | 30 |
| Item 6. | Selected Financial Data | 32 |
| Item 7. | Management’s Discussion and Analysis of Financial Condition and Results of Operations | 33 |
| Item 7A. | Quantitative and Qualitative Disclosures About Market Risk | 42 |
| Item 8. | Financial Statements and Supplementary Data | 43 |
| Item 9. | Changes in and Disagreements With Accountants on Accounting and Financial Disclosure | 43 |
| Item 9A. | Controls and Procedures | 43 |
| Item 9B. | Other Information | 44 |
| **PART III** | | |
| Item 10. | Directors, Executive Officers and Corporate Governance | 45 |
| Item 11. | Executive Compensation | 45 |
| Item 12. | Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters | 45 |
| Item 13. | Certain Relationships and Related Transactions, and Director Independence | 45 |
| Item 14. | Principal Accounting Fees and Services | 45 |
| **PART IV** | | |
| Item 15. | Exhibits, Financial Statement Schedules | 46 |
| Item 16. | Form 10-K Summary | 50 |
| | Signatures | 51 |
| | Index to Financial Statements | 52 |

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this "Form 10-K") contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements, other than statements of historical or current facts, that reflect future plans, estimates, beliefs or expected performance are forward-looking statements. In some cases, you can identify forward-looking statements because they are preceded by, followed by or include words such as "may," "can," "should," "will," "estimate," "plan," "project," "forecast," "intend," "expect," "anticipate," "believe," "seek," "target" or similar expressions. These forward-looking statements are based on information available as of the date of this Form 10-K and our management's current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties that may be outside of our control. Accordingly, forward-looking statements should not be relied upon as representing our views as of any subsequent date. We do not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those set forth under the section entitled "Risk Factors" below.

## PART I

*The following should be read in conjunction with the audited consolidated financial statements and the notes thereto included elsewhere in this Form 10-K. Throughout this document, we make statements that are classified as "forward-looking." Please refer to the "Forward-Looking Statements" section above for an explanation of these types of statements.*

### Item 1. Business

### Overview

Waitr Holdings Inc. (together with its wholly owned subsidiaries, the "Company," "Waitr," "we," "our" or "us") operates an online ordering technology platform, including the Waitr and Bite Squad mobile applications (the "Platforms"), providing delivery, carryout and dine-in options, connecting restaurants, drivers and diners in cities across the United States. The Platforms are a convenient way to discover, order and receive great food and other products from local restaurants, national chains and grocery stores. Our strategy is to bring delivery, carryout and dine-in infrastructure to underserved populations of restaurants, grocery stores and diners and establish strong market presence or leadership positions in the markets in which we operate. As of December 31, 2020, we operated in small and medium sized markets across the United States, spanning more than 700 cities.

Our business has been built with a restaurant-first philosophy by providing differentiated and brand additive services to the restaurants on the Platforms. Restaurants benefit from the online Platforms through increased exposure to consumers for expanded business in delivery, carryout and dine-in services as well as providing convenient payment solutions. For diners, Waitr optimizes the journey from restaurant and food discovery through delivery, while providing a diverse restaurant selection and a great customer experience. The intuitive, easy-to-use Platforms allow consumers to browse local restaurants and menus, track order and delivery status, and securely store previous orders for ease of use and convenience. During 2020, we expanded into new delivery verticals such as same-day groceries and alcohol delivery services, and also diversified our product offering beyond restaurant food delivery with the introduction of our tableside service technology for restaurants.

We generate revenue primarily when diners place an order via online payment on one of the Platforms. We recognize revenue from diner orders when orders are completed. Our revenue consists primarily of net fees received from restaurants and net diner fees generated on these orders.

### Key Business Metrics

For a description of our key business metrics, including Active Diners, Average Daily Orders, Gross Food Sales and Average Order Size, see Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations* of this Form 10-K.

### The Waitr Solution

We have created differentiated software platforms, purpose-built to connect restaurants, drivers and diners. Our business has been built with a focus on quality through providing brand-additive services to restaurants, which in turn benefits diners by providing a diverse restaurant selection and a great customer experience.

### *Restaurant Benefits*

We believe that we provide restaurants with the following key benefits:

- *Exposure.* Our Platforms provide restaurants with access to incremental users and the opportunity to grow their consumer base. Restaurant menus are showcased on the Platforms, resulting in diners discovering restaurants they would like to visit in person, not just order on the Platforms, further expanding the potential pool of dine-in customers for restaurants.
- *Incremental channels.* Our Platforms provide restaurants with additional channels through which they can receive more orders, while building brand awareness, as they are discovered by more diners.
- *Deep integration and customization.* We provide menu onboarding and real-time menu customization that restaurants can manage themselves.
- *Service*. We provide restaurants with in-market team support from our network of market managers, assistant market managers and market coordinators, and we provide them with a team of partner support representatives, helping to ensure the Platforms operate efficiently for the restaurants.
- *Restaurant Software Platforms.* The Platforms provide restaurants with actionable data on diners' order history and trends, allowing restaurants to offer more tailored dishes and suggest more add-on items, which increases order values.
- *Reliable Delivery.* We connect restaurants with a network of independent contractor drivers through our wholly owned subsidiary, Delivery Logistics, LLC ("Delivery Logistics").

### *Diner Benefits*

We believe that we provide diners with the following key benefits:

- *Selection.* The restaurants on our Platforms include a mix of local independent restaurants and national chains that represent a wide array of cuisines, price points and local favorites in each market to best serve the diverse tastes of diners.
- *Quality Service.* We have dedicated customer support to assist diners, helping to ensure quick and consistent quality service when ordering on the Platforms.
- *Discovery.* The Platforms are designed to showcase the variety of restaurants inclusive of menus with professional photography, giving diners a rich understanding of restaurants' offerings.
- *Personalized Experience.* We allow diners to tailor their orders to various layers of customization through easy-to-use Platforms. Diners can add frequent restaurants as favorites and keep track of past orders.
- *Convenience.* We provide diners with intuitive Platforms that make ordering and delivery simple from any connected device. Diners can track their order and know exactly when to expect their food.

### *Driver Benefits*

- *Flexibility*. We provide independent contractor drivers with the opportunity to work when and how they want, based upon their individual needs. Our streamlined onboarding process allows drivers to quickly start earning on their own schedule.
- *Transparency*. We provide independent contractor drivers with educational opportunities that help to maximize their earnings potential and we provide tools and resources to ensure they provide exceptional customer service, safely.

## Business Strategy

We have historically grown our business by increasing the number of quality restaurants available on the Platforms, which has facilitated growth in diners and orders. Leveraging best practices from the launch of prior markets, we continuously refine our processes in onboarding new restaurants, deploying adequate resources to markets, sales and ongoing business development. During 2020, we also focused our efforts on diversifying our product offering beyond restaurant food delivery with expansion into new delivery verticals. We intend to pursue the following growth strategies to grow the Platforms:

*Expansion into new markets, development of new products and services and investment in new technology*

Our long-term business strategy includes expansion into new cities and geographies, development of new product offerings and services across our marketplace and investment in new technology, all of which will continue to enhance the user experience of the Platforms.

*Increase sales through further penetration of existing markets*

We plan to continue marketing and actively building our brands in existing markets by improving our restaurant offerings and technology platform depth, continuing to enhance the quality of our customer service and increasing the presence in the local communities.

*Pursue Strategic Acquisitions*

We intend to selectively evaluate and pursue expansion of both our core business and diversification opportunities through strategic acquisitions in both existing and new markets.

*Deliver an excellent diner experience*

We believe that by tailoring experiences on our Platforms to the nuances of local or regional markets, we can further improve the user experience and drive growth for our restaurant partners. We plan to invest in our direct sales teams and to add more restaurants and restaurant variety to the Platforms. We will continue to further refine our customer support team to provide a high-quality experience to our diners. We believe significant opportunity exists to increase existing diner spend, add new diners, and further establish our market positions.

*Leverage relationships with our restaurant partners*

We intend to utilize our existing relationships with diverse, high-quality restaurant partners to expand our presence within our current markets as well as support in the expansion into new markets.

**Marketing**

The Platforms are an important extension of restaurant branding. Restaurants promote Waitr and Bite Squad as a feature for their diners through in-restaurant advertising collateral such as door stickers, table tents and push cards, and other promotional items. Our remaining sales and marketing initiatives are through paid digital marketing, social media strategies and local sponsorships.

**Sales**

Our sales team is constantly focused on signing restaurants across our current and target markets. By focusing our sales efforts on onboarding new restaurants and showing them the value of the Platforms, restaurants promote themselves on the Platforms to their own diner bases. This increase in diners helps to drive more sales and ultimately more orders to the Platforms. After market launch, we typically continue the sales efforts with business development managers, while also conducting sales initiatives at the regional and corporate level with key partners and larger national accounts thereby continually bolstering our restaurant base. After opening new markets, our local market and sales teams continue to work with the restaurants to increase overall order volume and ensure a high level of quality across the Platforms.

**Products and Services**

***Restaurant Products and Services***

*Restaurant Onboarding.* We offer restaurants a streamlined onboarding process that features direct menu management and high levels of customer service from our market level management and restaurant support team.

*Product Features*. We provide restaurants with the ability to offer promotions and tailored daily specials, optimize orders through real time analytics and manage restaurant menus. The Platforms include a dedicated mobile application for restaurants which simplifies the aggregation of restaurant order and delivery tasks onto a central in-app controller and provides flexibility to edit menus based on inventory or promotions. This is all performed through user-friendly hardware that receives orders on-site and integrates them seamlessly into existing kitchen flow. We have also begun to integrate with online ordering and point-of-sale vendors in order to further enhance our restaurant partners' efficiency when fulfilling orders generated on our Platforms. The Platforms are also able to provide featured placement of certain restaurants within the application.

*Restaurant Support*. We also provide restaurants with a team of support representatives to ensure a high-quality restaurant experience.

*Delivery*. We provide ordering and delivery Platforms for restaurants through a network of independent contractor drivers to address the growing demand for delivery services.

*Tableside Service Technology*. We recently introduced our tableside service technology offering restaurants an integrated payment solution that can help improve their safety protocols, sales and efficiency.

***Diner Products and Services***

*Features*. The Platforms simplify the diner ordering process to a few steps. These include setting location, specifying delivery method, immediate or future order, selecting and customizing menu items and tracking orders until completion. Diners have search capabilities to locate a certain restaurant or search by cuisine type and can easily view their favorite restaurants and past orders.

*Restaurant Selection and Customization.* The restaurants on the Platforms offer diners a wide array of cuisine types, both from local independent restaurants and national chain restaurants. Our goal is to create a personalized experience for diners, where they can tailor their orders to several layers of customization: getting what they want, when they want it.

*Customer Support*. We also provide diners with a team of customer support representatives to ensure a high-quality diner experience.

**Customers**

As of December 31, 2020, we had over 20,000 restaurants on the Platforms and served approximately 1.9 million Active Diners. For the years ended December 31, 2020, 2019 and 2018, none of the restaurants on the Platforms or Active Diners accounted for 1% or more of the Company's revenues.

**Competition**

Our primary competition consists of other online ordering and delivery service providers, who compete with us for restaurants, diners and delivery drivers within the markets we serve. Over the last few years, we have experienced increased competition from national delivery service providers.

Additionally, we face competition from traditional offline options used by the vast majority of restaurants in our markets, including paper menus, telephone orders for delivery or takeout, and local advertising placed by restaurants. Management believes that the Company competes favorably with the traditional ordering process by aggregating restaurant and menu information on the Platforms, making it more convenient for diners to locate restaurants by proximity, cuisine type and/or price point, and efficiently placing a customized order or a repeat order for delivery or carryout, without ever having to interact directly with the restaurant. Our tableside service technology which was introduced in certain markets in October 2020 allows diners to access a restaurant's menu from their table, place an order, and facilitate contactless payment on the Platforms. For restaurants, we offer a more targeted marketing opportunity than traditional, offline, local advertising channels, providing exposure to our network of hungry diners, who routinely access our Platforms.

**Impact of COVID-19 on our Business**

In December 2019, an outbreak of a new strain of coronavirus ("COVID-19") began in Wuhan, Hubei Province, China. In March 2020, the World Health Organization declared COVID-19 a pandemic. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains and created significant volatility and disruption of financial markets. The potential impacts and duration of the COVID-19 pandemic on the global economy and on the Company's business, in particular, are uncertain and may be difficult to assess or predict at this time.

In March 2020, as the COVID-19 pandemic became more widespread in the United States, we launched several initiatives to help protect and support our restaurant partners, diners, independent contractor drivers and our employees during these unprecedented times. Waitr has thus far been able to operate effectively during the COVID-19 pandemic; however, the pandemic could impact the demand for the Company's services. In addition, a prolonged recession or additional financial market corrections resulting from the spread of COVID-19, including an increase in the number of COVID-19 cases, could adversely affect demand for the Company's services. To the extent that the COVID-19 pandemic adversely impacts the Company's business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in the Risk Factors in this Form 10-K. We continue to monitor the impact of the COVID-19 global outbreak, although there remains significant uncertainty related to the public health and the global economic situation.

**Seasonality and Holidays**

Our business tends to follow restaurant closure and diner behavior patterns. In many of our markets, we have historically experienced variations in order frequency as a result of weather patterns, university summer breaks and other vacation periods. In addition, most restaurants tend to close on certain major holidays, including Thanksgiving and Christmas Eve Day, in our key markets. Further, diner activity may be impacted by unusually cold, rainy, or warm weather. Cold weather and rain typically drive increases in order volume, while unusually warm or sunny weather typically drives decreases in orders. Furthermore, snowstorms, hurricanes and tropical storms have adverse effects on order volume, particularly if they cause property damage or utility interruptions to our restaurant partners. Consequently, our results between quarters, or between periods may vary as a result of prolonged periods of unusually cold, warm, inclement, or otherwise unexpected weather and the timing of certain holidays. As shown in our results of operations for the year ended December 31, 2020, the macroeconomic effects of the COVID-19 pandemic have had an impact on our typical seasonality trends and could impact future periods.

**Technology and Intellectual Property**

Our Platforms use scalable software to provide a consistent and robust user experience as user adoption increases. The internally developed Platforms are purpose-built to streamline online ordering and fulfillment for consumers and restaurants. The Platforms are 100% hosted in the cloud. Cloud hosting assists us with addressing potential capacity constraints that we may face as we grow our core applications and provide a level of redundancy, fault tolerance and cost effectiveness.

We protect our intellectual property through a combination of trademarks, trade dress, domain name registrations, trade secrets, patents, and copyrights.

As of December 31, 2020, we had registered trademarks covering “Waitr” and “Bite Squad” and the stylistic designs associated with our brands. We have also filed other trademark applications in the United States and may pursue additional trademark registrations to the extent management believes it will benefit the business and be cost effective.

As of December 31, 2020, we filed two patent applications in the United States, which seek to cover proprietary inventions relating to our products and services. We may pursue further patents to the extent that management believes it will benefit Waitr’s business and be cost effective.

We hold several registrations to domain names relating to our business, including waitrapp.com, bitesquad.com, and others.

Our employees are required to maintain proprietary and non-public information confidential and to assign any and all inventions or other intellectual property relating to the business to Waitr. The policies and applicable terms of use of the Platforms also contain confidentiality and assignment of intellectual property provisions and restrict the distribution or use of the Company’s technology in unauthorized manners. Additionally, we enter into confidentiality agreements with consultants and contractors who are given access to confidential information about the Company.

**Government Regulation**

Our industry and business model are relatively new, have been evolving, and are subject to rapid changes in technology and the adoption and application of regulation. We are subject to a variety of law, regulations, and local ordinances in the jurisdictions in which we operate and they are also evolving and difficult to predict. These include laws and regulation relating to (i) pricing and fee structures, (ii) food safety, (iii) labor and employment, (iv) acceptance of credit card payments and consumer protection, (v) website and mobile application accessibility, security, and data privacy, (vi) alcoholic beverages, (vii) background checks, (viii) taxes, and (ix) other regulated matters. These laws, regulations, and ordinances can be subject to interpretation and can lack certainty and specificity relative to our business. In many cases, it may be unclear whether certain of these regulatory schemes apply to our business and how best to navigate potential differing standards, interpretations, and even conflicts among the different governmental authorities who adopt and enforce such regulation.

Recent political, financial, and world events may have the effect of increasing scrutiny on technology companies and on gig economy enterprises reliant on an independent contractor workforce. Governmental entities may enact new measures that are adverse to our business, like measures capping commissions charged to restaurant merchants that have been recently enacted in response to the COVID-19 pandemic in several state and city jurisdictions. While most of such limits have been implemented to be a temporary response to the pandemic, it is unclear whether they could be implemented on a more permanent basis or otherwise extended in some jurisdictions. As a result, we may be forced to either increase fees to consumers, if legally permitted, reduce our margins and profitability in such jurisdictions, or cease providing services in such jurisdictions, thereby reducing our geographic footprint and expansion opportunities. We may also be compelled to expend significant resources or discontinue certain services or features which could adversely affect our business.

While we hope to continue to expand and make our technology platforms broadly available, these laws, regulations, and ordinances may limit our ability to expand geographically or require us to expend significant resources to modify our platforms, systems, or alter our business model in order to do so. Further, if we are unable to comply with regulation imposed upon our business, we could be subject to regulatory proceedings, fines or other penalties, along with potential civil and criminal proceedings. Finally, such proceedings could become the focus of increased media attention or other negative impacts on our brand identity or our public relations initiatives, thereby adversely impacting our business, financial condition, and results of operations.

**Human Capital**

As of March 3, 2021, we had approximately 1,034 employees. We also engage contractors and consultants. None of our employees are represented by a labor union with respect to their employment with the Company. We consider our relations with our employees to be good.

Our success depends upon our ability to identify, attract and retain highly qualified management and other key operating and technology personnel. Factors that may affect our ability to attract and retain qualified employees include employee morale, our reputation, competition from other employers, and availability of qualified individuals. We consider talent management a very important factor in our ability to drive our strategic initiatives and execute our long-term growth strategy and appreciate the importance of retention, growth and development of our employees. We strive to maintain a diverse and inclusive workforce and are committed to a culture which values equality and respect. Our employees are offered competitive compensation and benefits programs, as well as opportunities for career growth and development. We are committed to a safe workplace and an ethical environment in which employees can continually develop their skills and expertise to advance their careers.

The recruitment of qualified independent contractor drivers is an important part of our success. We provide independent contractor drivers with a streamlined onboarding process and educational opportunities that help to maximize their earnings potential. We strive to maintain a diverse network of independent contractor drivers and are committed to providing the tools and resources needed to ensure they provide exceptional customer service.

In response to the COVID-19 pandemic, we implemented several initiatives to help protect and support our restaurant partners, diners, independent contractor drivers and our employees, including offering no-contact delivery in select markets for certain restaurant delivery orders; offering no-contact grocery delivery in select markets; working with certain restaurant partners to waive diner delivery fees; deploying free marketing programs for certain restaurants; and providing masks, gloves and hand sanitizer to drivers. Additionally, we have allowed our employees to work remotely as appropriate, while implementing safety measures designed to protect the health of all those entering our facilities.

**Corporate History**

Waitr Incorporated began operations in 2014 in Lake Charles, Louisiana as a restaurant platform for online ordering and delivery services, and grew quickly, connecting restaurants and diners in various markets. Landcadia Holdings, Inc. was a special purpose acquisition company (“SPAC”) whose business was to effect a business combination. The November 2018 merger between Waitr Incorporated and Landcadia Holdings, Inc. (the “Landcadia Business Combination”) provided a platform for Waitr Incorporated to gain access to the U.S. public markets. Prior to the consummation of the Landcadia Business Combination, the common equity of the SPAC was traded on the Nasdaq Stock Market (the “Nasdaq”) under the symbol “LCA”. Effective November 2018, the Company’s common equity began trading on Nasdaq under the ticker symbol “WTRH”.

In January 2019, Waitr acquired BiteSquad.com, LLC (“Bite Squad”). Founded in 2012 and based in Minneapolis, Minnesota, Bite Squad operates an online ordering platform with operations similar to those of Waitr. The acquisition of Bite Squad (the “Bite Squad Merger”) expanded the Company’s scale and footprint across the United States.

**Basis of Presentation**

The Landcadia Business Combination was accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with generally accepted accounting principles in the United States of America (“GAAP”). Under this method of accounting, Landcadia Holdings, Inc. has been treated as the “acquired” company for financial reporting purposes. Accordingly, for accounting purposes, the Landcadia Business Combination was treated as the equivalent of Waitr Incorporated issuing stock for the net assets of Landcadia Holdings, Inc., accompanied by a recapitalization. The net assets of Landcadia Holdings, Inc. were stated at historical cost, with no goodwill or other intangible assets recorded. Reported amounts from operations included herein prior to the Landcadia Business Combination are those of Waitr Incorporated. The shares and earnings per share available to holders of the Company’s common stock, prior to the Landcadia Business Combination, have been retroactively restated to reflect the exchange ratio established in the Landcadia Business Combination.

The Bite Squad Merger was considered a business combination, in accordance with GAAP, and has been accounted for using the acquisition method. Under the acquisition method of accounting, total merger consideration, acquired assets and assumed liabilities are recorded based on their estimated fair values on the acquisition date. The excess of the fair value of merger consideration over the fair value of the assets less liabilities acquired has been recorded as goodwill. The results of operations of Bite Squad are included in our consolidated financial statements since the acquisition date, January 17, 2019.

### Available Information

The Company is subject to the informational requirements of the Exchange Act and files or furnishes reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). The Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act, are filed with the SEC and are available free of charge on the Company's website at investors.waitrapp.com/financial-information/sec-filings at the same time as when the reports are available on the SEC's website. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at http://www.sec.gov. The Company also maintains websites at www.waitrapp.com and www.bitesquad.com. The contents of the websites referenced herein are not incorporated into this filing. Further, the Company's references to the URLs for these websites are intended to be inactive textual references only.

## Item 1A. Risk Factors

*An investment in our securities involves a high degree of risk. You should carefully consider the risks described below, together with the other information contained in this annual report on Form 10-K, including our financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations," before making an investment decision. Our business, prospects, financial condition and operating results could be harmed by any of these risks, as well as other risks not currently known to us or that we currently consider immaterial. The trading price of our securities could decline due to any of these risks, and, as a result, you may lose all or part of your investment. As used in the risks described in this subsection, references to "we," "us" and "our" are intended to refer to the Company unless the context clearly indicates otherwise.*

### Risk Factor Summary

Following is a summary of the principal risk factors to our business, which risks are more fully described below the summary.

*Risks Related to Our Operations*

- If we fail to retain existing diners or add new diners, or if our diners decrease their number of orders or order sizes on the Platforms, our revenue, financial results, and business may be adversely affected.
- If our delivery service levels decline or if restaurants do not see increases in business, restaurants could leave the Platforms, reducing revenue and significantly harming our business.
- We generate a substantial amount of our revenue from restaurants viewed positively by diners. The loss of restaurants to other platforms could seriously harm our business.
- We may be unable to continue to grow at historical growth rates or achieve profitability in the future.
- We are subject to a variety of risks relating to our relationships with the independent contractor drivers, including shortages of available drivers, loss of independent contractor drivers, adverse conditions impacting independent contractor drivers, and possible increases in driver compensation.
- If we are not able to maintain and enhance our brands, or if events occur that damage our reputation and brands, our ability to expand our base of diners and restaurants may be impaired, and our business and financial results may be harmed. Unfavorable media coverage could seriously harm our business.
- Seasonality and the impact of inclement weather could adversely affect our operations and profitability.
- Our inability to manage growth and meet demand could harm our operations and brands.
- Our efforts to improve the experience of restaurants and diners may not be successful and the related investment may impact our profitability.
- Our operations depend on mobile operating systems, hardware, networks and standards that we do not control. Changes in our products or to those operating systems, hardware, networks or standards may seriously harm our Active Diner growth, retention, and engagement.
- Our business is dependent on our ability to maintain and scale our technical infrastructure, and any significant disruption in our service could damage our reputation, result in a potential loss of diners and engagement, or adversely affect our financial results.

- Personal data, internet security breaches or loss of data provided by diners or restaurants on our Platforms could violate applicable law and contracts with key service providers and could result in liability to us, damage to our reputation and brands and harm to our business.
- We have limited operational history and are subject to developmental risks associated with the development of any new business.
- If we become a payment processor at some point in the future, we would be required to comply with applicable laws and standards. Inability to comply with applicable laws or standards could result in harm to our business.
- We are subject to a number of risks related to the credit card and debit card payments we accept.
- We rely on third-party vendors to provide products and services, and we could be adversely impacted if they fail to fulfill their obligations.
- We may not be able to successfully compete in technology innovation and distribution. If we are unable to continue to innovate and provide technology desirable to diners and restaurants, our business operations could materially suffer.
- As part of our business strategy, we have effected, and may continue to effect, acquisitions to grow our business. Failure to pursue and successfully make additional acquisitions could negatively impact our future growth.
- The terms of the agreements governing our debt contain operating and financial covenants that may restrict our business and financing activities. Our failure to comply with these covenants could result in the acceleration of our outstanding indebtedness.
- Additional impairments of the carrying amounts of goodwill or other indefinite-lived assets could negatively affect our financial condition and results of operations.
- We depend on search engines, display advertising, social media, email, content-based online advertising and other online sources to attract diners to the Platforms. If we are unable to attract diners and convert them into Active Diners making orders in a cost-effective manner, our business and financial results may be harmed.
- The loss of senior management or key operating personnel could adversely affect our operations. We depend on skilled personnel to grow and operate our business, and our failure to hire, retain or attract key personnel could adversely affect our business.
- Major hurricanes, tropical cyclones, major snow and/or ice storms in areas not accustomed to them and other instances of severe weather and other natural phenomena could cause significant losses.
- Acquisitions could disrupt our business, dilute our stockholders and harm our business and results of operations.
- If we cannot protect our intellectual property, the value of our brands and other intangible assets may be diminished, and our business may be adversely affected.
- We are currently party to patent lawsuits and other intellectual property rights claims that are expensive and time consuming, and, if resolved adversely, could have a significant impact on our business, financial condition and results of operations.
- We are subject to claims, lawsuits, investigations, and various proceedings, and face potential liability and expenses for legal claims from the normal course of business activities.
- Our use of open source software could expose us to “copyleft” claims or otherwise subject us to business or legal risk.
- We may require additional capital to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances. Insufficient capital can harm our operating, business and financial results.
- If our employees were to unionize, our operating costs could increase and our ability to compete could be impaired.
- Failure to maintain an effective system of disclosure controls and internal control over financial reporting could have an adverse effect on our business and results of operations.

*Risks Related to Our Industry*

- Our industry is highly competitive and fragmented, and our business and results of operations may suffer if we are unable to adequately address downward pricing and other competitive pressures.
- Our business depends on discretionary spending patterns in the areas in which the restaurants on our Platforms operate and in the economy at large. Economic downturns or other events (like coronavirus or similar widespread health/pandemic outbreaks) impacting the United States and global economy could materially adversely affect our results of operations.

- Our industry is affected by general economic and business risks that are largely beyond our control.
- We face risks related to health epidemics and other outbreaks, which could significantly disrupt our operations.
- In response to the COVID-19 pandemic, several jurisdictions have implemented or are considering implementing fee caps, fee disclosure requirements and similar measures that could negatively impact the Company's financial results.
- We rely on restaurants in our network for many aspects of our business, and their failure to maintain their service levels could harm our business.
- If use of the Internet via websites, mobile devices and other platforms, particularly with respect to online ordering, does not continue to increase as rapidly as we anticipate, our business and growth prospects may be harmed.
- The nature of our business and content on the Platforms exposes us to potential liability and expenses for legal claims that could materially affect our results of operations and business.
- Our storage, processing and use of data, some of which contains personal information, subjects us to complex and evolving federal and state laws and regulations regarding privacy, data protection, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in investigations, claims, changes to our business practices, increased cost of operations, and declines in user growth, retention, or engagement, any of which could seriously harm our business.

*Risks Related to Ownership of Our Securities*

- Future sales of a substantial number of shares by existing stockholders could cause our share price to decline.
- Future offerings of debt or equity securities that rank senior to our common stock may adversely affect the market price of our common stock.
- The Debt Warrants, Notes and other Derivative Securities are exercisable/convertible into shares of our common stock, which would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.

**Risks Related to Our Operations**

***If we fail to retain existing diners or add new diners, or if our diners decrease their number of orders or order sizes on the Platforms, our revenue, financial results, and business may be adversely affected.***

Our financial performance has been significantly determined by our success in adding, retaining, and engaging Active Diners who make orders for delivery, dine-in or carryout using the Platforms. We anticipate that our Active Diner growth rate could decline over time as the size of our Active Diner base increases, and as we achieve higher market penetration rates. To the extent our Active Diner growth rate slows, our business performance could become increasingly dependent on our ability to increase the size and frequency of orders in current and new markets. If diners do not perceive the Platforms to be useful, reliable, and trustworthy, we may not be able to attract or retain diners or otherwise maintain or increase the frequency and amount of orders. A decrease in diner retention, growth, order frequency or overall order price could render the Platforms less attractive to restaurants, which may have a material and adverse impact on our revenue, business, financial condition, and results of operations. Any number of factors could negatively affect diner retention, growth, and engagement, thereby adversely affecting our revenue, financial results, and future growth potential, including if:

- diners increasingly order through competing products or services;
- we fail to introduce new and improved services or if new services are not favorably received;
- we are unable to successfully maintain our efforts to provide a satisfactory delivery and ordering experience;
- we are unable to continue to develop products for mobile devices that users find engaging, that work with a variety of mobile operating systems and networks, and that achieve a high level of market acceptance;
- there are changes in diner sentiment about the quality or usefulness of the Platforms, delivery quality, food quality or other products or concerns related to privacy and sharing, safety, security, or other factors;
- we are unable to manage and prioritize information to ensure diners are presented with menu items that are interesting, useful, and relevant to them;
- there are adverse changes in the Platforms, delivery services or restaurant services or products that are mandated by legislation, regulatory authorities, or litigation, including settlements or consent decrees;

- technical or other problems prevent us from delivering food in a rapid and reliable manner or otherwise affect the user experience or enjoyment of food or beverages delivered;
- we adopt policies or procedures related to delivery, ordering or user data that are perceived negatively by our diners or the general public;
- we fail to provide adequate customer service to restaurants, diners, independent contractor drivers, or advertisers;
- we, restaurants on the Platforms, or other companies in the mobile food delivery or ordering industry are the subject of adverse media reports, adverse litigation, or long-term governmental regulation such as fee caps, or other negative publicity;
- restaurants develop their own direct-to-consumer applications or online ordering and delivery services; or
- we are unable to maintain and increase our Active Diner base and order frequency or our Average Daily Orders and Gross Food Sales.

***If our delivery service levels decline or if restaurants do not see increases in business, restaurants could leave the Platforms, reducing revenue and significantly harming our business.***

Restaurants may not continue to do business with us or may be unwilling to pay service fees if we do not deliver food, groceries and beverages in a timely, professional and friendly manner or if the restaurants do not believe that their investment in the Waitr platform or the Bite Squad platform, as applicable, will produce an increase in revenue from delivery, dine-in or carryout orders. Our service fees and commission revenue and the availability of restaurants on the Platforms could be negatively impacted by the following factors, among others:

- decreases in the number of Active Diners or Average Daily Orders on the Platforms;
- loss of online or mobile food delivery market share to competitors;
- inability to professionally and accurately display menu items to consumers on the Platforms;
- adverse media reports or other negative publicity involving the Company, restaurants on our Platforms or other companies in our industry; and
- the impact of macroeconomic conditions and conditions in the restaurant industry in general, including restaurant closures.

***We generate a substantial amount of our revenue from restaurants viewed positively by diners. The loss of restaurants to other platforms could seriously harm our business.***

Substantially all of our revenue is derived from items offered by restaurants to diners on the Platforms. The number of Active Diners, Average Daily Orders and Gross Food Sales depends on the availability of quality items available on the Platforms from restaurants viewed positively by diners. As is typical in our industry, restaurants do not agree to long-term contracts with us, and they are generally free to leave the Platforms with minimal notice or to participate on competing platforms. While no single restaurant accounts for more than 10% of our revenue, many of the restaurants on our Platforms only recently started providing menu items on the Platforms, and they spend a relatively small portion of their overall budget with us. In addition, some restaurants may view the Platforms as experimental and unproven. Restaurants may not continue to do business with us if we do not increase revenues for them or provide delivery, dine-in or carryout ordering for diners in an effective manner, or if they do not believe that the use of the Platforms will generate a competitive return relative to other alternatives, including from our competitors.

Growth in the number of restaurants on the Platforms may not continue at historical rates, and the addition of new restaurants to the Platforms and retention of existing restaurants on the Platforms could decline due to a number of factors. First, the cost of adding new restaurants or retaining existing restaurants on the Platforms could increase substantially. Competition to advertise our services to restaurants has been increasing and could continue to increase as a result of increasing competition among similar companies for a finite pool of restaurants. In addition, the number of options available to restaurants may result in downward pressure on the prices that restaurants are willing to pay for our services. As more choices become available for diners to order delivery, dine-in or carryout from restaurants, the number and frequency of our word-of-mouth and/or organic referrals may decline. Our efforts to attract and retain new restaurants in new geographical areas may not be successful.

If we fail to attract new restaurants or retain existing restaurants, especially those restaurants that are most popular with diners, our financial results could materially suffer.

***We may be unable to continue to grow at historical growth rates or achieve profitability in the future.***

Our revenue has grown year over year, but this growth rate may not be sustainable. The growth rates of Active Diners and Gross Food Sales could decline over time as the market for our services matures. Diner growth, the addition of new restaurants to the Platforms and our revenue growth rates could decline as the size of our Active Diner base increases and as we achieve higher market penetration rates. If our growth rates decline, investors' perceptions of our business may be adversely affected and the market price of our common stock could decline. While we have achieved profitability during the last three quarters of 2020, we may have unprofitable results in the future, for several reasons, including insufficient growth in new menu items, declining numbers of Active Diners or orders, increasing competition, costs to scale our business and technology and other risks described elsewhere in this Form 10-K.

***We are subject to a variety of risks relating to our relationships with the independent contractor drivers, including shortages of available drivers, loss of independent contractor drivers, adverse conditions impacting independent contractor drivers, and possible increases in driver compensation.***

During the year ended December 31, 2020, we terminated our employee drivers and outsourced our driver function to Delivery Logistics, who provides us with independent contractor drivers. While we implemented this change in a way intended to ensure that the drivers are indeed independent contractors under applicable law and regulation, certain state and local governmental authorities have recently initiated efforts to classify independent contractors performing driver jobs as employees. In January 2020, California State Assembly Bill 5 ("AB5") went into effect, which codifies an employee-friendly test to determine whether a worker is an employee or independent contractor under California law. However, in November 2020, California voters passed Proposition 22, the App-Based Drivers as Contractors and Labor Policies Initiative. Proposition 22 classifies app-based transportation and delivery drivers as independent contractors and adopts various labor and wage policies specific to this class of workers, which policies will likely increase operating costs. Many legal experts have stated that the passage of Proposition 22 effectively exempts this class of workers from the reach of AB5. While the Company does not operate in California, the Company has received misclassification claims and may see an increase in claims from other states that have adopted or may adopt classification tests similar to AB5 (without any similar Proposition 22 carve-out for app-based delivery drivers) and there can be no assurance that any claim will not be combined into a collective or class action. These regulatory actions and/or increased scrutiny could result in increased costs and burdens for the Company.

The change in composition of our driver base could also result in a degradation of service provided by contracted delivery drivers, and an increase in the turnover rates of delivery drivers. If Delivery Logistics is unable to attract and retain a sufficient number of independent contractor drivers, we could face difficulty meeting consumer order demands or be forced to forego business that would otherwise be available to us, which could adversely affect our profitability and ability to maintain or grow our business.

Shortages of available drivers could require us to spend more to procure driver services and could create shortages at peak order times. We could face a challenge with having enough qualified drivers primarily due to intense market competition, which may subject us to increased payments for independent contractor driver rates that would negatively impact our profitability.

Further, with respect to independent contractor drivers, shortages can result from the absence of long-term contracts along with other contractual terms or policies that make contracting with Delivery Logistics less desirable to certain independent contractor drivers. In addition, the "on-call" or "on-demand" nature of the way that we ask independent contractor drivers to pick up shifts during busy times may result in difficulties procuring such independent contractor drivers when we need that labor most. Such a shortage could result in material harm to our business or reputation.

The financial condition and operating costs of the independent contractor drivers are affected by conditions and events that are beyond our control and may also be beyond their control. Adverse changes in the financial condition of independent contractor drivers or increases in their car ownership or operating costs could cause them to seek higher revenues or to cease their business relationships with Delivery Logistics. The prices that we charge our diners could be impacted by these circumstances, which may in turn limit pricing flexibility with diners, resulting in fewer delivery orders and decreasing our revenues.

Independent contractor drivers may utilize shirts and food carrier equipment bearing our trade names and trademarks; however, it is not required. If one of the independent contractor drivers is subject to negative publicity, it could negatively reflect on us and have a material and adverse effect on our business, brand and financial performance. Under certain state laws, we could also be subject to allegations of liability for the activities of the independent contractor drivers.

As independent business owners, independent contractor drivers may make business or personal decisions that conflict with our best interests. For example, if route distance is further than desired or personal scheduling conflicts arise, an independent contractor driver may deny orders from time to time. In these circumstances, we must be able to timely deliver food orders to maintain relationships with diners and restaurants on the Platforms. The unwillingness of independent contractor drivers to perform their services when and where they are needed could adversely harm our financial performance and operating results.

***If we are not able to maintain and enhance our brands, or if events occur that damage our reputation and brands, our ability to expand our base of diners and restaurants may be impaired, and our business and financial results may be harmed. Unfavorable media coverage could seriously harm our business.***

Our brands have significantly contributed to the success of our business. We believe that maintaining and enhancing our brands is critical to expanding our base of diners and restaurants. Many of our new diners are referred by existing diners, and, therefore, we strive to ensure that our diners remain favorably inclined towards the Platforms and our online ordering service. Maintaining and enhancing our brands could depend largely on our ability to continue to provide useful, reliable, trustworthy, and innovative services, which we may not do successfully. We may introduce new services, products or terms of service that diners do not like, which may negatively affect our brands.

Additionally, the actions of restaurants that are on our Platforms (or quality and safety of their food), independent contractor drivers and others may negatively affect our brands if consumers do not have a positive experience interacting with those parties after using the Platforms. We may experience media, legislative, or regulatory scrutiny of our delivery and food safety record, our delivery experience, privacy matters or other issues, which may adversely affect our reputation and brands. We may also fail to provide adequate customer service, which could erode confidence in our brands. Maintaining and enhancing our brands may require us to make substantial investments and these investments may not be successful. We face the potential loss of use of our trade name “Waitr” due to certain litigation (see **Item 3. Legal Proceedings** below). If we fail to successfully promote and maintain our brands, if we lose the right to our trade name, or if we incur excessive expenses in this effort, our business and financial results may be adversely affected.

***Seasonality and the impact of inclement weather could adversely affect our operations and profitability.***

We observe that diner behavior patterns and demand for the services we provide generally fluctuate during the year on both of our Platforms. For example, order frequency tends to vary, primarily as a result of weather patterns, university summer breaks and other vacation periods. In addition, orders in cities or towns with college campuses tend to fluctuate with the start and end of the school year, which can comprise a large part of our overall revenue in certain locations. Our revenues fluctuate according to these patterns and due to the timing of certain holidays within each quarter and result in quarterly fluctuations. As a result, diner activity and demand for our services has historically been stronger in our first and fourth fiscal quarters as compared to our second and third fiscal quarters. In addition, other seasonality trends may develop and the existing seasonality and diner behavior that we experience may change or become more extreme, including as a result of factors outside of our control. For example, as shown in our results of operations for the year ended December 31, 2020, the COVID-19 pandemic has had an impact on our typical seasonality trends and could impact future periods.

We sometimes experience large influxes of orders during inclement weather when consumers do not wish to leave their homes to eat restaurant food. Such inclement weather events are unpredictable in many cases and may continue to provide disruption in future periods in certain markets. In such events, the availability of independent contractor drivers could be limited due to unsafe driving conditions or the refusal or unwillingness of drivers to work during such weather events. This can result in substantially delayed delivery times and diner frustration with our services, reducing the willingness of consumers to order using the Platforms in the future. We have in the past experienced increased order volume during certain holidays, while facing a simultaneous shortage in drivers, which can also result in substantial delivery delays and diner dissatisfaction. In addition, the likelihood of accidents may increase during inclement weather events, thereby increasing the costs to us of each delivery, exposing us to potential litigation or accident claims. Any of these events could substantially impact our revenue and results of operations and our ability to grow and operate our business.

***Our inability to manage growth and meet demand could harm our operations and brands.***

Occasions have arisen in the past in which we were not able to adequately meet surges in orders and consumer demand. We may be required to make substantial investments in the future in technology, customer service, sales and marketing infrastructure in order to adequately handle growth, surges in orders and consumer demands. As we continue to grow, we must be able to effectively integrate, develop and motivate a large number of new employees, while maintaining the beneficial aspects of our company culture. We may not be able to manage growth effectively. If we do not manage the growth of our business and operations effectively, the quality of the Platforms and efficiency of our operations could suffer, which could harm our brands, business and results of operations.

***Our efforts to improve the experience of restaurants and diners may not be successful and the related investment may impact our profitability.***

Our culture prioritizes an excellent diner and restaurant experience and loyalty. Our efforts in achieving improved diner and restaurant experience and loyalty may not produce the short-term or long-term benefits that we expect, in which case our growth and engagement, our relationships with diners and restaurants, and our business could be materially adversely affected.

***Our operations depend on mobile operating systems, hardware, networks and standards that we do not control. Changes in our products or to those operating systems, hardware, networks or standards may seriously harm our Active Diner growth, retention, and engagement.***

A large percentage of our revenues and growth occur on mobile devices using the Waitr App and the Bite Squad App, or collectively, the "Apps." Because the Apps are used primarily on mobile devices, the Apps must remain interoperable with popular mobile operating systems, Android and iOS, and related hardware, including but not limited to mobile devices. We have no control over these operating systems or hardware, and any changes to these systems or hardware that degrade the functionality of our products, or give preferential treatment to competitive products, could seriously harm the usage of the Apps on mobile devices. Our competitors could attempt to make arrangements with Apple or Google to make interoperability of our products with those mobile operating systems more difficult or display their competitive offerings more prominently than ours. Similarly, our competitors could enter into other arrangements with mobile device manufacturers, wireless network carriers or Internet service providers that diminish the functionality of the Apps. We plan to continue to introduce new products regularly and have experienced that it takes time to optimize such products to function with these operating systems and hardware, impacting the popularity of such products, and this trend could continue.

***Our business is dependent on our ability to maintain and scale our technical infrastructure, and any significant disruption in our service could damage our reputation, result in a potential loss of diners and engagement, or adversely affect our financial results.***

Our reputation and ability to attract, retain, and serve diners and restaurants depend upon the reliable performance of the Platforms and their underlying technical infrastructure. We have experienced service disruptions, and may experience future disruptions, outages or other performance problems due to a variety of factors. As the Platforms grow more complex, store more information and service higher numbers of diners, their technical infrastructure could suffer. We may not be able to identify causes of performance issues or service disruptions.

Our systems may not be adequately designed with the necessary reliability and redundancy to avoid performance delays or outages that could be harmful to our business. If the Platforms are unavailable when diners, independent contractor drivers or restaurants attempt to access them, or if they do not load as quickly as they expect, these key users may not return to the Platforms as often in the future, or at all. As our Active Diners and restaurants and the amount and types of information shared on the Platforms continue to grow, we will need an increasing amount of technical infrastructure, including network capacity, and computing power, to continue to satisfy the needs of our diners, restaurants on the Platforms and the independent contractor delivery drivers. It is possible that we may fail to effectively scale and grow our technical infrastructure to accommodate these increased demands. In addition, our business is subject to interruptions, delays, or failures resulting from natural disasters, terrorism, or other catastrophic events.

A substantial portion of our network infrastructure is provided by third parties. Substantially all of the communications, network and computer hardware used to operate our websites and mobile applications are located in the United States in Amazon Web Services and Google Cloud Platform data centers. We do not own or control the operation of these facilities. In addition, we may not have sufficient protection or recovery plans in certain circumstances. We may not always maintain redundancy for certain hardware. Any disruption or failure in the services we receive from these providers could harm our ability to handle existing or increased traffic and could significantly harm our business. Any financial or other difficulties these providers face may adversely affect our business, and we exercise little control over these providers, which increases our vulnerability to problems with the services they provide.

We expect to continue to make significant investments to maintain and improve the availability of the Platforms and to enable rapid releases of new features and products. To the extent that we do not effectively address capacity constraints, respond adequately to service disruptions, upgrade our systems as needed or continually develop our technology and network architecture to accommodate actual and anticipated changes in technology, our business and results of operations would be harmed.

We have spent and expect to continue to spend substantial amounts on technology infrastructure and services to handle the traffic on our websites and mobile applications and to help shorten the length of or prevent system interruptions. The operation of these systems is expensive and complex, and we could experience operational failures.

Although we carry business interruption insurance, it may not be sufficient to compensate us for the potentially significant losses, including the potential harm to the future growth of our business that may result from interruptions in our service as a result of system failures.

***Personal data, internet security breaches or loss of data provided by diners or restaurants on our Platforms could violate applicable law and contracts with key service providers and could result in liability to us, damage to our reputation and brands and harm to our business.***

Mobile malware, viruses, hacking, and phishing attacks have become more prevalent in our industry and may occur on our systems in the future. Although it is difficult to determine what, if any, harm may directly result from an interruption or attack, any failure to maintain performance, reliability, security, and availability of our products and technical infrastructure to the satisfaction of restaurants or diners may seriously harm our reputation and our ability to retain and attract diners and restaurants.

We rely on third-party billing and payment processing providers, many of whom may collect and store sensitive data, including legally protected personal information. Examples include third parties who process diner orders, payroll and other payments, and service providers who collect and store diner, restaurant or employee information. We may also process and store and use additional third parties to process and store sensitive intellectual property and other proprietary business information, including that of the restaurants on our Platforms. While we intend to maintain data privacy and security measures that are compliant with applicable privacy laws and regulations, future security breaches could subject us and/or these third-party service providers to liability for violations of various laws, rules or regulations, civil liability, government-imposed fines, orders requiring that we or these third parties change our or their practices, or criminal charges, which could adversely affect our business. Complying with these various laws could cause us to incur substantial costs or require us to change our business practices, systems and compliance procedures in a manner adverse to our business.

***We have limited operational history and are subject to developmental risks associated with the development of any new business.***

We lack significant operational history by which future performance may be judged or compared. Any future success that we may enjoy will depend upon many factors, several of which may be beyond our control, or which cannot be predicted at this time, and which could have a material adverse effect upon our financial condition, business prospects and operations and the value of an investment in the Company. As a result, our past quarterly financial results do not necessarily indicate future performance. Investors should take into account the risks and uncertainties frequently encountered by companies in rapidly evolving markets. Investors should not rely upon our past quarterly financial results as indicators of future performance. The numerous factors, which we are unable to predict or are outside of our control, include the following:

- We may not be able to accurately forecast revenues and plan operating expenses;
- We may be unable to fund our working capital requirements or maintain compliance with our debt covenants, particularly if our forecast regarding the sufficiency of our liquidity is inaccurate or our expenses exceed our expectations;
- We may be unable to scale our technological and operational infrastructure to accommodate rapid growth in diners, orders or customer support needs;
- Our growth may depend on acquisitions, and we may lack the capital necessary to pursue them;
- Our still relatively recent transition to a public company could pose operational, financial and quality risks that we are unable to manage effectively;
- The development and introduction of new products or services by us or our competitors is uncertain;
- Competing with traditional ordering methods or delivery services provided directly by restaurants (or third parties) to consumers over the phone or through their own websites or other means could pose a risk to our growth and financial performance;
- Our ability to maintain, retain and grow our number of Active Diners, Average Daily Orders, Gross Food Sales and order frequency is not guaranteed;
- Our ability to attract and retain restaurants over long periods of time has not been tested in several markets;
- We may prove unable to attract and retain key employees and personnel to support growth;
- Seasonal and weather-related fluctuations in spending by consumers relating to food delivery can be unpredictable;
- The acceptable pricing of our services and commission fees to restaurants and diner fees to consumers has not been tested widely;
- Our ability to increase services, diner fees and other revenue does not enjoy long historical data trends and any increases in our costs may be met with adverse restaurant response that could materially negatively impact revenue as affected restaurants may withdraw from our Platforms;

- We have yet to demonstrate our ability to diversify and grow material revenue sources beyond current services and diner fees;
- Increases in marketing, sales, and other operating expenses that we may incur to grow and expand our operations and to remain competitive are unpredictable;
- Our ability to maintain gross margins and operating margins can be difficult to predict and impacted by numerous factors beyond our control (for example, due to transaction charge increases, technology cost increases, competitive pricing and other items);
- We may experience system failures or breaches of security and privacy that could pose a harm on their own and could affect consumers' confidence in our services;
- We may not be able to adequately manage key third-party service providers;
- We may experience changes in diner or restaurant behavior or preferences;
- Payment processing costs could increase, or we could fail to implement our own payment processing solution;
- Given the rapid pace of our evolution into a public company, our internal controls may not be able to keep pace with necessary requirements from a business, accounting or legal point of view; and
- We may experience safety hazards or issues with independent contractor drivers or third parties that come into contact with the drivers, which could be difficult to predict and which could impact our operating costs and diner or restaurant use of the Platforms.

***If we become a payment processor at some point in the future, we would be required to comply with applicable laws and standards. Inability to comply with applicable laws or standards could result in harm to our business.***

Although we currently do not directly store or process payments on behalf of restaurants or diners and use third parties to do so, we may choose to do so in the future. We would need to comply with Payment Card Industry ("PCI") and Data Security Standard (the "Standard") if we choose to pursue this possibility. The Standard is a comprehensive set of requirements for enhancing payment account data security that was developed by the PCI Security Standards Council to help facilitate the broad adoption of consistent data security measures. Payment card network rules would require us to comply with the Standard, and our failure to do so may result in fines or restrictions on our ability to accept payment cards if we elected to become a payment processor.

Under certain circumstances specified in the payment card network rules, we could be required in the future to submit to periodic audits, self-assessments or other assessments of our compliance with the Standard. Such activities may reveal that we had failed to comply with the Standard. If an audit, self-assessment or other test determines that we need to take steps to remediate any deficiencies, such remediation efforts may distract our management team and require us to undertake costly and time-consuming remediation efforts. In addition, even if we comply with the Standard, there is no assurance that we will be protected from a security breach. Payment processing businesses involve complex financial, cybersecurity and other factors that may be difficult to us. We cannot ensure that the cost savings or additional revenue from becoming a payment processor would exceed the significant costs associated with that decision. While we are currently PCI compliant on both Platforms, there can be no assurance that we will remain compliant.

***We are subject to a number of risks related to the credit card and debit card payments we accept.***

We accept payments through credit and debit card transactions. For credit and debit card payments, we pay interchange and other fees, which may increase over time. An increase in those fees may require us to increase the prices we charge and would increase our operating expenses, either of which could harm our business, financial condition and results of operations.

We currently rely exclusively on one third-party vendor to provide payment processing services, including the processing of payments from credit cards and debit cards, and our business would be disrupted if this vendor becomes unwilling or unable to provide these services to us and we are unable to find a suitable replacement on a timely basis. If we or our processing vendor fails to maintain adequate systems for the authorization and processing of credit card transactions, it could cause one or more of the major credit card companies to disallow our continued use of their payment products. In addition, if these systems fail to work properly and, as a result, we do not charge our customers' credit cards on a timely basis or at all, our business, revenue, results of operations and financial condition could be harmed.

The payment methods that we offer also subject us to potential fraud and theft by criminals, who are becoming increasingly more sophisticated, seeking to obtain unauthorized access to or exploit weaknesses that may exist in the payment systems. If we fail to comply with applicable rules or requirements for the payment methods we or the restaurants accept, or if payment-related data are compromised due to a breach of data, we may be liable for significant costs incurred by payment card issuing banks and other third parties or subject to fines and higher transaction fees, or our ability to accept or facilitate certain types of payments may be impaired. In addition, our customers could lose confidence in certain payment types, which may result in a shift to other payment types or potential changes to our payment systems that may result in higher costs. If we fail to adequately control fraudulent credit card transactions, we may face civil liability, diminished public perception of our security measures, and significantly higher credit card-related costs, each of which could harm our business, results of operations and financial condition.

We are also subject to payment card association operating rules, certification requirements and rules governing electronic funds transfers, which could change or be reinterpreted to make it more difficult for us to comply. We are required to comply with payment card industry security standards. Failing to comply with those standards may violate payment card association operating rules, federal and state laws and regulations, and the terms of our contracts with payment processors. Any failure to comply fully also may subject us to fines, penalties, damages and civil liability, and may result in the loss of our ability to accept credit and debit card payments. Further, there is no guarantee that such compliance will prevent illegal or improper use of our payment systems or the theft, loss or misuse of data pertaining to credit and debit cards, card holders and transactions.

If we fail to maintain our chargeback rate or refund rates at acceptable levels, our processing vendor may increase its transaction fees or terminate its relationship with us. Any increases in applicable credit and debit card fees could harm our results of operations, particularly if we elect not to raise our rates for our service to offset the increase. The termination of our ability to process payments on any major credit or debit card would significantly impair our ability to operate our business.

***We rely on third-party vendors to provide products and services, and we could be adversely impacted if they fail to fulfill their obligations.***

We depend on third-party vendors and partners to provide us with certain products and services, including components of our computer systems, software, data centers, payment processors and telecommunications networks, to conduct our business. For example, we rely on third parties for services such as organizing and accumulating certain daily transaction data on orders. We also rely on third parties for specific software and hardware used in providing our products and services. Some of these organizations and service providers may provide similar services and technology to our competitors, and we do not have long-term or exclusive contracts with them.

Our systems and operations or those of our third-party vendors and partners could be exposed to damage or interruption from, among other things, fire, natural disaster, power loss, telecommunications failure, unauthorized entry, computer viruses, denial-of-service attacks, acts of terrorism, human error, vandalism or sabotage, financial insolvency, bankruptcy and similar events. In addition, we may be unable to renew our existing contracts with our most significant vendors and partners or our vendors and partners may stop providing or otherwise supporting the products and services we obtain from them, and we may not be able to obtain these or similar products or services on the same or similar terms as our existing arrangements, if at all. The failure of our vendors and partners to perform their obligations and provide the products and services we obtain from them in a timely manner for any reason could adversely affect our operations and profitability.

***We may not be able to successfully compete in technology innovation and distribution. If we are unable to continue to innovate and provide technology desirable to diners and restaurants, our business operations could materially suffer.***

We must continuously innovate to improve our existing Platform technology and ensure that our products and services are well received. Mobile applications, internet-enabled technology and online e-commerce are constantly changing. We face competition from larger and more established companies, and smaller companies also provide similar services and technology. Our competitors may also develop products, features, or services that are similar to ours or that achieve greater market acceptance. These products, features, and services may undertake more far-reaching and successful product development efforts or marketing campaigns or may adopt more aggressive pricing policies.

Our ability to compete effectively in the deployment of innovative products depends on factors outside of our control, including the following:

- usefulness, ease of use, performance and reliability of our products compared to those of our competitors;
- size and composition of base of Active Diners;
- engagement of Active Diners with the Platforms;
- the timing and market acceptance of products, including developments and enhancements to the Platforms or our competitors' products;

- customer service and support efforts;
- acquisitions or consolidation within our industry, which may result in more formidable competitors; and
- our ability to attract, retain, and motivate talented employees, particularly software engineers.

Developing the Platforms, which include the Apps, websites and other technologies, entails significant technical and business risks. We may use new technologies ineffectively, or we may fail to adapt to emerging industry standards. If we face material delays in introducing new or enhanced products or if our recently introduced products do not perform in accordance with our expectations, the restaurants and diners in our network may forego the use of our products in favor of those of our competitors.

***As part of our business strategy, we have effected, and may continue to effect, acquisitions to grow our business. Failure to pursue and successfully make additional acquisitions could negatively impact our future growth.***

As part of our business strategy, we have effected acquisitions to add complementary companies, products and technologies to grow our business. In the future, we may not be able to find other suitable acquisition candidates, and we may not be able to complete these acquisitions. Additionally, the continuing trend toward consolidation in the online and mobile app ordering and delivery industry may result in larger companies with greater financial resources and other competitive advantages than Waitr's and could affect our ability to successfully make additional acquisitions, which may impact our growth rates and ability to maintain profitability.

***The terms of the agreements governing our debt contain operating and financial covenants that may restrict our business and financing activities. Our failure to comply with these covenants could result in the acceleration of our outstanding indebtedness.***

We are party to a Credit Agreement and Convertible Notes Agreement (see Part II, Item 8, *Note 9 - Debt*). These agreements include a number of customary covenants that, among other things, limit or restrict the ability of the Company and its subsidiaries to incur additional debt, incur liens on assets, engage in mergers or consolidations, dispose of assets, pay dividends or repurchase capital stock and repay certain junior indebtedness. The aforementioned restrictions are subject to certain exceptions including the ability to incur additional indebtedness, liens, dividends, and prepayments of junior indebtedness subject, in each case, to compliance with certain financial metrics and/or certain other conditions and a number of other traditional exceptions that grant Waitr Inc. continued flexibility to operate and develop its business. In certain cases, these covenants may impose limitations or restrictions on the manner in which we conduct our business and could place us at a competitive disadvantage to competitors. Included in these covenants is an affirmative covenant relating to the deliverance of audited annual financial statements to the administrative agent and lenders, accompanied by a report from an independent public accounting firm, which report shall be unqualified as to going concern and scope of audit.

Our ability to comply with these covenants and other restrictions may be affected by events beyond our control, and we may not be able to meet these covenants. From time to time, we may be required to seek waivers or amendments to the Credit Agreement and Convertible Notes Agreement to maintain compliance with these covenants, and there can be no certainty that any such waiver or amendment will be available. Non-compliance with one or more of these covenants could result in any amounts outstanding under the Credit Agreement and Convertible Notes Agreement becoming immediately due and payable. Additionally, upon the occurrence and during the continuance of an event of default, both the Credit Agreement and Convertible Notes Agreement provide for default interest at a rate that is 2% and 5% higher, respectively, than the interest rates otherwise payable under the agreements. If we are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either when they mature or in the event of a default, we may need to engage in debt or equity financings to secure additional funds. However, additional funds may not be available when we need them, on terms that are acceptable to us, or at all.

***Additional impairments of the carrying amounts of goodwill or other indefinite-lived assets could negatively affect our financial condition and results of operations.***

We conduct our goodwill and intangible asset impairment test annually as of October 1, or more frequently if indicators of impairment exist, and we review the recoverability of long-lived assets, including acquired technology, capitalized software costs, and property and equipment when events or changes in circumstances occur that indicate that the carrying value of the asset may not be recoverable. For purposes of testing for goodwill impairment, we have one reporting unit. During the year ended December 31, 2019, we experienced a sustained decline in market capitalization as a result of adverse changes in market conditions from increased competition which negatively affected our order and revenue growth. This resulted in the recognition of a total non-cash pre-tax impairment loss of $191.2 million to write down the carrying values of goodwill and intangible assets, including capitalized contract costs, customer relationships and developed technology, to their implied fair values. See Part II, Item 8, *Note 7 – Intangible Assets and Goodwill* of this Form 10-K for additional details.

Determining the fair value of a reporting unit and intangible assets requires the use of estimates and significant judgments that are based on a number of factors including actual operating results. It is reasonably possible that the judgments and estimates used could change in future periods. There can be no assurance that additional goodwill or intangible assets will not be impaired and that the carrying value of other indefinite-lived assets will be recoverable in future periods, which could adversely affect our financial results and stockholders' equity.

***Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our financial condition and results of operations.***

We are subject to income taxes in the United States, and our domestic tax liabilities are subject to the allocation of expenses in differing jurisdictions. Our effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation;
- costs related to intercompany restructurings;
- changes in tax laws, regulations or interpretations thereof; and
- lower than anticipated future earnings in jurisdictions where we have lower statutory tax rates and higher than anticipated future earnings in jurisdictions where we have higher statutory tax rates.

In addition, we may be subject to audits of our income, sales and other transaction taxes by U.S. federal and state authorities. Outcomes from these audits could have an adverse effect on our financial condition and results of operations.

***We depend on search engines, display advertising, social media, email, content-based online advertising and other online sources to attract diners to the Platforms. If we are unable to attract diners and convert them into Active Diners making orders in a cost-effective manner, our business and financial results may be harmed.***

Our success depends on our ability to attract online diners to the Platforms and convert them into orders in a cost-effective manner. We depend, in part, on search engines, display advertising, social media, email, content-based online advertising and other online sources to generate traffic to our websites and downloads of the Apps. We are included in search results as a result of both paid search listings, where we purchase specific search terms that result in the inclusion of our advertisement, and, separately, organic searches that depend upon the content on websites owned and maintained by us.

Search engines, social media platforms and other online sources often revise their algorithms and introduce new advertising products. If one or more of the search engines or other online sources on which we rely for website traffic were to modify its general methodology for how it displays our advertisements, resulting in fewer consumers clicking through to our websites, our business could suffer. In addition, if our online display advertisements are no longer effective or are not able to reach certain diners due to diners' use of ad-blocking software, our business could suffer.

If one or more of the search engines or other online sources on which we rely for purchased listings modifies or terminates its relationship with us, our expenses could rise, we could lose consumers and traffic to our websites could decrease, any of which could have a material adverse effect on our business, financial condition and results of operations.

***The loss of senior management or key operating personnel could adversely affect our operations. We depend on skilled personnel to grow and operate our business, and our failure to hire, retain or attract key personnel could adversely affect our business.***

We depend on our executive officers, senior management team and other key operating and technology personnel. As we continue to grow, we cannot guarantee that we will continue to attract the personnel we need to maintain our competitive advantage. If for any reason the services of our key personnel were to become unavailable, there could be a material adverse effect on our business, financial condition, results of operations, cash flows and prospects. While we have entered into an employment agreement with our chief executive officer through 2021, the rest of our executive team has entered into at-will employment arrangements. We believe that equity inducements issued to our executive team in connection with employment properly incentivizes our team to maintain employment.

We could face significant competition from other companies in hiring such personnel, particularly in larger markets into which we may expand. If we do not succeed in attracting, hiring, and integrating excellent personnel, or retaining and motivating existing personnel, we may be unable to grow effectively. Retaining and attracting key talent is extremely competitive in the high technology industry, particularly in the areas of mobile applications and Internet technology. If we are unable to retain or attract key talent or personnel, our operations could suffer, thereby materially adversely affecting our business.

***Major hurricanes, tropical cyclones, major snow and/or ice storms in areas not accustomed to them and other instances of severe weather and other natural phenomena could cause significant losses.***

Our services and operations are subject to interruption, decreases in consumer entertainment spending and damage and destruction to company property as a result of severe local weather conditions or other natural phenomena. Our headquarters are located in areas that have historically been and could, in the future, be materially and adversely affected by damage resulting from a major tropical cyclone, significant rain event, a hurricane, or other severe weather phenomena. In addition, we rely on third parties for critical infrastructure and services. Any of these third parties could be subject to disruptions due to similar major weather events, which could adversely affect our business and financial results.

We may also suffer from weather-related or other events, such as tornadoes, hurricanes, blizzards, ice storms, floods, fires, widespread computer viruses, terrorist attacks, acts of war and explosions, which may disrupt fuel supplies, increase fuel costs, disrupt freight shipments or routes, affect regional economies, destroy our assets or the assets of our customers or otherwise adversely affect the business or financial condition of our customers (both restaurant and diner), any of which could adversely affect our results or make our results more volatile. In addition, third parties that provide critical technology, services and infrastructure, such as data centers, telecommunications networks and the like remain vulnerable to these types of events, all of which could disrupt critical services for us, adversely affecting our financial results and operations.

Such adverse weather occurrences could materially impact orders on the Platforms and delivery capabilities of independent contractor drivers, thus severely decreasing our revenue and increasing costs. Further, in the event of any such weather occurrence, our insurance may not be sufficient to cover the costs of repairing or replacing damaged equipment and we may suffer a significant decline in revenues if any of the restaurants on the Platforms are closed for an extended period of time or these events result in significant disruption to telecommunications systems, including the Internet or mobile phone services. Any such events could materially and adversely affect our business and the results of our operations.

***Acquisitions could disrupt our business, dilute our stockholders and harm our business and results of operations.***

As part of our business strategy, we have effected, and may continue to effect, acquisitions to add specialized employees and complementary companies, products, and technologies. Our ability to acquire and successfully integrate larger or more complex companies, products, and technologies is unproven. In the future, we may not be able to find other suitable acquisition candidates, and we may not be able to complete acquisitions on favorable terms, if at all. Our competitors have large cash reserves and aggressive acquisition strategies, and we may not be able to successfully attract acquisition targets to the same degree as our competitors. Our previous and future acquisitions may not achieve our goals, and any future acquisitions we complete could be viewed negatively by diners, restaurants, or investors. In addition, if we fail to close transactions successfully or integrate new teams, or integrate the products and technologies associated with these acquisitions into our company and culture, our business could be seriously harmed. Any integration process may require significant time and resources, and we may not be able to manage the process successfully. We may not successfully evaluate or use the acquired products, technology, and personnel, or accurately forecast the financial impact of an acquisition transaction, including accounting charges. We may also incur unanticipated liabilities that we assume as a result of acquiring companies. We may have to pay cash, incur debt, or issue equity securities to pay for any acquisition, any of which could seriously harm our business. Selling equity to finance any such acquisitions would also dilute our stockholders. Incurring debt would increase our fixed obligations and could also include covenants or other restrictions that would impede our operations.

***If we cannot protect our intellectual property, the value of our brands and other intangible assets may be diminished, and our business may be adversely affected.***

We rely and expect to continue to rely on a combination of confidentiality and license agreements with our employees, consultants, and third parties with whom we have relationships, as well as trademark, copyright, patent, trade secret, and domain name protection laws, to protect our proprietary rights. In the United States and internationally, we have filed various applications for protection of certain aspects of our intellectual property. We do not currently hold any issued patents. In the future, we may acquire patents or patent portfolios, which could require significant cash expenditures. However, third parties may knowingly or unknowingly infringe our proprietary rights, third parties may challenge proprietary rights held by us, and pending and future trademark and patent applications may not be approved. In addition, effective intellectual property protection may not be available in every country in which we operate or intend to operate our business. In any or all of these cases, we may be required to expend significant time and expense in order to prevent infringement or to enforce our rights. Although we have taken measures to protect our proprietary rights, there can be no assurance that others will not offer products or concepts that are substantially similar to ours and compete with our business.

We have registered the trademark “Waitr,” along with its stylized logo, with the United States Patent and Trademark Office. Waiter.com, Inc. sued Waitr Incorporated in 2016 in the United States District Court for the Western District of Louisiana alleging, among other things, trademark infringement based on the use of the name “Waitr.” Although we believe that Waiter.com, Inc.’s lawsuit lacks merit, there is a risk that the court could find that our use of the name “Waitr” infringes the rights of Waiter.com, Inc. In such event, the court could award Waiter.com, Inc. significant damages and/or order that we discontinue our use of the name “Waitr.” Any such adverse ruling or finding could materially adversely affect our financial results and operations. Having to use a different name could confuse restaurants and/or diners, resulting in fewer orders.

***We are currently party to patent lawsuits and other intellectual property rights claims that are expensive and time consuming, and, if resolved adversely, could have a significant impact on our business, financial condition and results of operations.***

Companies in the Internet, technology, and mobile application industries own large numbers of patents, copyrights, trademarks, and trade secrets, and frequently enter into litigation based on allegations of infringement, misappropriation, or other violations of intellectual property or other rights. In addition, various “non-practicing entities” that own patents and other intellectual property rights often attempt to aggressively assert their rights in order to extract value from technology companies. Furthermore, from time to time we may introduce new products, including in areas where we currently do not compete, which could increase our exposure to patent and other intellectual property claims from competitors and non-practicing entities.

As a public company, we may receive letters demanding that we cease and desist using certain intellectual property. Some of these may result in litigation against us. Defending patent and other intellectual property litigation costs large amounts of money and time and can impose a significant burden on management and employees. Favorable final outcomes do not occur in all cases. In addition, plaintiffs may seek, and we may become subject to, preliminary or provisional rulings in the course of any such litigation, including potential preliminary injunctions requiring us to cease some or all of our operations. For example, a ruling in the lawsuit filed by Waiter.com, Inc. could require that we stop using the name Waitr. We may decide to settle such lawsuits and disputes on terms that are unfavorable to us. Similarly, if any litigation to which we are a party is resolved adversely, we may be subject to an unfavorable judgment that may not be reversed upon appeal. The terms of such a settlement or judgment may require us to cease some or all of our operations or pay substantial amounts to the other party. In addition, we may have to seek a license to continue practices found to be in violation of a third party’s rights, which may not be available on reasonable terms, or at all, and may significantly increase our operating costs and expenses. As a result, we may also be required to develop alternative non-infringing technology, names or practices or discontinue the practices.

The development of alternative non-infringing technology, names or practices could require significant effort and expense or may not be feasible. Our business, financial condition and results of operations could be adversely affected as a result of an unfavorable resolution of the disputes and litigation referred to above.

***We are subject to claims, lawsuits, investigations, and various proceedings, and face potential liability and expenses for legal claims from the normal course of business activities.***

Waitr is involved in litigation arising from the normal course of business activities, including, without limitation, labor and employment claims, lawsuits and claims involving personal injuries, physical damage and workers’ compensation benefits suffered as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr maintains insurance that it believes generally covers liability for potential damages in many of these matters, insurance coverage is not guaranteed, often these claims are met with denial of coverage positions by the carriers, and there are limits to insurance coverage; accordingly, we could suffer material losses as a result of these claims or the denial of coverage for such claims.

***Our use of open source software could expose us to “copyleft” claims or otherwise subject us to business or legal risk.***

We use open source software in our products. Our use of open source software in our products may require us to license innovations that are material to our business and may also expose us to increased litigation risk. If the protection of our proprietary rights is inadequate to prevent unauthorized use or appropriation by third parties, the value of our brands and other intangible assets may be diminished and competitors may be able to more effectively mimic our service and methods of operations. Any of these events could have an adverse effect on our business and financial results.

***We may require additional capital to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances. Insufficient capital can harm our operating, business and financial results.***

We intend to continue to make investments to support our growth and may require additional capital to pursue our business objectives and respond to business opportunities, challenges or unforeseen circumstances, including to increase our marketing expenditures to improve brand awareness, develop new product and service offerings or further improve the Platforms and existing product and service offerings, enhance our operating infrastructure and acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. However, additional funds may not be available when we need them, on terms that are acceptable to us, or at all. Volatility in the credit markets also may have an adverse effect on our ability to obtain debt financing.

If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to pursue our business objectives and to respond to business opportunities, challenges or unforeseen circumstances could be significantly limited, and our business, operating results, financial condition and prospects could be materially adversely affected.

***If our employees were to unionize, our operating costs could increase and our ability to compete could be impaired.***

None of our employees are currently represented under a collective bargaining agreement. However, we always face the risk that our employees may try to unionize, and if our independent contractors were ever reclassified as employees, the magnitude of this risk would increase. Further, Congress or one or more states could approve legislation and/or the National Labor Relations Board could render decisions or implement rule changes that could significantly affect our business and our relationship with employees and independent contractors, including actions that could substantially liberalize the procedures for union organization. In addition, we can offer no assurance that the National Labor Relations Board will not adopt new regulations or interpret existing regulations in a manner that would favor the agenda of unions.

Any attempt to organize by our employees could result in increased legal and other associated costs and divert management attention, and if we entered into a collective bargaining agreement, the terms could negatively affect our costs, efficiency and ability to generate acceptable returns on the affected operations. In particular, the unionization of our employees could have a material adverse effect on our business, financial condition, results of operations, cash flows and prospects because:

- Restrictive work rules could hamper our efforts to improve and sustain operating efficiency and could impair our service reputation and limit our ability to provide our services;
- A strike or work stoppage could negatively impact our profitability and could damage customer and employee relationships; and
- An election and bargaining process could divert management’s time and attention from our overall objectives and impose significant expenses.

***Failure to maintain an effective system of disclosure controls and internal control over financial reporting could have an adverse effect on our business and results of operations.***

As a public company, we are subject to the requirements of the Sarbanes-Oxley Act of 2002, which requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. Our independent registered public accounting firm will be required to formally attest to the effectiveness of our internal control over financial reporting effective January 1, 2021 and may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed, or operating. Any failure to maintain effective disclosure controls and internal control over financial reporting could have an adverse effect on our business and results of operations.

### Risks Related to Our Industry

***Our industry is highly competitive and fragmented, and our business and results of operations may suffer if we are unable to adequately address downward pricing and other competitive pressures.***

We compete with many traditional and online and mobile app ordering and general delivery companies of varying sizes, including many that have greater access to restaurants, a wider range of services, a wider range of menu or delivery items, greater capital resources, or other competitive advantages. Traditional ordering techniques involve advertising by restaurants in low-cost paper publications and through traditional online and offline media channels, with consumers simply calling restaurants or delivery services to place orders. Traditional takeout or delivery services are often lower cost than the Platforms and are difficult to disrupt. We also compete with smaller, regional and local companies that cover specific locations with specific restaurants or that offer niche services. We also compete, to a lesser extent, with restaurants that hire their own delivery drivers for online, mobile application or telephone orders. Numerous competitive factors could impair our ability to maintain or improve our profitability. These factors include the following:

- Many of our competitors' periodically reduce or eliminate their delivery charges to consumers or commissions that they charge to restaurants to gain business, especially during times of increased competition or reduced growth in the economy, which may limit our ability to maintain or increase our order commissions and delivery charges, may require us to reduce our order commissions and delivery charges or may limit our ability to maintain or expand our business;
- Some restaurants have reduced or may reduce the number of mobile app or online ordering and delivery services and technologies that they use by selecting a single core company or a limited number of providers as approved service providers and, in some instances, we may not be selected;
- Restaurants could solicit bids from multiple service providers for their mobile application or online ordering and delivery needs, which may depress service fees and commission rates or result in a loss of business to competitors;
- The continuing trend toward consolidation in the online and mobile app ordering and delivery industry could result in larger companies with greater financial resources and other competitive advantages, and we may have difficulty competing with them;
- Advances in technology may require us to increase investments in order to remain competitive, and our restaurant diners and consumers may not be willing to accept higher service fees, commission rates or delivery charges to cover the cost of these investments;
- Higher fuel prices and, in turn, higher fuel surcharges may cause some of the independent contractor drivers to demand higher independent contractor driver rates;
- Competition from "gig economy" companies in general may negatively impact independent contractor driver, restaurant customer and/or consumer relationships and service rates;
- Restaurants could develop their own online or mobile app ordering and delivery technology and hire their own drivers to make their own deliveries, which could reduce demand for our services to restaurants and limit choices for consumers, reducing the number and frequency of orders using our technology; and
- Continued debate and uncertainty in various jurisdictions regarding gig economy companies' treatment of drivers as independent contractors, which could increase our independent contractor expenses in future periods.

***Our business depends on discretionary spending patterns in the areas in which the restaurants on our Platforms operate and in the economy at large. Economic downturns or other events (like coronavirus or similar widespread health/pandemic outbreaks) impacting the United States and global economy could materially adversely affect our results of operations.***

Purchases at restaurants and food and beverage hospitality services locations are discretionary for consumers and we are therefore susceptible to changes in discretionary spending patterns or economic slowdowns in the geographic areas in which restaurants on our Platforms operate and in the economy at large. We believe that consumers generally are more willing to make discretionary purchases, including delivery, dine-in or carryout of restaurant meals, during favorable economic conditions. Disruptions in the overall economy (including disruptions due to coronavirus or similar health/pandemic events), including high unemployment, financial market volatility and unpredictability, and the related reduction in consumer confidence, could negatively affect food and beverage sales throughout the restaurant industry, including orders through the Platforms. In addition, we believe that a proportion of our weekday revenues, particularly during the lunch hour, historically have been derived from business customers using expense accounts. Our business therefore may be affected by reduced expense account or other business-related dining by business clientele. There is also a risk that if uncertain economic conditions persist for an extended period of time or worsen, consumers might make long-lasting changes to their discretionary spending behavior, including ordering food for delivery, dine-in or carryout less frequently. The ability of the U.S. economy to handle this uncertainty is likely to be affected by many national and international factors that are beyond our control. These factors, including national, regional and local politics and economic conditions, continued impact of the COVID-19 pandemic, disposable consumer income and consumer confidence, also affect discretionary consumer spending. If any of these factors cause restaurants to cease operations or cease using the Platforms, it could also significantly harm our financial results, for the reasons set forth elsewhere in these risk factors. Continued uncertainty in or a worsening of the economy, generally or in a number of our markets, and diners' reactions to these trends could adversely affect our business and cause us to, among other things, reduce the number and frequency of new market openings or cease operations in existing markets.

***Our industry is affected by general economic and business risks that are largely beyond our control.***

Our industry is highly cyclical, and our business is dependent on a number of factors, many of which are beyond our control. We believe that some of the most significant of these factors are economic changes that affect supply and demand in dining out in general, such as:

- changes in diners' dining habits and in the availability of disposable income for ordering food from restaurants;
- excess restaurant capacity in comparison with food order demand;
- downturns in restaurants' business cycles;
- recessionary economic cycles, downturns or other events (like the COVID-19 or similar widespread health/pandemic outbreaks); and
- closure of restaurants and economic impact on diners as a result of the COVID-19 pandemic.

The risks associated with these factors are heightened when the U.S. and/or global economy is weakened. Some of the principal risks during such times are as follows:

- We may experience low overall food and beverage order levels because our diners' demand for our services generally correlate with the strength of the U.S. and, to a lesser extent, global economy;
- Certain of the restaurants on our Platforms may face credit issues and cash flow problems, particularly if they encounter increased financing costs, decreased access to capital or loss of customers as a result of the COVID-19 pandemic, which may decrease diner demand for restaurant prepared food, and such issues and problems may affect the number of orders that occur through the Platforms;
- Food ordering and dining out patterns may change as food supply chains are redesigned and customer tastes change, resulting in an imbalance between restaurants' available menu items and the demands of Active Diners;
- Diners may select competitors that offer lower delivery charges, commission rates or other charges from among existing choices in an attempt to lower their costs, and we might be forced to lower our rates or lose restaurants offering food or diners ordering food through the Platforms; and
- Disruptive health events or pandemics, such as the COVID-19 pandemic and the governmental regulatory response in connection therewith, may have significant, negative economic effects on the geographic areas in which we operate, which may include impacts to ordering, carryout, dine-in or delivery habits, availability of independent contractor delivery drivers, and restaurants' ability to receive and prepare food. Additionally, many of our markets include colleges or universities whose populations fluctuate between semesters. Temporary closures or suspension of semesters by colleges and universities in response to the COVID-19 pandemic or other health events may have a material adverse effect upon our operations and financial results.

We are also subject to cost increases outside of our control that could materially reduce our profitability if we are unable to increase our rates sufficiently. Such cost increases include, but are not limited to, compensation to independent contractor drivers, interest rates, taxes, license and registration fees, insurance, payment processing and other technology related fees, and the costs of healthcare for our employees.

The business levels of restaurants on the Platforms also may be negatively affected by adverse economic conditions or financial constraints, which could lead to disruptions in the availability of popular order items, reducing use of the Platforms. A significant interruption in our normal order levels could disrupt our operations, increase our costs and negatively impact our ability to serve our diners.

In addition, events outside our control, such as strikes or other work stoppages at our facilities, or actual or threatened armed conflicts or terrorist attacks, efforts to combat terrorism, military action against a foreign state or group located in a foreign state, or heightened security requirements could lead to reduced economic demand, reduced availability of credit or ordering capabilities of the Platforms. Such events or enhanced security measures in connection with such events could impair our operations and result in higher operating costs.

***We face risks related to health epidemics and other outbreaks, which could significantly disrupt our operations.***

In December 2019, an outbreak of a new strain of coronavirus, COVID-19, began in Wuhan, Hubei Province, China. In March 2020, the World Health Organization declared COVID-19 a pandemic. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains and created significant volatility and disruption of financial markets. Waitr has thus far been able to operate effectively during the COVID-19 pandemic. However, the potential impacts and duration of the COVID-19 pandemic on the global economy and on the Company's business, in particular, are uncertain and may be difficult to assess or predict. The pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, which may reduce the Company's ability to access capital and continue to operate effectively. The COVID-19 pandemic could also reduce the demand for the Company's services or result in restaurant closures, and a prolonged recession or additional financial market corrections resulting from the spread of COVID-19 could adversely affect demand for the Company's services. To the extent that the COVID-19 pandemic adversely impacts the Company's business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in the risk factors in this Form 10-K. We are closely monitoring the impact of the COVID-19 global outbreak and lifting of any restrictions, although there remains significant uncertainty related to the public health and economic situation in both the United States and globally.

***In response to the COVID-19 pandemic, several jurisdictions have implemented or are considering implementing fee caps, fee disclosure requirements and similar measures that could negatively impact the Company's financial results.***

In an attempt to provide relief to restaurants which have been materially and adversely impacted by closures and other governmental limitations placed on restaurant and bar activities because of the COVID-19 pandemic, several jurisdictions across the United States have implemented caps on restaurant fees charged by local food delivery logistics platforms. Thus far, these fee caps have been implemented in relatively few jurisdictions where we have operations, are temporary in nature, and have not resulted in a material impact on our results of operations. With the continued duration of the COVID-19 pandemic, however, these existing fee caps could persist for at least the near term. In addition, other jurisdictions where we operate are currently considering similar caps and others may decide to implement similar caps. If fee caps, fee disclosure requirements or similar measures are more broadly implemented in jurisdictions in which we operate, our business, financial condition, and results of operations could be adversely affected in the near term. There is also a risk that fee caps could be retained after the COVID-19 pandemic subsides and could have an ongoing adverse effect on our business, financial condition, and result of operations.

***We rely on restaurants in our network for many aspects of our business, and their failure to maintain their service levels could harm our business.***

Diners demand quality food at reasonable prices. The ability of diners to obtain such quality food from restaurants they like on a timely basis through the Platforms drives the primary value of the Platforms. Our ability to provide diners with a high-quality and compelling ordering experience depends, in part, on diners receiving competitive prices, convenience, customer service and responsiveness from restaurants from whom they order. If these restaurants do not meet or exceed diner expectations with competitive levels of convenience, customer service, price and responsiveness, the value of our brands may be harmed, our ability to attract new diners to the Platforms may be limited and the number of diners placing orders through the Platforms may decline, which could have a material adverse effect on our business, financial condition and results of operations. Likewise, if restaurants face challenges or difficulties set forth elsewhere in these risk factors, the number of restaurants on the Platforms could decline, the price of food could increase or customer service levels could suffer, all of which could harm our business and results of operations.

***If use of the Internet via websites, mobile devices and other platforms, particularly with respect to online ordering, does not continue to increase as rapidly as we anticipate, our business and growth prospects may be harmed.***

Our business and growth prospects substantially depend upon the continued and increasing use of the Internet and mobile telecommunications as an effective medium of transactions by diners. Orders on the Platforms are conducted using the Internet and/or mobile networks. Historical rates of growth and adoption in Internet and mobile wireless communications may not predict future rates of growth or adoption. Diners or restaurants may not continue to use the Internet or mobile networking services to order their food at current or increased growth rates or at all. Consumers in our industry (and in others) may reject the use of the Internet and mobile applications as a viable platform or resource for a number of reasons in the future, including:

- actual or perceived lack of security of information or privacy protection;
- possible disruptions, computer viruses or other damage to Internet servers, users' computers or mobile applications;
- excessive governmental regulation; and
- unacceptable delays due to actual or perceived limitations of wireless networks.

***The nature of our business and content on the Platforms exposes us to potential liability and expenses for legal claims that could materially affect our results of operations and business.***

We face potential liability, expenses for legal claims and harm to our business relating to the nature of the delivery, dine-in and carryout food business, including potential claims related to food offerings, delivery and quality. For example, third parties have in the past and could in the future assert legal claims against us in connection with personal injuries related to food poisoning or tampering or accidents caused by the independent contractor delivery drivers. Alternatively, we could be subject to legal claims relating to the sale of alcoholic beverages by restaurants on our Platforms to underage diners.

Reports of food-borne illnesses, whether true or not, could adversely impact the results of our operations regardless of whether our diners actually suffer such illnesses from orders on the Platforms. Food-borne illnesses and other food safety issues have occurred in the food industry in the past and could occur in the future. In addition, consumer preferences could be affected by health concerns about the consumption of foods provided on the Platforms, even if those concerns do not directly relate to food items available on the Platforms. A negative report or negative publicity, whether related to a restaurant on one of our Platforms or to a competitor in the industry, may have an adverse impact on demand for the restaurants' food and could result in decreased diner orders on the Platforms. A decrease in orders or Active Diners as a result of these health concerns or negative publicity could materially harm our brands, business, financial condition and results of operations.

Furthermore, our reliance on third-party food suppliers and distributors increases the risk that food-borne illness incidents could be caused by factors outside of our control and that multiple markets for our services would be affected rather than a single market. We cannot assure that all food items will be properly maintained during delivery to diners or that the independent contractor drivers will identify food that is problematic upon pickup. If diners become ill from food-borne illnesses, we and/or restaurants on our Platforms could be forced to temporarily suspend service. Furthermore, any instances of food contamination, whether or not they are related to us, could subject us or restaurants to regulation by applicable governmental authorities.

We face the prospect of liabilities and expenses relating to the content and other information that we publish on the Platforms, third-party sites and/or relating to our marketing efforts. We could face claims based on the violation of intellectual property rights, such as copyright infringement claims based on the unauthorized use of menu content or other items. Although we typically obtain a restaurant's consent to publish their menu items prior to posting them on the Platforms, we may not always be successful in obtaining such consent. We could incur significant costs investigating and defending such claims and, if we are found liable, significant damages. If any of these events occur, our business and financial results could be adversely affected.

We have incurred and expect to continue to incur expenses relating to legal claims. The frequency of such claims is unpredictable. We have experienced diversion of attention by management to address these claims, and such claims can result in significant costs to investigate and defend, regardless of the merits of such claims. The potentially significant number and dollar amount of claims could materially affect our results of operations and harm our business.

***Our storage, processing and use of data, some of which contains personal information, subjects us to complex and evolving federal and state laws and regulations regarding privacy, data protection, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in investigations, claims, changes to our business practices, increased cost of operations, and declines in user growth, retention, or engagement, any of which could seriously harm our business.***

We are subject to a variety of laws and regulations in the United States that involve matters central to our business, including user privacy, sweepstakes, rewards or coupons, rights of publicity, data protection, content, intellectual property, distribution, electronic contracts and other communications, e-commerce, competition, protection of minors, consumer protection, taxation, libel, defamation, internet or data usage, and online-payment services. These laws and regulations constantly evolve and remain subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate. Because we store, process, and use data, some of which contains personal information, we are subject to complex and evolving federal and state laws and regulations regarding privacy, data protection, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in investigations, claims, changes to our business practices, increased cost of operations, and declines in diner and restaurant growth, orders, retention, or engagement, any of which could adversely affect our business.

## Risks Related to Ownership of Our Securities

***The market price of our common stock may be volatile and could decline.***

The market price of our common stock may fluctuate significantly in response to various factors, some of which are beyond our control. In addition to the factors discussed in this "Risk Factors" section and elsewhere in this Form 10-K, the factors that could affect our stock price are:

- industry or general market conditions;
- domestic and international political and economic factors unrelated to our performance;
- actual or anticipated fluctuations in our quarterly operating results;
- changes in or failure to meet publicly disclosed expectations as to our future financial performance;
- changes in securities analysts' estimates of our financial performance or lack of research and reports by industry analysts;
- action by institutional stockholders or other large stockholders, including sales of large blocks of common stock;
- speculation in the press or investment community;
- changes in investor perception of us and our industry;
- changes in market valuations or earnings of similar companies;
- announcements by us or our competitors of significant products, contracts, acquisitions or strategic partnerships;
- changes in our capital structure, such as future sales of our common stock or other securities;
- changes in applicable laws, rules or regulations, regulatory actions affecting us and other dynamics; and
- additions or departures of key personnel.

The stock markets have experienced extreme volatility over time that has been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock. In the past, following periods of volatility in the market price of a company's securities, class action litigation has sometimes been instituted against such company. Any litigation of this type brought against us could result in substantial costs and a diversion of our management's attention and resources, which would harm our business, operating results and financial condition.

***Future sales of a substantial number of shares by existing stockholders could cause our share price to decline.***

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could cause the market price of our common stock to decline. The registration statement registering our securities issued in connection with the Landcadia Business Combination and Bite Squad Merger became effective on February 14, 2019, and all such securities registered thereby, except for shares of common stock subject to transfer restrictions, are eligible to be sold into the public market, subject to compliance with the Company's insider trading policy for such parties that are covered thereby. Significant sales of our common stock could cause our share price to decline.

In the future, we may issue additional shares of common stock or other equity or fixed maturity securities convertible into common stock in connection with a financing, acquisition, and litigation settlement or employee arrangement or otherwise. Any of these issuances could result in substantial dilution to our existing stockholders and could cause the trading price of our common stock to decline.

***Future offerings of debt or equity securities that rank senior to our common stock may adversely affect the market price of our common stock.***

If, in the future, we decide to issue debt or equity securities that rank senior to our common stock, it is likely that such securities will be governed by an indenture or other instrument containing covenants restricting our operating flexibility. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of our common stock and may result in dilution of the percentage ownership of the holders of our common stock. We and, indirectly, our stockholders, will bear the cost of issuing and servicing such securities. Because our decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, holders of our common stock will bear the risk of our future offerings reducing the market price of our common stock and diluting the value of their shareholdings in us.

***Anti-takeover provisions in our third amended and restated certificate of incorporation as currently in effect (the "Charter") discourage, delay or prevent a change in control of our company and may affect the trading price of our common stock.***

Our Charter includes a number of provisions that may discourage, delay or prevent a change in our management or control over us. For example, our Charter includes the following provisions:

- a staggered board providing for three classes of directors, which limits the ability of a stockholder or group to gain control of our Board;
- the ability of our Board to issue preferred stock, which could contain features that delay or prevent a change of control;
- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the right of our Board to elect a director to fill a vacancy created by the expansion of our Board or the resignation, death or removal of a director in certain circumstances, which prevents stockholders from being able to fill vacancies on our Board;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- a prohibition on stockholders calling a special meeting and the requirement that a meeting of stockholders may only be called by members of our Board, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- the requirement that the removal of directors by the stockholders be approved by the affirmative vote of holders of at least 75% of the voting power of all then outstanding shares of capital stock entitled to vote generally in the election of directors, which limits the ability of stockholders to remove directors;
- the requirement that the adoption, amendment, alteration or repeal of the bylaws by stockholders be approved by the affirmative vote of at least 75% of the voting power of all then outstanding shares of capital stock entitled to vote generally in the election of directors and the requirement that the amendment or repeal of certain provisions of our certificate of incorporation be approved by the affirmative vote of at least 75% of the outstanding shares entitled to vote thereon, which limit the ability of stockholders to effect corporate governance changes; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our Board or to propose matters to be acted upon at a meeting of stockholders, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of the Company.

These provisions may prevent our stockholders from receiving the benefit from any premium to the market price of our common stock offered by a bidder in a takeover context. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if the provisions are viewed as discouraging takeover attempts in the future.

Our Charter may also make it difficult for stockholders to replace or remove our management. These provisions may facilitate management entrenchment that may delay, deter, render more difficult or prevent a change in our control, which may not be in the best interests of our stockholders.

***The Charter designates the Court of Chancery of the State of Delaware and federal court within the State of Delaware as the exclusive forum for certain types of actions and proceedings that the Company's stockholders may initiate, which could limit a stockholder's ability to obtain a favorable judicial forum for disputes with the Company or its directors, officers or employees.***

Our Charter provides that, subject to limited exceptions, the Court of Chancery of the State of Delaware and federal court within the State of Delaware will be exclusive forums for any:

- derivative action or proceeding brought on the Company's behalf;
- action asserting a claim of breach of a fiduciary duty owed by any of the Company's directors, officers or other employees to the Company or its stockholders;
- action asserting a claim against the Company arising pursuant to any provision of the Delaware General Corporation Law, our Charter or our Bylaws; or
- other action asserting a claim against the Company that is governed by the internal affairs doctrine.

Any person or entity purchasing or otherwise acquiring any interest in shares of the Company's capital stock shall be deemed to have notice of and to have consented to the provisions of the Company's Charter described above. These choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with the Company or its directors, officers or other employees, which may discourage such lawsuits against the Company and its directors, officers and employees. Alternatively, if a court were to find these provisions of the Charter inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, the Company may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect the Company's business and financial condition.

***The Debt Warrants, Notes and other Derivative Securities are exercisable/convertible into shares of our common stock, which would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders.***

We issued Debt Warrants to Luxor Capital in connection with the Debt Facility. The Debt Warrants are currently exercisable for 399,726 shares of our common stock with an exercise price of $12.51 per share. In addition, the Notes are convertible into up to 3,957,164 shares of common stock. In 2020, we issued an option to our chief executive officer to purchase 9,572,397 shares of common stock at an exercise price of $0.37 per share, as well as restricted stock grants to our executives. The shares of common stock issued upon exercise of these derivative securities (and restricted stock grants) and/or conversion of the Notes will result in dilution to the then existing holders of common stock of the Company and increase the number of shares eligible for resale in the public market. Sales of substantial numbers of such shares in the public market could adversely affect the market price of our common stock. Other equity-based awards were issued in 2020 that also could result in dilution and increased shares also eligible for resale in the public market. See Part II, Item 8, *Note 9 - Debt*, for the definitions of Debt Facility, Notes and Luxor Capital, Part II, Item 8, *Note 13 – Stock-Based Awards and Cash-Based Awards* for a description of Mr. Grimstad's option and other awards, and Part II, Item 8, *Note 14 – Stockholders' Equity*, for the definition of Debt Warrants.

***We may issue shares of preferred stock in the future, which could make it difficult for another company to acquire us or could otherwise adversely affect holders of our common stock, which could depress the price of our common stock.***

Our Charter authorizes us to issue one or more series of preferred stock. Our Board has the authority to determine the preferences, limitations and relative rights of the shares of preferred stock and to fix the number of shares constituting any series and the designation of such series, without any further vote or action by our shareholders. Our preferred stock could be issued with voting, liquidation, dividend and other rights superior to the rights of our common stock. The potential issuance of preferred stock may delay or prevent a change in control of us, discourage bids for our common stock at a premium to the market price, and materially and adversely affect the market price and the voting and other rights of the holders of our common stock.

## Item 1B. Unresolved Staff Comments

None.

## Item 2. Properties

Our properties consist of leased facilities for key administrative, operational and technology functions. Our corporate headquarters are located in Lafayette, Louisiana. We consider our current facilities suitable for their purpose and adequate to support our business. Additional information relative to lease obligations is included in Part II, Item 7, of this Form 10-K.

## Item 3. Legal Proceedings

In July 2016, Waiter.com, Inc. filed a lawsuit against Waitr Inc. in the United States District Court for the Western District of Louisiana, alleging trademark infringement based on Waitr's use of the "Waitr" trademark and logo, Civil Action No.: 2:16-CV-01041. Plaintiff seeks injunctive relief and damages relating to Waitr's use of the "Waitr" name and logo. During the third quarter of 2020, the trial date was rescheduled to June 2021, and in September 2020, the court ruled on various motions, certain of which ruled against defenses the Company had advanced. Waitr believes that the damages case lacks merit and that it has a defense to the infringement claims alleged. Waitr continues to vigorously defend the suit.

In February 2019, the Company was named a defendant in a lawsuit titled *Halley, et al vs. Waitr Holdings Inc*. filed in the United States District Court for the Eastern District of Louisiana on behalf of plaintiff and similarly situated drivers alleging violations of the Fair Labor Standards Act ("FLSA") and state and federal wage law, and in March 2019, the Company was named a defendant in a lawsuit titled *Montgomery v. Waitr Holdings Inc.* filed in the United States District Court for the Eastern District of Louisiana on behalf of plaintiff and similarly situated drivers, alleging violations of FLSA and Louisiana Wage Payment Act. The parties to the *Halley* and *Montgomery* matters jointly filed with the court a motion for preliminary approval of a settlement agreement whereby the Halley and Montgomery plaintiffs, on behalf of themselves and similarly situated drivers, would dismiss the lawsuits against the Company in consideration for the Company issuing up to 1,556,420 shares of Waitr common stock to be allocated to participating class members pursuant to a formula set forth in the settlement agreement. On April 28, 2020, the court granted the motion and issue notice to putative class members. Following the expiration of the class period, the court held a fairness hearing on August 19, 2020. The court approved a final judgment pursuant to which the Company paid 873,720 shares of common stock to the participating class members on October 7, 2020 to settle the lawsuits.

In April 2019, the Company was named as a defendant in a class action complaint filed by certain current and former restaurant partners, captioned *Bobby's Country Cookin', et al v. Waitr*, which is currently pending in the United States District Court for the Western District of Louisiana. Plaintiffs allege, among other things, claims for breach of contract, violation of the duty of good faith and fair dealing, and unjust enrichment, and seek recovery on behalf of themselves and two separate classes. Based on the current class definitions, as many as 10,000 restaurant partners could be members of the two separate classes that the representative plaintiffs are attempting to certify. Plaintiff's deadline to file a motion for class certification is October 2021. Waitr maintains that the underlying allegations and claims lack merit, and that the classes, as pled, are incapable of certification. Waitr intends to vigorously defend the suit.

In September 2019, Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC were named as defendants in a putative class action lawsuit entitled *Walter Welch, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC*. The case was filed in the Western District of Louisiana, Lake Charles Division. In the lawsuit, the plaintiff asserts putative class action claims alleging, inter alia, that various defendants made false and misleading statements in securities filings, engaged in fraud, and violated accounting and securities rules. A similar putative class action lawsuit, entitled *Kelly Bates, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC*, was filed in that same court in November 2019. These two cases were recently consolidated, and an amended complaint was filed in October 2020. The Company filed a motion to dismiss in February 2021. Waitr believes that this lawsuit lacks merit and that it has strong defenses to all of the claims alleged. Waitr intends to vigorously defend this lawsuit.

In addition to the lawsuits described above, Waitr is involved in other litigation arising from the normal course of business activities, including, without limitation, labor and employment claims, lawsuits and claims involving personal injuries, physical damage and workers' compensation benefits suffered as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr maintains insurance that it believes generally covers liability for potential damages in many of these matters, insurance coverage is not guaranteed, often these claims are met with denial of coverage positions by the carriers, and there are limits to insurance coverage; accordingly, we could suffer material losses as a result of these claims or the denial of coverage for such claims.

## Item 4. Mine Safety Disclosures

Not applicable.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

**Market Information**

The Company's common stock began trading on Nasdaq under the symbol "WTRH" on November 16, 2018. Prior to the consummation of the Landcadia Business Combination, the common equity of Landcadia Holdings, Inc. (the SPAC) was traded on Nasdaq under the symbol "LCA." As of the close of business on March 3, 2021, there were approximately 9,617 stockholders of record of the Company's common stock. The number of holders of record is based upon the actual number of holders registered at such date and does not include holders of shares in "street name" or persons, partnerships, associates, corporations or other entities in security position listings maintained by depositories.

**Dividends**

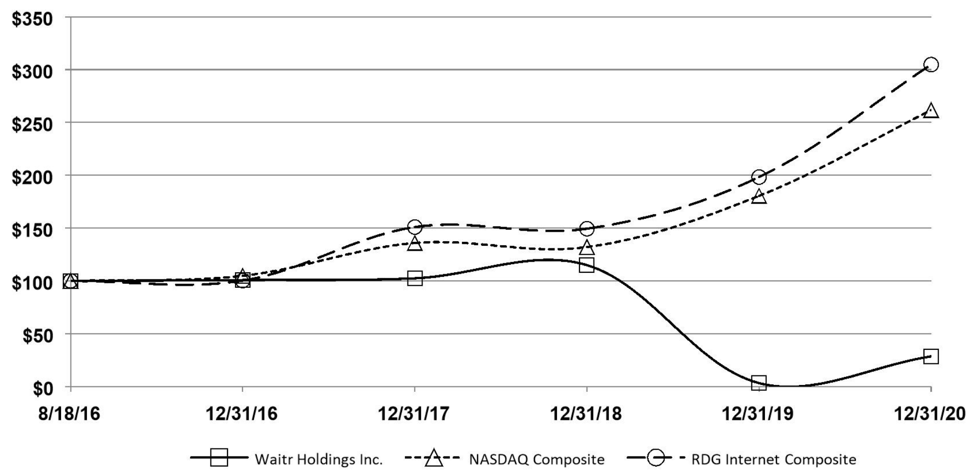
The Company has not historically paid any cash dividends or declared any stock dividends on its common stock. The payment of cash dividends in the future will be dependent upon the Company's revenues and earnings, if any, capital requirements and general financial condition. The payment of any cash or stock dividends will be within the discretion of the Board at such time. The Board is not currently contemplating and does not anticipate paying any cash dividends or declaring any stock dividends in the foreseeable future. Further, the Company's ability to declare dividends is limited by restrictive covenants in its credit agreements.

**Issuer Purchases of Equity Securities**

During the three months and year ended December 31, 2020, the Company did not repurchase any of its common stock.

**Company Stock Performance Graph**

The following graph compares total cumulative shareholder returns during the period from August 18, 2016 (the date the Company's common stock commenced trading on the Nasdaq) through December 31, 2020 for the Company's common stock, the Nasdaq Composite Index and the RDG Internet Composite Index. Such returns are based on historical results and are not intended to suggest future performance. The cumulative total returns for the Nasdaq Composite Index and the RDG Internet Composite Index assume reinvestment of dividends.




The performance graph above and related information shall not be deemed "soliciting material" or "filed" with the SEC, nor should such information be incorporated by reference into any future filings under the Securities Act or the Exchange Act except to the extent that the Company specifically incorporates it by reference in such filing.

**Securities Authorized for Issuance Under Equity Compensation Plans**

The Company intends to file with the SEC the information required by this item not later than 120 days after the end of the fiscal year covered by this Form 10-K.

**Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities**

***Unregistered Sales of Equity Securities***

In December 2020, the Company agreed to issue 28,090 shares of common stock pursuant to an acquisition. These shares were issued in reliance upon an exception from registration afforded in Section 4(a)(2) of the Securities Act. No commissions were paid in connection therewith.

## Item 6. Selected Financial Data

The following table sets forth, as of the dates and for the periods indicated, selected financial data which is derived from the Company's audited consolidated financial statements for the respective periods. Certain prior year amounts have been revised for the correction of an immaterial error. See Part II, Item 8, *Note 11 – Correction of Prior Period Error*, for further details. Reported amounts from operations included herein prior to the Landcadia Business Combination are those of Waitr Incorporated. The results of operations of Bite Squad are included in the consolidated financial statements beginning on the acquisition date, January 17, 2019.

The following selected financial data is not necessarily indicative of the results of future operations and should be read in conjunction with Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, and the consolidated financial statements and the related notes thereto included in Part II, Item 8, *Financial Statements and Supplementary Data* of this Form 10-K to fully understand factors that may affect the comparability of the information presented below.

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| **$ in thousands, except per share data** | **2020** | **2019** | **2018** | **2017** | **2016** |
| **STATEMENT OF OPERATIONS DATA:** | | | | | |
| Revenue | $ 204,328 | $ 191,675 | $ 69,273 | $ 22,911 | $ 5,650 |
| Total costs and expenses[(a)] | 177,153 | 472,982 | 103,416 | 38,994 | 10,975 |
| Income (loss) from operations[(a)] | 27,175 | (281,307) | (34,143) | (16,083) | (5,325) |
| Other expenses (income) and losses (gains), net[(b)] | 11,217 | 9,918 | 18,100 | 10,818 | 3,392 |
| Net income (loss)[(a)(b)] | 15,836 | (291,306) | (51,816) | (26,907) | (8,722) |
| Income (loss) per share: | | | | | |
| Basic | $ 0.16 | $ (4.00) | $ (3.29) | $ (2.69) | $ (1.02) |
| Diluted | $ 0.15 | $ (4.00) | $ (3.29) | $ (2.69) | $ (1.02) |
| **CASH FLOW DATA:** | | | | | |
| Net cash provided by (used in) operating activities | $ 38,445 | $ (73,477) | $ (15,842) | $ (12,411) | $ (4,497) |
| Net cash used in investing activities | (6,125) | (196,576) | (3,761) | (1,874) | (826) |
| Net cash provided by financing activities | 23,069 | 90,030 | 224,996 | 14,947 | 8,334 |
| **BALANCE SHEET DATA (at end of period):** | | | | | |
| Total cash | $ 84,706 | $ 29,317 | $ 209,340 | $ 3,947 | $ 3,285 |
| Total assets | 232,232 | 178,973 | 226,552 | 11,407 | 7,815 |
| Total liabilities | 144,136 | 173,570 | 114,566 | 12,917 | 1,432 |
| Total stockholders' equity (deficit) | 88,096 | 5,403 | 111,986 | (1,510) | 6,383 |

(a) Includes goodwill and intangible and other asset impairments totaling $192,463 for the year ended December 31, 2019 (see Part II, Item 8, *Note 7 – Intangible Assets and Goodwill*).

(b) Includes other expense of $17,505 for the year ended December 31, 2018 for the estimated loss exposure related to a medical contingency claim (see Part II, Item 8, *Note 11 – Correction of Prior Period Error*) and includes a loss on debt extinguishment of $10,537 for the year ended December 31, 2017.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the consolidated financial statements and related notes thereto included elsewhere in this Form 10-K. Dollar amounts in this discussion are expressed in thousands, except as otherwise noted. The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of our control. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed elsewhere in this Form 10-K, particularly in Part I, Item 1A, Risk Factors. Waitr does not undertake any obligation to publicly update any forward-looking statements except as otherwise required by applicable law.*

### Overview

Waitr operates an online ordering technology platform, including the Waitr and Bite Squad mobile applications (the "Platforms"), providing delivery, carryout and dine-in options, connecting local restaurants, drivers and diners in cities across the United States. Our strategy is to bring delivery, carryout and dine-in infrastructure to underserved populations of restaurants, grocery stores and diners and establish strong market presence or leadership positions in the markets in which we operate. Our business has been built with a restaurant-first philosophy by providing differentiated and brand additive services to the restaurants on the Platforms. Our Platforms allow consumers to browse local restaurants and menus, track order and delivery status, and securely store previous orders for ease of use and convenience. Restaurants benefit from the online Platforms through increased exposure to consumers for expanded business in the delivery market and carryout sales. In October 2020, we diversified our product offering beyond restaurant food delivery with the launch of tableside service technology for restaurants.

As of December 31, 2020, we had over 20,000 restaurants, in over 700 cities, on the Platforms. Average Daily Orders for the years ended December 31, 2020, 2019 and 2018 were approximately 39,071, 51,156 and 21,860, respectively. Revenues totaled $204,328 in the year ended December 31, 2020 compared to $191,675 in the year ended December 31, 2019 and $69,273 in the year ended December 31, 2018.

During the first half of 2020, we implemented various strategic initiatives, with a focus on improving revenue per order, costs per order, operating cash flow, profitability and liquidity, including the successful completion of a switch to an independent contractor model for delivery drivers. We focused efforts on operational improvements through the streamlining of operations, support and sales and marketing functions and offered new and enhanced service offerings to our restaurant partners. During the remainder of 2020, we continued to work with both new and existing restaurant partners to boost delivery potential by providing value-added marketing and support services. Despite impacts from hurricanes and the ongoing pandemic, our results during 2020 continued to reflect the implementation of our strategic initiatives around service and profitability. We achieved profitability and positive operating cash flow for the first time in February 2020 and for the year ended December 31, 2020. Additionally, during 2020, we expanded into new delivery verticals such as same-day groceries and alcohol delivery services, as well as diversifying our product offering beyond restaurant food delivery with the introduction of our tableside service technology for restaurants.

In March 2020 and May 2020, the Company entered into open market sale agreements with respect to an at-the-market offering program (the "ATM Program") under which the Company could offer and sell, from time to time at its sole discretion, shares of its common stock up to a certain aggregate offering price (see Part II, Item 8, *Note 14 – Stockholders' Equity)*. Sales of our common stock pursuant to our ATM Program, along with the implementation of the initiatives discussed above, resulted in increases in our working capital and liquid assets as of December 31, 2020. At the completion of our ATM Program on July 10, 2020, we had sold a total of 23,698,720 shares of common stock for net proceeds of approximately $47,574. We continue to evaluate additional opportunities to further strengthen our liquidity position in order to fund growth initiatives to complement our operating cash flows as we pursue our long-term growth plans.

#### *Management Appointments*

In January 2020, the Board appointed Carl A. Grimstad to the position of Chief Executive Officer of the Company, and a member of the Board. In May 2020, the board appointed Leonid (Leo) Bogdanov to the position of Chief Financial Officer. Mr. Bogdanov previously had been serving as director of financial planning & analysis of the Company. Additional management appointments made during 2020 included the appointment in May 2020 of Mark D'Ambrosio to the position of Chief Sales Officer and the appointments in July 2020 of Thomas C. Pritchard to the position of General Counsel and David Cronin to the position of Chief Engagement Officer.

***Impact of COVID-19 on our Business***

In March 2020, as the COVID-19 pandemic became more widespread in the United States, we launched several initiatives to help protect and support our restaurant partners, diners, independent contractor drivers and our employees during these unprecedented times, including offering no-contact delivery for certain restaurant delivery orders; offering no-contact grocery delivery in select markets; working with certain restaurant partners to waive diner delivery fees; deploying free marketing programs for certain restaurants; and providing masks, gloves and hand sanitizer to drivers. Additionally, in early April 2020, we expanded our delivery areas to further support our restaurant partners and diners. We experienced a significant increase in the number of independent contractor driver applications from April through December 2020, providing us sufficient capacity to satisfy additional delivery and carryout demand from restaurant partners and diners.

We have thus far been able to operate effectively during the COVID-19 pandemic. Restrictions on in-restaurant dining resulted in more restaurants utilizing delivery services, which in turn had a positive impact on our order volumes. The lifting of restrictions on in-restaurant dining could have a negative impact on our order volumes.

The potential short and long-term impacts and duration of the COVID-19 pandemic on the global economy and on the Company's business, in particular, are uncertain and may be difficult to assess or predict at this time. The pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, which may reduce the Company's ability to access capital and continue to operate effectively. The COVID-19 pandemic could also reduce the demand for the Company's services. In addition, a prolonged recession or additional financial market corrections resulting from the spread of COVID-19, including an increase in the number of COVID-19 cases, could adversely affect demand for the Company's services. To the extent that the COVID-19 pandemic adversely impacts the Company's business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in the risk factors in this Form 10-K. Management continues to monitor the impact of the COVID-19 outbreak and the possible effects on its financial position, liquidity, operations, industry and workforce.

**Significant Accounting Policies and Critical Estimates**

The preparation of financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period, along with related disclosures. We regularly assess these estimates and record changes to estimates in the period in which they become known. We base our estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameters used in determining these estimates could cause actual results to differ from estimates. Significant estimates and judgements relied upon in preparing these consolidated financial statements affect the following items:

- incurred loss estimates under our insurance policies with large deductibles or retention levels;
- loss exposure related to claims such as the Medical Contingency (see Part II, Item 8, *Note 11 – Correction of Prior Period Error*);
- income taxes;
- useful lives of tangible and intangible assets;
- equity compensation;
- contingencies;
- goodwill and other intangible assets, including the recoverability of intangible assets with finite lives and other long-lived assets; and
- fair value of assets acquired and liabilities assumed as part of a business combination.

For a description of our significant accounting policies, see Part II, Item 8, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies*, to our consolidated financial statements in this Form 10-K.

For a description of accounting standards adopted during the year ended December 31, 2020, see Part II, Item 8, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies*, to our consolidated financial statements in this Form 10-K. Also described in Note 2 are pending standards and their estimated effect on our consolidated financial statements.

Through year-end 2020, we qualified as an "emerging growth company" pursuant to the provisions of the JOBS Act. As an emerging growth company, we were able to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies", including not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act. Effective January 1, 2021, we are no longer an emerging growth company. Accordingly, for fiscal year 2021, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting.

**Factors Affecting the Comparability of Our Results of Operations**

***Bite Squad Merger.*** The Bite Squad Merger was considered a business combination in accordance with ASC 805, and has been accounted for using the acquisition method. Under the acquisition method of accounting, total merger consideration, acquired assets and assumed liabilities are recorded based on their estimated fair values on the acquisition date. The excess of the fair value of merger consideration over the fair value of the assets less liabilities acquired has been recorded as goodwill. The results of operations of Bite Squad are included in our consolidated financial statements beginning on the acquisition date, January 17, 2019.

In connection with the Bite Squad Merger, we incurred direct and incremental costs during the year ended December 31, 2019, of approximately $6,956, consisting of legal and professional fees, which are included in general and administrative expenses in the consolidated statement of operations in such year.

***Changes in Fee Structure.*** Since 2017, our fee structure evolved gradually from a per transaction fee plus a percentage of the food sale amount to one based exclusively on a percentage of the food sale amount. In early 2018, we established a multi-tier fee structure, allowing restaurants to elect to pay a higher fee rate in lieu of paying a one-time set-up and integration fee. Additionally, we initiated modifications to our fee structure in July 2019 with a majority of restaurants on the Waitr platform, which became effective in August 2019, and in January 2020, with the majority of our remaining restaurants, which became effective throughout February 2020. We continue to review and update our current rate structure, as necessary, as we look to offer new and enhanced value-adding services to our restaurant partners.

***Goodwill and Intangible Asset Impairments.*** During the year ended December 31, 2019, we recognized non-cash impairment charges totaling $191,194 to write down the carrying values of goodwill and intangible assets to their implied fair values, as a result of our annual goodwill impairment analysis, which concluded that the fair value of the reporting unit (the Company) was less than its carrying amount. The primary factor contributing to the decline in fair value of the reporting unit was the negative impacts on the Company's estimated order volumes and revenue resulting from adverse changes in market conditions from increased competition. Determining the fair value of a reporting unit and intangible assets requires the use of estimates and significant judgments that are based on a number of factors including actual operating results. It is reasonably possible that the judgments and estimates used could change in future periods. There can be no assurance that additional goodwill or intangible assets will not be impaired in future periods. Significant goodwill and intangible asset impairments may impact the comparability of our results from period to period.

***Seasonality and Holidays.*** Our business tends to follow restaurant closure and diner behavior patterns. In many of our markets, we have historically experienced variations in order frequency as a result of weather patterns, university summer breaks and other vacation periods. In addition, most restaurants tend to close on certain major holidays, including Thanksgiving and Christmas Eve Day, in our key markets. Further, diner activity may be impacted by unusually cold, rainy, or warm weather. Cold weather and rain typically drive increases in order volume, while unusually warm or sunny weather typically drives decreases in orders. Furthermore, snowstorms, hurricanes and tropical storms have adverse effects on order volume, particularly if they cause property damage or utility interruptions to our restaurant partners. Consequently, our results between quarters, or between periods may vary as a result of prolonged periods of unusually cold, warm, inclement, or otherwise unexpected weather and the timing of certain holidays. As shown in our results of operations for the year ended December 31, 2020, the COVID-19 pandemic has had an impact on our typical seasonality trends and could impact future periods.

***Acquisition Pipeline.*** We continue to actively maintain and evaluate a pipeline of potential acquisition targets and may pursue acquisitions in the future. Future business acquisitions may impact the comparability of our results in future periods relative to prior periods.

**Key Factors Affecting Our Performance**

***Efficient Market Expansion and Penetration.*** Our continued revenue growth and improved cash flow and profitability is dependent on successful restaurant, diner and driver penetration of our markets and achieving our targeted scale in current and future markets. Failure in achieving positive market-level operating margins (exclusive of indirect and corporate overhead costs) could adversely affect our working capital, which in turn, could slow our growth plans.

We typically target markets that we estimate could achieve sustainable, positive market-level operating margins that support market operating cash flows and profits, improve efficiency, and appropriately leverage the scale of our advertising, marketing, research and development, and other corporate resources. Our financial condition, cash flows, and results of operations depend, in significant part, on our ability to achieve and sustain our target profitability thresholds in our markets.

***Waitr's Restaurant and Diner Network.*** A significant part of our growth is our ability to successfully expand our network of restaurants and diners using the Platforms. If we fail to retain existing restaurants and diners using the Platforms, or to add new restaurants and diners to the Platforms, our revenue, financial results and business may be adversely affected.

### Key Business Metrics

Defined below are the key business metrics that we use to analyze our business performance, determine financial forecasts, and help develop long-term strategic plans:

***Active Diners.*** We count Active Diners as the number of diner accounts from which an order has been placed through the Platforms during the past twelve months (as of the end of the relevant period) and consider Active Diners an important metric because the number of diners using our Platforms is a key revenue driver and a valuable measure of the size of our engaged diner base.

***Average Daily Orders.*** We calculate Average Daily Orders as the number of orders during the period divided by the number of days in that period, including holidays. Average Daily Orders is an important metric for us because the number of orders processed on our Platforms is a key revenue driver and, in conjunction with the number of Active Diners, a valuable measure of diner activity on our Platforms for a given period.

***Gross Food Sales.*** We calculate Gross Food Sales as the total food and beverage sales, sales taxes, prepaid gratuities, and diner fees processed through the Platforms during a given period. Gross Food Sales are different than the order value upon which we charge our fee to restaurants, which excludes gratuities and diner fees. Prepaid gratuities, which are not included in our revenue, are determined by diners and may differ from order to order. Gratuities other than prepaid gratuities, such as cash tips, are not included in Gross Food Sales. Gross Food Sales is an important metric for us because the total volume of food sales transacted through our Platforms is a key revenue driver.

***Average Order Size.*** We calculate Average Order Size as Gross Food Sales for a given period divided by the number of orders during the same period. Average Order Size is an important metric for us because the average value of food sales on our Platforms is a key revenue driver.

| | Year Ended December 31, | | |
|---|---|---|---|
| Key Business Metrics(1) | 2020 | 2019 | 2018 |
| Active Diners (as of period end) | 1,865,194 | 2,352,007 | 989,000 |
| Average Daily Orders | 39,071 | 51,156 | 21,860 |
| Gross Food Sales (dollars in thousands) | $ 598,616 | $ 663,919 | $ 278,833 |
| Average Order Size (in dollars) | $ 41.86 | $ 36.15 | $ 34.95 |

(1) The key business metrics include the operations of Bite Squad beginning on the acquisition date, January 17, 2019.

### Basis of Presentation

***Revenue***

We generate revenue primarily when diners place an order on one of the Platforms. We recognize revenue from diner orders when orders are delivered. Our revenue consists primarily of transaction fees, comprised of fees received from restaurants, determined as a percentage of the total food sales, net of any diner promotions or refunds and diner fees (less any discounts).

***Cost and Expenses:***

***Operations and Support.*** Operations and support expense consists primarily of salaries, benefits, stock-based compensation, and bonuses for employees and contractors engaged in operations and customer service, including independent contractor drivers, as well as market managers, restaurant onboarding, and driver logistics personnel, as well as payment processing costs incurred on customer orders.

***Sales and Marketing.*** Sales and marketing expense consists primarily of salaries, commissions, benefits, stock-based compensation and bonuses for sales and sales support personnel, including restaurant business development managers, marketing employees and contractors, and third-party marketing expenses such as social media and search engine marketing, online display, team sponsorships and print marketing.

***Research and Development.*** Research and development expense consists primarily of salaries, benefits, stock-based compensation and bonuses for employees and contractors engaged in the design, development, maintenance and testing of the

Platforms. This expense also includes such items as software subscriptions that are necessary for the upkeep and maintenance of the Platforms.

***General and Administrative.*** General and administrative expense consists primarily of salaries, benefits, stock-based compensation and bonuses for executive, finance and accounting, human resources and administrative employees, third-party legal, accounting, and other professional services, insurance (including workers' compensation, auto liability and general liability), travel, facilities rent, and other corporate overhead costs.

***Depreciation and Amortization.*** Depreciation and amortization expense consists primarily of amortization of capitalized costs for software development, trademarks and customer relationships and depreciation of leasehold improvements, furniture, and equipment, primarily tablets deployed in restaurants. We do not allocate depreciation and amortization expense to other line items.

***Intangible and Other Asset Impairments.*** Intangible and other asset impairments include write-downs of intangible assets and minor impairments related to the replacement of internally developed software code as well as the impairment of capitalized contract costs of obtaining and fulfilling contracts.

***Other Expenses (Income) and Losses (Gains), Net.*** Other expenses (income) and losses (gains), net, primarily includes interest expense on outstanding debt and accruals for legal contingencies, as well as any other items not considered to be incurred in the normal operations of the business.

**Results of Operations**

The following table sets forth our results of operations for the periods indicated, with line items presented in thousands of dollars and as a percentage of our revenue:

| | Year Ended December 31, | | | | | |
|---|---|---|---|---|---|---|
| (in thousands, except percentages(1)) | 2020 | % of Revenue | 2019 | % of Revenue | 2018(2) | % of Revenue |
| **Revenue** | **$ 204,328** | **100%** | **$ 191,675** | **100%** | **$ 69,273** | **100%** |
| **Costs and expenses:** | | | | | | |
| Operations and support | 109,240 | 53% | 147,759 | 77% | 51,428 | 74% |
| Sales and marketing | 12,242 | 6% | 52,370 | 27% | 15,695 | 23% |
| Research and development | 4,262 | 2% | 7,718 | 4% | 3,913 | 6% |
| General and administrative | 42,982 | 21% | 56,862 | 30% | 31,148 | 45% |
| Depreciation and amortization | 8,377 | 4% | 15,774 | 8% | 1,223 | 2% |
| Goodwill impairment | — | 0% | 119,212 | 62% | — | 0% |
| Intangible and other asset impairments | 30 | 0% | 73,251 | 38% | — | 0% |
| Loss on disposal of assets | 20 | 0% | 36 | 0% | 9 | 0% |
| **Total costs and expenses** | **177,153** | 87% | **472,982** | 247% | **103,416** | 149% |
| **Income (loss) from operations** | **27,175** | 13% | **(281,307)** | (147%) | **(34,143)** | (49%) |
| **Other expenses (income) and losses (gains), net:** | | | | | | |
| Interest expense | 9,458 | 5% | 9,408 | 5% | 1,822 | 3% |
| Interest income | (102) | 0% | (1,037) | (1%) | (406) | (1%) |
| Gain on derivatives | — | 0% | — | 0% | (337) | 0% |
| Gain on debt extinguishment | — | 0% | — | 0% | (486) | (1%) |
| Other expense | 1,861 | 1% | 1,547 | 1% | 17,507 | 25% |
| **Net income (loss) before income taxes** | **15,958** | 8% | **(291,225)** | (152%) | **(52,243)** | (75%) |
| Income tax expense | 122 | 0% | 81 | 0% | (427) | (1%) |
| **Net income (loss)** | **$ 15,836** | 8% | **$ (291,306)** | (152%) | **$ (51,816)** | (75%) |

(1) Percentages may not foot due to rounding.

(2) Other expense, net loss before income taxes and net loss for the year ended December 31, 2018 have been revised to reflect the correction of a prior period error. See Part II, Item 8, *Note 11 – Correction of Prior Period Error* of this Form 10-K for further details.

The following section includes a discussion of our results of operations for the years ended December 31, 2020 and 2019. Details of results of operations for the year ended December 31, 2018 can be found under Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations* in the Company's 2019 Annual Report on Form 10-K. A discussion of other expenses (income) and losses (gains), net for the year ended December 31, 2018 is included below to reflect the revised amounts related to the correction of a prior period error. The results of operations of Bite Squad are included in our consolidated financial statements beginning on the acquisition date, January 17, 2019 (see Part II, Item 8, *Note 3 – Business Combinations* of this Form 10-K).

***Revenue***

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Revenue | $ 204,328 | $ 191,675 | $ 69,273 | 7% | 177% |

Revenue increased for the year ended December 31, 2020 compared to December 31, 2019, primarily as a result of improved revenue unit economics. The Average Order Size increased to $41.86 from $36.15, an improvement of 16%, while Average Daily Orders decreased in the year ended December 31, 2020 compared to December 31, 2019, partially as a result of market closures in late 2019 and early 2020.

Included in revenue for the year ended December 31, 2019 is $3,005 related to a cumulative adjustment to setup and integration fee revenue as a result of contract modifications made in July 2019 and the effect of such modifications on our measure of progress towards the performance obligations. The cumulative adjustment to revenue was partially offset by write-offs of uncollected setup and integration fees within accounts receivable of $797 and refunds of previously paid setup and integration fees of $320.

***Operations and Support***

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Operations and support | $ 109,240 | $ 147,759 | $ 51,428 | (26%) | 187% |
| As a percentage of revenue | 53% | 77% | 74% | | |

Operations and support expenses decreased in dollar terms and as a percentage of revenue for the year ended December 31, 2020 compared to December 31, 2019, primarily as a result of lower driver operations cost relating to the change to independent contractor drivers.

***Sales and Marketing***

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Sales and marketing | $ 12,242 | $ 52,370 | $ 15,695 | (77%) | 234% |
| As a percentage of revenue | 6% | 27% | 23% | | |

Sales and marketing expense decreased in dollar terms and as a percentage of revenue in the year ended December 31, 2020 compared to December 31, 2019, primarily as a result of decreased advertising spend of approximately $28,483, as well as staff reductions and the consolidation of sales and marketing functions in the second half of 2019 and early 2020.

***Research and Development***

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Research and development | $ 4,262 | $ 7,718 | $ 3,913 | (45%) | 97% |
| As a percentage of revenue | 2% | 4% | 6% | | |

Research and development expense decreased in dollar terms and as a percentage of revenue in the year ended December 31, 2020 compared to December 31, 2019, primarily due to the capitalization of increased software development costs during 2020 as further features and functionality were incorporated into the Platforms.

*General and Administrative*

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| General and administrative | $ 42,982 | $ 56,862 | $ 31,148 | (24%) | 83% |
| As a percentage of revenue | 21% | 30% | 45% | | |

General and administrative expense decreased in dollar terms and as a percentage of revenue in the year ended December 31, 2020 compared to December 31, 2019, due to decreased travel, entertainment and other related expenses as a result of COVID-19 and stock-based compensation expenses. Additionally, included in general and administrative expense during the year ended December 31, 2019 are $6,956 of business combination-related professional and other costs associated with the Bite Squad Merger.

*Depreciation and Amortization*

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Depreciation and amortization | $ 8,377 | $ 15,774 | $ 1,223 | (47%) | 1,190% |
| As a percentage of revenue | 4% | 8% | 2% | | |

Depreciation and amortization expense decreased in dollar terms and as a percentage of revenue in the year ended December 31, 2020 compared to December 31, 2019, primarily as a result of the write-down of the carrying value of intangible assets to their implied fair values in September 2019 in connection with the Company's goodwill impairment analysis.

*Goodwill Impairment*

During the year ended December 31, 2019, we recognized a non-cash goodwill impairment charge of $119,212 to write down the carrying value of goodwill to its implied fair value. The primary factor contributing to a reduction in the fair value was the sustained decline in the Company's stock price in 2019, resulting in a market capitalization that was significantly lower than the carrying value of the Company's consolidated stockholders' equity. See Part II, Item 8, *Note 7 – Goodwill and Intangible Assets* for additional details.

*Intangible and Other Asset Impairments*

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Intangible and other asset impairments | $ 30 | $ 73,251 | $ - | (100%) | - |
| As a percentage of revenue | 0% | 38% | 0% | | |

The sustained decline in the Company's stock price during 2019 resulted in a non-cash intangible asset impairment charge in the year ended December 31, 2019 of $71,982 to write down the carrying value of certain intangible assets to their implied fair values. The impairment charge included the write-offs of capitalized contracts costs of $3,815, customer relationships of $57,295 and developed technology of $10,872. During the year ended December 31, 2019, we recognized $852 in impairment charges related to non-recoverable capitalized costs to obtain and fulfill contracts as a result of the termination by certain restaurants of their contracts in connection with the modified fee structure introduced by the Company in July 2019.

*Other Expenses (Income) and Losses (Gains), Net*

| | Year Ended December 31, | | | Percentage change | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2019 to 2020 | 2018 to 2019 |
| | (dollars in thousands) | | | | |
| Other expenses (income) and losses (gains), net | $ 11,217 | $ 9,918 | $ 18,100 | 13% | (45%) |
| As a percentage of revenue | 5% | 5% | 26% | | |

Other expenses (income) and losses (gains), net for the year ended December 31, 2020 primarily consisted of interest expense of $9,318 associated with the Term Loans and Notes and a $1,023 stock-based compensation expense accrual related to the settlement of the *Halley* and *Montgomery* legal contingencies (see Part I, Item 3, Legal Proceedings). Other expenses (income) and losses (gains), net for the year ended December 31, 2019 primarily consisted of $9,268 of interest expense associated with the Term Loans and Notes and a $2,000 stock-based compensation expense accrual related to the *Halley* and *Montgomery* legal contingencies. See Part II, Item 8, *Note 9 – Debt* for definitions of Term Loans and Notes.

Other expenses (income) and losses (gains), net for the year ended December 31, 2018 primarily consisted of $17,505 related to a medical contingency claim. See Part II, Item 8, *Note 11 – Correction of Prior Period Error* for additional details.

***Income Tax Expense (Benefit)***

Income tax expense for the years ended December 31, 2020 and 2019 was $122 and $81, respectively, entirely related to state taxes in various jurisdictions. We have historically generated net operating losses; therefore, a valuation allowance has been recorded on our net deferred tax assets.

**Liquidity and Capital Resources**

***Overview***

As of December 31, 2020, we had cash on hand of $84,706. Our primary sources of liquidity have been cash flow from operations and proceeds from the issuance of stock, long-term convertible debt and term loans.

The implementation of various initiatives throughout 2020, with a focus on improving revenue per order, costs per order, cash flow, operations and liquidity, resulted in positive results for the Company during the year ended December 31, 2020. Additionally, proceeds from the sales of our common stock pursuant to our ATM Program launched in March and May 2020 enhanced our liquidity position at December 31, 2020. We used a portion of the proceeds to repay our debt obligations, as discussed below, and intend to use the remaining proceeds for working capital and general corporate purposes, and to further enhance our ability to execute our strategic, operational and growth initiatives.

In May 2020, the Company entered into a Limited Waiver and Conversion Agreement, pursuant to which the lenders agreed to waive the requirement to prepay the Term Loans arising as a result of the May 2020 ATM Program. In consideration of the prepayment waiver, the Company made a payment of $12,500 on the Term Loans and the lenders converted $12,500 of the Notes into shares of the Company's common stock. In July 2020, the Company entered into amendments to the agreements governing the Term Loans and Notes, pursuant to which the interest rates for the Term Loans and Notes were reduced by 200 basis points for a one-year period, to 5.125% and 4.0% per annum, respectively, and the maturity dates for the Term Loans and Notes were extended by one year to November 15, 2023 upon the payment of $10,500 of the Term Loans. The aggregate principal amount of outstanding long-term debt totaled $99,137 as of December 31, 2020, consisting of $49,479 of Term Loans, $49,504 of Notes and $154 of promissory notes. As of December 31, 2020, the Company had $2,726 of outstanding short-term loans for insurance financing.

We currently expect that our cash on hand and estimated cash flow from operations will be sufficient to meet our working capital needs beyond twelve months; however, there can be no assurance that we will generate cash flow at the levels we anticipate. We may use cash on hand to repay additional debt or to acquire or invest in complementary businesses, products and technologies. We continually evaluate additional opportunities to strengthen our liquidity position, fund growth initiatives and/or combine with other businesses by issuing equity or equity-linked securities (in public or private offerings) and/or incurring additional debt. However, market conditions, our future financial performance or other factors may make it difficult or impossible for us to access sources of capital, on favorable terms or at all, should we determine in the future to raise additional funds.

We are continuously reviewing our liquidity and anticipated working capital needs, particularly in light of the uncertainty created by the COVID-19 pandemic. Thus far, we have been able to operate effectively during the pandemic, however, the potential impacts and duration of the COVID-19 pandemic on the economy and on our business, in particular, may be difficult to assess or predict.

***Capital Expenditures***

Our main capital expenditures relate to the purchase of tablets for restaurants on the Platforms and investments in the development of the Platforms, which are expected to increase as we continue to grow our business. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth under Part I, Item 1A, *Risk Factors* in this Form 10-K.

***Cash Flow***

The following table sets forth our summary cash flow information for the periods indicated:

| | Year Ended December 31, | | |
|---|---|---|---|
| **(in thousands)** | **2020** | **2019** | **2018** |
| Net cash provided by (used in) operating activities | $ 38,445 | $ (73,477) | $ (15,842) |
| Net cash used in investing activities | (6,125) | (196,576) | (3,761) |
| Net cash provided by financing activities | 23,069 | 90,030 | 224,996 |

*Cash Flows Provided By (Used In) Operating Activities*

For the year ended December 31, 2020, net cash provided by operating activities was $38,445, compared to net cash used in operating activities of $73,477 for the year ended December 31, 2019, primarily reflecting the effects of the implementation of various initiatives aimed at improving operations and profitability. The increase in net cash used in operating activities for the year ended December 31, 2019 compared to 2018 primarily reflected an increase in new market launch activities in 2019 relative to 2018. Operating activities during the years ended December 31, 2019 and 2018 included the payment of business combination-related expenses of $6,956 and $5,768, respectively.

*Cash Flows Used In Investing Activities*

For the year ended December 31, 2020, net cash used in investing activities included $3,982 of costs for internally developed software, $1,555 for the purchase of property and equipment and $628 for the acquisition of intangible assets. Net cash used in investing activities for the year ended December 31, 2019 included $192,568 for the acquisition of Bite Squad, $1,805 for internally developed software, $1,636 for the purchase of property and equipment, and $695 for the acquisition of intangible assets. Net cash used in investing activities for the year ended December 31, 2018 primarily consisted of $3,750 for the purchase of property and equipment.

Property and equipment is comprised primarily of computer tablets for restaurants on the Platforms. The tablets remain our property. We control software applications and updates on the tablets, and the tablets are programmed exclusively for the Platforms. We also periodically purchase office furniture, equipment, computers and software and leasehold improvements.

*Cash Flows Provided By Financing Activities*

For the year ended December 31, 2020, net cash provided by financing activities included $47,574 of net proceeds from the sales of common stock under the Company’s ATM Program and $4,753 of borrowings under short-term loans for insurance financing, less $22,594 of payments on the Term Loans and $5,632 of payments on short-term loans for insurance financing. For the year ended December 31, 2019, net cash provided by financing activities included net proceeds from the issuance of common stock of $45,823, proceeds from the issuance of Term Loans of $42,080 and $7,875 of borrowings under a short-term loan for the Company’s annual insurance premium financing, less $4,931 of payments on short-term loans for insurance financing.

For the year ended December 31, 2018, net cash provided by financing activities included $143,648 of net cash assumed from the Landcadia Business Combination and $85,000 of proceeds from the issuance of the Term Loans and Notes, less $3,050 of related debt issuance costs. During the year ended December 31, 2018, we borrowed $5,000 under an unsecured line of credit and repaid in full the $5,000 of borrowings. Additionally, we borrowed $2,172 under a short-term loan to finance a portion of our insurance premium obligations and made repayments of $1,514 on such loan during the year ended December 31, 2018.

**Contractual Obligations and Other Commitments**

At December 31, 2020, we had corporate offices in Lake Charles and Lafayette, Louisiana, as well as smaller offices across the United States. Our office leases expire on various dates through August 2026. We recognize rent expense on a straight-line basis over the relevant lease period.

Our debt and interest payments, future minimum payments under non-cancellable operating leases for equipment and office facilities and payments related to our medical contingency were as follows as of December 31, 2020:

| | Payments Due by Period | | | | |
|---|---|---|---|---|---|
| (in thousands) | Less than 1 Year | 1 to 3 Years | 3 to 5 Years | Thereafter | Total |
| Debt(1) | $ — | $ 98,983 | $ — | $ — | $ 98,983 |
| Loan agreements(2) | 2,969 | 187 | — | — | 3,156 |
| Interest due on debt(3) | 5,439 | 12,341 | — | — | 17,780 |
| Operating lease obligations | 1,353 | 2,065 | 1,619 | 535 | 5,572 |
| Medical contingency(4) | 448 | 910 | 910 | 15,167 | 17,435 |
| **Total** | **$ 10,209** | **$ 114,486** | **$ 2,529** | **$ 15,702** | **$ 142,926** |

(1) Debt includes principal amounts due under the Debt Facility and Notes as of December 31, 2020. See Part II, Item 8, *Note 9 – Debt* of this Form 10-K for additional details.

(2) Loan agreements include principal payments due under short-term loans to finance certain insurance premiums and principal payments for promissory notes related to acquisitions. See Part II, Item 8, *Note 9 – Debt* of this Form 10-K for additional details.

(3) Interest due on debt assumes all interest payments are paid in cash. Interest on the Notes assumes no conversion prior to the maturity of the Notes.

(4) In November 2017, Guarantee Insurance Company ("GIC"), the Company's former workers' compensation insurer, was ordered into receivership for purposes of liquidation by the Second Judicial Circuit Court in Leon County, Florida. At the time of the court order, GIC was administering the Company's outstanding workers' compensation claims. Upon entering receivership, the guaranty associations of the states where GIC operated began reviewing outstanding claims administered by GIC for continued claim coverage eligibility based on guaranty associations' eligibility criteria. Louisiana Insurance Guaranty Association, the agency created by the Louisiana insurance guaranty act to pay for claims of insolvent members ("LIGA"), determined that the Company's enterprise value exceeded the $25,000 eligibility threshold for claims coverage. As such, LIGA assessed one of the Company's outstanding claims as ineligible for coverage. The Company has accrued an estimated amount of loss exposure for the workers' compensation claim (the Medical Contingency claim). See Part II, Item 8, *Note 12 – Commitments and Contingencies* of this Form 10-K for additional details.

Contractual commitment amounts in the table above are associated with agreements that are enforceable and legally binding, while obligations under other contracts that we can cancel without a significant penalty are not included. We have no material long-term purchase obligations outstanding with any vendors or other third parties.

**Off-Balance Sheet Arrangements**

We did not have any off-balance sheet arrangements as of December 31, 2020.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to interest rate risk and certain other market risks in the ordinary course of our business.

***Interest Rate Risk***

As of December 31, 2020, we had outstanding interest-bearing long-term debt totaling $98,983, consisting of $49,479 of Term Loans and $49,504 of Notes. The interest rates under the Term Loans and Notes were reduced by 200 basis points for a one-year period, effective August 3, 2020, in connection with amendments to the loan agreements governing the Term Loans and Notes and a payment on the Term Loans. Although the interest rates decreased on August 3, 2020, we are not currently exposed to interest rate risk on our outstanding debt, as the new rates are fixed and set to revert back to the fixed rates in effect prior to the amendments. If we enter into variable-rate debt in the future, we may be subject to increased sensitivity to interest rate movements.

We invest excess cash primarily in bank accounts and money market accounts, on which we earn interest. Our current investment strategy is to preserve principal and provide liquidity for our operating and market expansion needs. Since our investments have been and are expected to remain mainly short-term in nature, we do not believe that changes in interest rates would have a material effect on the fair market value of our investments or our operating results.

***Inflation Risk***

We do not believe that inflation has had a material effect on our business, results of operations or financial condition.

## Item 8. Financial Statements and Supplementary Data

Information concerning this Item begins on Page F-1.

## Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

There have been no disagreements with our independent registered public accounting firm on our accounting or financial reporting that would require our independent registered public accounting firm to qualify or disclaim its report on our financial statements or otherwise require disclosure in this Form 10-K.

## Item 9A. Controls and Procedures

***Evaluation of Disclosure Controls and Procedures***

As required by Rule 13a-15(b) of the Exchange Act, we have evaluated, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of the end of the period covered by this Form 10-K. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed by us in reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure and is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. Based upon the evaluation, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures were effective to accomplish their objectives at the reasonable assurance levels as of December 31, 2020.

***Changes in Internal Controls Over Financial Reporting***

There has not been any change in our internal control over financial reporting that occurred during the quarter ended December 31, 2020 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

***Management's Report on Internal Control Over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Internal control over financial reporting should be designed under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and include those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of our company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect errors or misstatements in our financial statements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Management assessed the effectiveness of our internal control over financial reporting at December 31, 2020 using the criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the

Treadway Commission (COSO) (2013 framework). Based on our assessments and those criteria, management determined that we maintained effective internal control over financial reporting as of December 31, 2020.

This Form 10-K does not include an attestation report of internal controls from our independent registered public accounting firm due to our status as an emerging growth company under the JOBS Act during the year ended December 31, 2020.

**Item 9B. Other Information**

None.

# PART III

## Item 10. Directors, Executive Officers and Corporate Governance

In accordance with General Instruction G(3) to Form 10-K, the Company intends to file with the SEC the information required by this item not later than 120 days after the end of the fiscal year covered by this Form 10-K.

***Code of Conduct***. The Company has adopted a code of business conduct and ethics (the “Code of Conduct”) that applies to all employees, officers and directors of the Company. The Code of Conduct is available on the Company’s website at investors.waitrapp.com under “Corporate Governance.” The Company intends to post on its website all disclosures that are required by law or Nasdaq listing rules regarding any amendment to, or a waiver of, any provision of the Code of Conduct for the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

## Item 11. Executive Compensation

In accordance with General Instruction G(3) to Form 10-K, the Company intends to file with the SEC the information required by this item not later than 120 days after the end of the fiscal year covered by this Form 10-K.

## Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

In accordance with General Instruction G(3) to Form 10-K, the Company intends to file with the SEC the information required by this item not later than 120 days after the end of the fiscal year covered by this Form 10-K.

## Item 13. Certain Relationships and Related Transactions, and Director Independence

In accordance with General Instruction G(3) to Form 10-K, the Company intends to file with the SEC the information required by this item not later than 120 days after the end of the fiscal year covered by this Form 10-K.

## Item 14. Principal Accounting Fees and Services

In accordance with General Instruction G(3) to Form 10-K, the Company intends to file with the SEC the information required by this item not later than 120 days after the end of the fiscal year covered by this Form 10-K.

# PART IV

## Item 15. Exhibits, Financial Statement Schedules

### 1. Financial Statements:

The following Consolidated Financial Statements, notes to the Consolidated Financial Statements and the Report of Independent Registered Public Accounting Firm thereon are included beginning on page F-1 of this Form 10-K:

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2020 and 2019

Consolidated Statements of Operations for the three years in the period ended December 31, 2020

Consolidated Statements of Cash Flows for the three years in the period ended December 31, 2020

Consolidated Statements of Stockholders' Equity (Deficit) for the three years in the period ended December 31, 2020

Notes to Consolidated Financial Statements

### 2. Financial Statement Schedules:

All schedules are omitted because the required information is inapplicable or the information is presented in the Consolidated Financial Statements or the notes thereto.

**3. Exhibits:**

| Exhibit No. | Description |
|---|---|
| 3.1 | Third Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 3.2 | Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 4.1 | Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 (incorporated by reference to Exhibit 4.1 of the Annual Report on Form 10-K (File No. 001-37788) filed by the Company on March 16, 2020). |
| 4.2 | Specimen Common Stock Certificate (incorporated by reference to Exhibit 4.1 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 4.3 | Specimen Warrant Certificate (incorporated by reference to Exhibit 4.2 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 4.4 | Warrant Agreement, dated May 25, 2016, between the Company and Continental Stock Transfer &Trust Company, as warrant agent (incorporated by reference to Exhibit 4.4 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 1, 2016). |
| 4.5 | Amendment No. 1 to Warrant Agreement, dated as of February 25, 2019, by and between the Company and Continental Stock Transfer & Trust Company (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on February 25, 2019). |
| 4.6 | Form of Warrant (incorporated by reference to Exhibit 4.3 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 10.1 | Credit and Guaranty Agreement, dated as of November 15, 2018, by and among Waitr Inc., as Borrower, Waitr Intermediate Holdings, LLC, certain subsidiaries of Waitr Inc., as Guarantors, various lenders and Luxor Capital Group, LP, as Administrative Agent, Collateral Agent and Lead Arranger (incorporated by reference to Exhibit 10.3 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.2 | Amendment No. 1 to Credit and Guaranty Agreement, dated as of January 17, 2019, by and among Waitr Inc., as Borrower, Waitr Intermediate Holdings, LLC, the various lenders and Luxor Capital Group, LP, as Administrative Agent and Collateral Agent (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on January 18, 2019). |

| Exhibit No. | Description |
|---|---|
| 10.3 | Amendment No. 2 to Credit and Guaranty Agreement, dated as of May 21, 2019, by and among Waitr Inc., Waitr Intermediate Holdings, LLC, Luxor Capital, LLC, as a Lender, and Luxor Capital Group, LP, as administrative agent and collateral agent for the Lenders (incorporated by reference to Exhibit 1.2 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on May 24, 2019). |
| 10.4 | Limited Waiver and Conversion Agreement, dated as of May 1, 2020, by and among Waitr Holdings Inc., Waitr Inc., Waitr Intermediate Holdings, LLC, the Lenders party thereto and Luxor Capital Group, LP (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on May 7, 2020). |
| 10.5 | Amendment No. 3 to Credit and Guaranty Agreement, dated as of July 15, 2020, by and among Waitr Holdings Inc., Waitr Intermediate Holdings, LLC, Luxor Capital, LLC, Luxor Capital Group, LP, and the lenders party thereto (incorporated by reference to Exhibit 10.7 of the Quarterly Report on Form 10-Q (File No. 001-37788) filed by the Company on August 6, 2020). |
| 10.6 | Pledge and Security Agreement, dated as of November 15, 2018, by and among Waitr Inc., Waitr Intermediate Holdings, LLC and certain subsidiaries of Waitr Inc., as Grantors, and Luxor Capital Group, LP, as Collateral Agent (incorporated by reference to Exhibit 10.4 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.7 | Credit Agreement, dated November 15, 2018, by and among the Company, as Borrower, various lenders and Luxor Capital Group, LP, as Administrative Agent and Lead Arranger (incorporated by reference to Exhibit 10.5 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.8 | Amendment No. 1 to Credit Agreement, dated as of January 17, 2019, by and among the Company, as Borrower, the lenders party thereto and Luxor Capital Group, LP, as Administrative Agent (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on January 18, 2019). |
| 10.9 | Amendment No. 2 to Credit Agreement, dated as of May 21, 2019, by and among Waitr Holdings Inc., Luxor Capital, LLC, as a Lender, and Luxor Capital Group, LP, as administrative agent for the Lenders (incorporated by reference to Exhibit 1.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on May 24, 2019). |
| 10.10 | Amendment No. 3 to Credit Agreement, dated as of July 15, 2020, by and among Waitr Holdings Inc., Waitr Intermediate Holdings, LLC, Luxor Capital, LLC, Luxor Capital Group, LP, and the lenders party thereto (incorporated by reference to Exhibit 10.6 of the Quarterly Report on Form 10-Q (File No. 001-37788) filed by the Company on August 6, 2020). |
| 10.11 | Form of Convertible Promissory Note (incorporated by reference to Exhibit 10.6 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.12 | Form of Amended and Restated Registration Rights Agreement by and among the Company and the investors listed on the signature pages thereto (incorporated by reference to Exhibit 10.1 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 10.13 | Registration Rights Agreement, dated November 15, 2018, by and among the Company and the parties listed on the signature pages thereto (incorporated by reference to Exhibit 10.2 of the Form 8-A/A (File No. 001-37788) filed by the Company on November 19, 2018). |
| 10.14 | Form of Registration Rights Agreement by and among Waitr Holdings Inc. and the parties listed on the signature pages thereto (incorporated by reference to Exhibit 10.3 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on January 18, 2019). |
| 10.15 | Open Market Sale Agreement dated March 20, 2020, by and between Waitr Holdings Inc. and Jefferies LLC (incorporated by reference to Exhibit 1.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on March 20, 2020). |
| 10.16 | Amended and Restated Open Market Sale Agreement, dated May 1, 2020, by and between Waitr Holdings Inc. and Jefferies LLC (incorporated by reference to Exhibit 1.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on May 1, 2020). |

| Exhibit No. | Description |
|---|---|
| 10.17 | Letter Agreement, dated November 15, 2018, by and among the Company, Luxor Capital Group, LP, Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP. (incorporated by reference to Exhibit 10.9 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.18* | Employment Agreement, dated January 3, 2020, by and between Waitr Holdings Inc. and Carl A. Grimstad (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on January 3, 2020). |
| 10.19* | Option Agreement, dated January 3, 2020, by and between Waitr Holdings Inc. and Carl A. Grimstad (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on January 3, 2020). |
| 10.20* | Performance Bonus Agreement, dated April 23, 2020, by and between Waitr Holdings Inc. and Carl A. Grimstad (incorporated by referenced to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on April 28, 2020. |
| 10.21* | Restricted Stock Unit Award Agreement, dated April 23, 2020, by and between Waitr Holdings Inc. and Carl A. Grimstad (incorporated by referenced to Exhibit 10.2 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on April 28, 2020. |
| 10.22 | Form of Lockup Agreement (incorporated by reference to Exhibit 10.19 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.23 | Form of Lockup Agreement (incorporated by reference to Exhibit 10.4 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on January 18, 2019). |
| 10.24 | Form of Indemnification Agreement (incorporated by reference to Exhibit 10.20 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on November 21, 2018). |
| 10.25* | Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 17, 2020). |
| 10.26* | Form of Restricted Stock Unit Award Agreement under the Amended and Restated 2018 Omnibus Incentive Plan. (1) |
| 21.1 | Subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 to Registration Statement on Form S-4 (File No. 333-229380) filed by the Company on January 25, 2019). |
| 23.1 | Consent of Moss Adams LLP.(1) |
| 31.1 | Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(a).(1) |
| 31.2 | Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(a).(1) |
| 32.1 | Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350.(1) |
| 32.2 | Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350.(1) |
| 101.INS | Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.(1) |
| 101.SCH | Inline XBRL Taxonomy Extension Schema Document.(1) |
| 101.CAL | Inline XBRL Taxonomy Extension Calculation Linkbase Document.(1) |
| 101.DEF | Inline XBRL Taxonomy Extension Definition Linkbase Document.(1) |

| Exhibit No. | Description |
|---|---|
| 101.LAB | Inline XBRL Taxonomy Extension Label Linkbase Document.(1) |
| 101.PRE | Inline XBRL Taxonomy Extension Presentation Linkbase Document.(1) |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL document).(1) |

* Indicates a management contract or compensatory plan
(1) Filed herewith

**Item 16. Form 10-K Summary**

None.

## SIGNATURES

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

By: /s/ Leo Bogdanov
Leo Bogdanov
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)
March 8, 2021

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated on March 8, 2021.

| Signature | Title |
|---|---|
| /s/ Carl A. Grimstad<br>Carl A. Grimstad | Chief Executive Officer and Chairman of the Board<br>(Principal Executive Officer) |
| /s/Leo Bogdanov<br>Leo Bogdanov | Chief Financial Officer<br>(Principal Financial Officer and Principal Accounting Officer) |
| /s/ Christopher Meaux<br>Christopher Meaux | Vice-Chairman of the Board of Directors |
| /s/ Tilman J. Fertitta<br>Tilman J. Fertitta | Director |
| /s/ Jonathan Green<br>Jonathan Green | Director |
| /s/ Charles Holzer<br>Charles Holzer | Director |
| /s/ Buford H. Ortale<br>Buford H. Ortale | Director |
| /s/ Pouyan Salehi<br>Pouyan Salehi | Director |
| /s/ Steven L. Scheinthal<br>Steven L. Scheinthal | Director |
| /s/ William Gray Stream<br>William Gray Stream | Director |

## INDEX TO FINANCIAL STATEMENTS


| | Page |
|---|---|
| Report of Independent Registered Public Accounting Firm | F-1 |
| Consolidated Balance Sheets | F-2 |
| Consolidated Statements of Operations | F-3 |
| Consolidated Statements of Stockholders' Equity (Deficit) | F-4 |
| Consolidated Statements of Cash Flows | F-6 |
| Notes to Consolidated Financial Statements | F-8 |

## Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of

Waitr Holdings Inc.

***Opinion on the Financial Statements***

We have audited the accompanying consolidated balance sheets of Waitr Holdings Inc. (the “Company”) as of December 31, 2020 and 2019, and the related consolidated statements of operations, stockholders’ equity (deficit), and cash flows for each of the three years in the period ended December 31, 2020, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2020 and 2019, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America.

***Basis for Opinion***

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Moss Adams LLP

Los Angeles, California
March 8, 2021

We have served as the Company’s auditor since 2018.

**WAITR HOLDINGS INC.**
**CONSOLIDATED BALANCE SHEETS**
**(in thousands, except share and per share data)**

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| **ASSETS** | | |
| **CURRENT ASSETS** | | |
| Cash | $ 84,706 | $ 29,317 |
| Accounts receivable, net | 2,954 | 3,272 |
| Capitalized contract costs, current | 737 | 199 |
| Prepaid expenses and other current assets | 6,657 | 8,329 |
| **TOTAL CURRENT ASSETS** | **95,054** | **41,117** |
| Property and equipment, net | 3,503 | 4,072 |
| Capitalized contract costs, noncurrent | 2,429 | 772 |
| Goodwill | 106,734 | 106,734 |
| Intangible assets, net | 23,924 | 25,761 |
| Other noncurrent assets | 588 | 517 |
| **TOTAL ASSETS** | **$ 232,232** | **$ 178,973** |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| **LIABILITIES:** | | |
| **CURRENT LIABILITIES** | | |
| Accounts payable | $ 4,382 | $ 4,384 |
| Restaurant food liability | 4,301 | 5,612 |
| Accrued payroll | 4,851 | 5,285 |
| Short-term loans for insurance financing | 2,726 | 3,612 |
| Deferred revenue, current | 141 | 414 |
| Income tax payable | 122 | 51 |
| Other current liabilities | 13,781 | 13,293 |
| **TOTAL CURRENT LIABILITIES** | **30,304** | **32,651** |
| Long-term debt | 94,372 | 123,244 |
| Accrued medical contingency | 16,987 | 17,203 |
| Accrued workers' compensation liability | — | 102 |
| Deferred revenue, noncurrent | — | 45 |
| Other noncurrent liabilities | 2,473 | 325 |
| **TOTAL LIABILITIES** | **144,136** | **173,570** |
| Commitments and contingent liabilities (Note 12) | | |
| **STOCKHOLDERS' EQUITY:** | | |
| Common stock, $0.0001 par value; 249,000,000 shares authorized and 111,259,037 and 76,579,175 shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively | 11 | 8 |
| Additional paid in capital | 451,991 | 385,137 |
| Accumulated deficit | (363,906) | (379,742) |
| **TOTAL STOCKHOLDERS' EQUITY** | **88,096** | **5,403** |
| **TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY** | **$ 232,232** | **$ 178,973** |

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

**WAITR HOLDINGS INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS**
**(in thousands, except share and per share data)**

| | Year Ended December 31, | | |
| --- | --- | --- | --- |
| | 2020 | 2019 | 2018 |
| **REVENUE** | **$ 204,328** | **$ 191,675** | **$ 69,273** |
| **COSTS AND EXPENSES:** | | | |
| Operations and support | 109,240 | 147,759 | 51,428 |
| Sales and marketing | 12,242 | 52,370 | 15,695 |
| Research and development | 4,262 | 7,718 | 3,913 |
| General and administrative | 42,982 | 56,862 | 31,148 |
| Depreciation and amortization | 8,377 | 15,774 | 1,223 |
| Goodwill impairment | — | 119,212 | — |
| Intangible and other asset impairments | 30 | 73,251 | — |
| Loss on disposal of assets | 20 | 36 | 9 |
| **TOTAL COSTS AND EXPENSES** | **177,153** | **472,982** | **103,416** |
| **INCOME (LOSS) FROM OPERATIONS** | **27,175** | **(281,307)** | **(34,143)** |
| **OTHER EXPENSES (INCOME) AND LOSSES (GAINS), NET** | | | |
| Interest expense | 9,458 | 9,408 | 1,822 |
| Interest income | (102) | (1,037) | (406) |
| Gain on derivatives | — | — | (337) |
| Gain on debt extinguishment | — | — | (486) |
| Other expense | 1,861 | 1,547 | 17,507 |
| **NET INCOME (LOSS) BEFORE INCOME TAXES** | **15,958** | **(291,225)** | **(52,243)** |
| Income tax expense (benefit) | 122 | 81 | (427) |
| **NET INCOME (LOSS)** | **$ 15,836** | **$ (291,306)** | **$ (51,816)** |
| **INCOME (LOSS) PER SHARE:** | | | |
| Basic | $ 0.16 | $ (4.00) | $ (3.29) |
| Diluted | $ 0.15 | $ (4.00) | $ (3.29) |
| **Weighted average shares used to compute net income (loss) per share:** | | | |
| Weighted average common shares outstanding – basic | 98,095,081 | 72,404,020 | 15,745,065 |
| Weighted average common shares outstanding – diluted | 108,175,022 | 72,404,020 | 15,745,065 |

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

# WAITR HOLDINGS INC.
## CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
## (in thousands, except share data)

| | Preferred Seed I | | Preferred Seed II | | Preferred Seed AA | | Common stock | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Additional paid in capital | Accumulated deficit | Total stockholders' equity (deficit) |
| **Balances at December 31, 2017** | **3,413,235** | **$ —** | **3,301,326** | **$ —** | **7,264,489** | **$ —** | **10,050,180** | **$ —** | **$ 35,110** | **$ (36,620)** | **$ (1,510)** |
| Net loss | — | — | — | — | — | — | — | — | — | (51,816) | (51,816) |
| Exercise of stock options | — | — | — | — | — | — | 562,028 | — | 97 | — | 97 |
| Vested Waitr options exchanged for common stock | — | — | — | — | — | — | 3,018,553 | — | — | — | — |
| Line of Credit Warrant exercises | — | — | — | — | — | — | 37,735 | — | 380 | — | 380 |
| 2014 Warrants exchanged for common stock | — | — | — | — | — | — | 405,884 | — | — | — | — |
| Conversion of preferred stock to common stock | (3,413,235) | — | (3,301,326) | — | (7,264,489) | — | 13,979,050 | — | — | — | — |
| Debt Warrants issued in connection with Luxor term loan | — | — | — | — | — | — | — | — | 1,569 | — | 1,569 |
| Conversion of convertible notes to common stock | — | — | — | — | — | — | 2,062,354 | — | 5,360 | — | 5,360 |
| Waitr shares redeemed for cash | — | — | — | — | — | — | (7,168,303) | — | (71,683) | — | (71,683) |
| Merger recapitalization (see Note 3) | — | — | — | — | — | — | 31,203,841 | 5 | 214,853 | — | 214,858 |
| Stock-based compensation | — | — | — | — | — | — | — | — | 9,580 | — | 9,580 |
| Stock issued as consideration in GoGoGrocer asset acquisition | — | — | — | — | — | — | 16,311 | — | 142 | — | 142 |
| Cancellation of stock | — | — | — | — | — | — | (132,095) | — | — | — | — |
| Equity compensation on Requested Amendment | — | — | — | — | — | — | — | — | 3,359 | — | 3,359 |
| Equity issued in exchange for services | — | — | — | — | — | — | — | — | 120 | — | 120 |
| Discount on convertible notes due to beneficial conversion feature | — | — | — | — | — | — | — | — | 1,530 | — | 1,530 |
| **Balances at December 31, 2018** | **—** | **—** | **—** | **—** | **—** | **—** | **54,035,538** | **5** | **200,417** | **(88,436)** | **111,986** |
| Net loss | — | — | — | — | — | — | — | — | — | (291,306) | (291,306) |
| Gain on debt extinguishment | — | — | — | — | — | — | — | — | 1,897 | — | 1,897 |
| Exercise of stock options and vesting of restricted stock units | — | — | — | — | — | — | 496,654 | — | 4 | — | 4 |
| Taxes paid related to net settlement on stock-based compensation | — | — | — | — | — | — | (121,874) | — | (811) | — | (811) |
| Stock-based compensation | — | — | — | — | — | — | — | — | 7,238 | — | 7,238 |
| Equity issued in exchange for services | — | — | — | — | — | — | — | — | 120 | — | 120 |
| Issuance of common stock in connection with Additional Term Loans | — | — | — | — | — | — | 325,000 | — | 3,884 | — | 3,884 |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Public Warrants exchanged for common stock | — | — | — | — | — | — | 4,494,889 | 1 | (610) | — | (609) |
| Stock issued as consideration in Bite Squad Merger | — | — | — | — | — | — | 10,591,968 | 1 | 126,573 | — | 126,574 |
| Issuance of common stock | — | — | — | — | — | — | 6,757,000 | 1 | 46,425 | — | 46,426 |
| **Balances at December 31, 2019** | **—** | **—** | **—** | **—** | **—** | **—** | **76,579,175** | **8** | **385,137** | **(379,742)** | **5,403** |
| Net income | — | — | — | — | — | — | — | — | — | 15,836 | 15,836 |
| Exercise of stock options and vesting of restricted stock units | — | — | — | — | — | — | 779,060 | — | 45 | — | 45 |
| Taxes paid related to net settlement on stock-based compensation | — | — | — | — | — | — | — | — | (1,077) | — | (1,077) |
| Stock-based compensation | — | — | — | — | — | — | — | — | 5,166 | — | 5,166 |
| Stock issued for conversion of Notes | — | — | — | — | — | — | 9,328,362 | 1 | 12,025 | — | 12,026 |
| Stock issued for settlement of legal contingency | — | — | — | — | — | — | 873,720 | — | 3,023 | — | 3,023 |
| Equity issued for asset acquisition | — | — | — | — | — | — | — | — | 100 | — | 100 |
| Issuance of common stock | — | — | — | — | — | — | 23,698,720 | 2 | 47,572 | — | 47,574 |
| **Balances at December 31, 2020** | **—** | **$ —** | **—** | **$ —** | **—** | **$ —** | **111,259,037** | **$ 11** | **$ 451,991** | **$ (363,906)** | **$ 88,096** |

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

**WAITR HOLDINGS INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(in thousands)**

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018 |
| **Cash flows from operating activities:** | | | |
| Net income (loss) | $ 15,836 | $ (291,306) | $ (51,816) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | | |
| Non-cash interest expense | 5,925 | 5,674 | 1,206 |
| Non-cash advertising expense | — | 397 | 603 |
| Stock-based compensation | 5,166 | 7,238 | 12,939 |
| Equity issued in exchange for services | — | 120 | 120 |
| Loss on disposal of assets | 20 | 36 | 9 |
| Depreciation and amortization | 8,377 | 15,774 | 1,223 |
| Goodwill impairment | — | 119,212 | — |
| Intangible and other asset impairments | 30 | 73,251 | — |
| Amortization of capitalized contract costs | 495 | 1,637 | 1,513 |
| Write-off of notes receivable | 388 | — | — |
| Gain on derivatives | — | — | (337) |
| Gain on debt extinguishment | — | — | (486) |
| Other non-cash (income) expense | (12) | (68) | 75 |
| Changes in assets and liabilities: | | | |
| Accounts receivable | 232 | 2,143 | (1,563) |
| Capitalized contract costs | (2,690) | (4,579) | (2,785) |
| Prepaid expenses and other current assets | 1,355 | (2,676) | (3,789) |
| Other noncurrent assets | (142) | — | — |
| Accounts payable | (2) | 1,604 | 1,580 |
| Restaurant food liability | (1,311) | 4,475 | 170 |
| Deferred revenue | (318) | (4,210) | 2,312 |
| Income tax payable | 71 | 26 | (427) |
| Accrued payroll | (434) | 1,104 | 2,105 |
| Accrued medical contingency | (216) | (680) | 17,883 |
| Accrued workers’ compensation liability | (102) | (161) | (988) |
| Other current liabilities | 3,630 | (2,617) | 4,481 |
| Other noncurrent liabilities | 2,147 | 129 | 130 |
| **Net cash provided by (used in) operating activities** | **38,445** | **(73,477)** | **(15,842)** |
| **Cash flows from investing activities:** | | | |
| Purchases of property and equipment | (1,555) | (1,636) | (3,750) |
| Internally developed software | (3,982) | (1,805) | — |
| Acquisition of Bite Squad, net of cash acquired | — | (192,568) | — |
| Other acquisitions | (628) | (695) | (11) |
| Collections on notes receivable | 21 | 94 | — |
| Proceeds from sale of property and equipment | 19 | 34 | — |
| **Net cash used in investing activities** | **(6,125)** | **(196,576)** | **(3,761)** |
| **Cash flows from financing activities:** | | | |
| Proceeds from issuance of stock | 48,314 | 50,002 | — |
| Equity issuance costs | (740) | (4,179) | — |
| Payments on long-term loans | (22,594) | — | — |
| Borrowings under short-term loans for insurance financing | 4,753 | 7,875 | 2,172 |
| Payments on short-term loans for insurance financing | (5,632) | (4,931) | (1,514) |
| Proceeds from exercise of stock options | 45 | 4 | 97 |
| Taxes paid related to net settlement on stock-based compensation | (1,077) | (811) | — |
| Proceeds from Notes and Term Loans | — | 42,080 | 85,000 |
| Debt issuance costs | — | — | (3,050) |
| Borrowings on line of credit | — | — | 5,000 |
| Payments on line of credit | — | — | (5,000) |
| Proceeds from convertible notes issuance | — | — | 1,470 |
| Repayment of Series 2017 and Series 2018 notes | — | — | (3,207) |

| | | | |
|---|---|---|---|
| Proceeds from warrant exercises | — | — | 380 |
| Cash received from Landcadia Holdings | — | — | 215,331 |
| Waitr shares redeemed for cash | — | (10) | (71,683) |
| **Net cash provided by financing activities** | **23,069** | **90,030** | **224,996** |
| **Net change in cash** | **55,389** | **(180,023)** | **205,393** |
| Cash, beginning of period | 29,317 | 209,340 | 3,947 |
| **Cash, end of period** | **$ 84,706** | **$ 29,317** | **$ 209,340** |
| **Supplemental disclosures of cash flow information:** | | | |
| Cash paid during the period for state income taxes | $ 64 | $ 74 | $ 31 |
| Cash paid during the period for interest | 3,533 | 3,734 | 616 |
| **Supplemental disclosures of non-cash investing and financing activities:** | | | |
| Conversion of convertible notes to stock | $ 12,026 | $ — | $ — |
| Stock issued in connection with legal settlement | 3,023 | — | — |
| Accrued consideration for acquisitions | 225 | — | — |
| Equity consideration in acquisitions | 100 | 868 | 142 |
| Seller-financed payables related to other acquisitions | — | 868 | — |
| Stock issued as consideration in Bite Squad acquisition | — | 126,574 | — |
| Stock issued in connection with Additional Term Loans | — | 3,884 | — |
| Non-cash gain on debt extinguishment | — | 1,897 | — |
| Debt assumed in IndiePlate asset acquisition | — | — | 60 |
| Bifurcated embedded derivatives | — | — | 87 |
| Discount on convertible notes due to beneficial conversion feature | — | — | 1,530 |
| Warrants issued | — | — | 1,612 |
| Conversion of convertible notes to preferred stock | — | — | 8,681 |

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

**WAITR HOLDINGS INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**
**(In thousands, except share and per share data)**

## 1. Organization

Waitr Holdings Inc., a Delaware corporation, together with its wholly owned subsidiaries (the "Company," "Waitr," "we," "us" and "our"), operates an online ordering technology platform, providing delivery, carryout and dine-in options, connecting restaurants, drivers and diners in cities across the United States. In January 2019, Waitr acquired BiteSquad.com, LLC ("Bite Squad"), which also operates an online ordering technology platform. The Company connects restaurants, diners and drivers via Waitr's and Bite Squad's mobile applications (the "Platforms"). The Company's Platforms allow consumers to browse local restaurants and menus, track order and delivery status, and securely store previous orders for ease of use and convenience. Restaurants benefit from the online Platforms through increased exposure to consumers for expanded business in the delivery market and carryout sales.

## 2. Basis of Presentation and Summary of Significant Accounting Policies

### Basis of Presentation

The consolidated financial statements and accompanying notes have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") and in accordance with the rules and regulations of the United States Securities and Exchange Commission ("SEC"). References to the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASUs") included hereafter refer to the ASC and ASUs established by the Financial Accounting Standards Board (the "FASB") as the source of authoritative GAAP.

During the third quarter of 2020, the Company identified and corrected an immaterial error related to the understatement of an accrued medical contingency that affected previously issued consolidated financial statements. In order to present the impact of the updated estimated liability for the claim, previously issued financial statements have been revised. See *Note 11 – Correction of Prior Period Error* for additional details, including a summary of the revisions to certain previously reported financial information presented herein for comparative purposes.

### Reclassifications

Certain amounts from prior periods have been reclassified to conform to the current period presentation.

### Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and all wholly owned subsidiaries. Intercompany transactions and balances have been eliminated upon consolidation.

### Use of Estimates

The preparation of the consolidated financial statements in accordance with GAAP requires the Company to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Significant estimates and judgments relied upon in preparing these consolidated financial statements affect the following items:

- incurred loss estimates under our insurance policies with large deductibles or retention levels;
- loss exposure related to claims such as the Medical Contingency (see *Note 11 – Correction of Prior Period Error*);
- income taxes;
- useful lives of tangible and intangible assets;
- equity compensation;
- contingencies;
- goodwill and other intangible assets, including the recoverability of intangible assets with finite lives and other long-lived assets; and
- fair value of assets acquired and liabilities assumed as part of a business combination.

The Company regularly assesses these estimates and records changes to estimates in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameters used in determining these estimates could cause actual results to differ from those estimates.

**Impact of COVID-19 on our Business**

In December 2019, an outbreak of a new strain of coronavirus ("COVID-19") began in Wuhan, Hubei Province, China. In March 2020, the World Health Organization declared COVID-19 a pandemic. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains and created significant volatility and disruption of financial markets. The potential impacts and duration of the COVID-19 pandemic on the global economy and on the Company's business, in particular, are uncertain and may be difficult to assess or predict at this time. The pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, which may reduce the Company's ability to access capital and continue to operate effectively. The COVID-19 pandemic could also reduce the demand for the Company's services, and a prolonged recession or additional financial market corrections resulting from the spread of COVID-19, including an increase in the number of COVID-19 cases, could adversely affect demand for the Company's services. Additionally, in response to the COVID-19 pandemic, several jurisdictions have implemented or are considering implementing fee caps, fee disclosure requirements and similar measures that could negatively impact the Company's financial results. To the extent that the COVID-19 pandemic adversely impacts the Company's business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in Part I, Item 1A. Risk Factors of this Form 10-K.

Waitr has thus far been able to operate during the COVID-19 pandemic. Restrictions on in-restaurant dining have resulted in restaurants utilizing delivery services and has had a positive impact on our business. We have taken several steps to help protect and support our restaurant partners, diners, independent contractor drivers and our employees during the COVID-19 outbreak, including offering no-contact delivery in select markets, offering no-contact grocery delivery in select markets, working with certain restaurant partners to waive diner delivery fees, deploying free marketing programs for certain restaurants and providing masks, gloves and hand sanitizer to drivers. We continue to monitor the impact of the COVID-19 global outbreak, although there remains significant uncertainty related to the public health and the global economic situation.

**Business Combinations**

The Company accounts for business combinations under the acquisition method of accounting, in accordance with ASC Topic 805, *Business Combinations*, recording any assets acquired and liabilities assumed based on their respective fair values. Any excess of the fair value of merger consideration over the fair value of the assets acquired less liabilities assumed is recorded as goodwill. The Company uses management estimates based on historically similar transactions to assist in establishing the acquisition date fair values of assets acquired, liabilities assumed, and contingent consideration granted, if any. These estimates and valuations require the Company to make significant assumptions, including projections of future events and operating performance.

**Cash**

Cash consists of demand deposits with financial institutions, as well as cash owed to restaurants on the Platforms. As of December 31, 2020, the Company had cash totaling $84,706. The Company has a compensating balance arrangement with its financial institution related to a letter of credit. As of December 31, 2020, cash supporting the outstanding letter of credit was $3,191.

Certain restaurants on the Platforms receive their portion of payments collected through the Company's Platforms less frequently than daily. Upon receipt of the restaurants' cash, the Company records an offsetting liability. As of December 31, 2020, our restaurant liability was $4,301.

The Company regularly maintains cash in excess of federally insured limits at financial institutions. The Company makes such deposits with entities it believes are of high credit quality and has not incurred any losses related to these balances. Management believes its credit risk, with respect to these financial institutions, to be minimal.

**Accounts Receivable and Allowance for Doubtful Accounts and Chargebacks**

Accounts receivable is primarily comprised of credit card receivables due from the credit card processor. Credit card payments on orders made through the Platforms are generally remitted to the Company in one to six days from the date revenue is generated.

Accounts receivable are stated net of an allowance for doubtful accounts, determined by management through an evaluation of specific accounts, considering historical experience, aging of accounts receivable, and information regarding the creditworthiness of the customers. When it becomes probable that the receivable will not be collected, the balance is written off. The Company performs periodic credit evaluations of the financial condition of customers, monitors collections and payments from customers, and generally does not require collateral.

Additionally, the Company is liable for uncollected credit card receivables (or "chargebacks"), including fraudulent orders, when a consumer's card is authorized but fails to process and for other unpaid credit card receivables. Chargebacks are recorded as a reduction of the revenue recorded for the transaction.

**Advertising Costs**

The costs of advertising are generally expensed as incurred, or in certain cases, advertising costs are capitalized and expensed when the advertisement first takes place. The accounting policy selected from these two alternatives is applied consistently to similar kinds of advertising activities. For the years ended December 31, 2020, 2019 and 2018, the Company recognized expense attributable to advertising totaling $2,749, $31,232 and $5,322, respectively. Advertising costs are included in sales and marketing expense on the Company's consolidated statements of operations.

**Property and Equipment, net**

Property and equipment, net is stated at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets.

Useful lives of each asset class are as follows:

| | |
|---|---|
| Equipment | 3 years |
| Furniture | 5 years |
| Leasehold improvements | 7 years |

Maintenance and repair costs are expensed as incurred. Major improvements, which extend the useful life of the related asset, are capitalized. When these assets are sold or otherwise disposed of, the asset and related depreciation are relieved and any gain or loss is included in the consolidated statements of operations for the period of sale or disposal.

**Intangible Assets**

*Internally Developed Software*

The Company incurs expenses associated with software development of new features and functionality, which includes wages, employee benefits, and other compensation-related expenses associated with these improvements. Additionally, the Company incurs third-party development and programming costs.

*Costs of Software to Be Sold, Leased, or Marketed*

The Company accounts for costs incurred to develop its externally-marketed platforms in accordance with ASC Topic 985-20, *Software — Costs of Software to Be Sold, Leased, or Marketed*. Internal and external costs incurred after technological feasibility has been established are capitalized. Technological feasibility is established upon completion of planning, designing, coding, and testing activities necessary to establish that the product can be produced to meet its design specifications, including functions, features, and technical performance requirements. The Company's software products generally reach technical feasibility shortly before the products are released to production. Capitalized software costs are amortized on a product-by-product basis. The Company amortizes capitalized software costs using the straight-line method over the estimated economic life of the product, which is 3 years.

*Internal Use Software*

The Company also capitalizes costs to develop or purchase internal-use software in accordance with ASC Topic 350-40, *Intangibles, Goodwill and Other — Internal-Use Software*. Costs are capitalized as incurred after the preliminary project stage is completed, the Company authorizes and commits funding to the project, and it is probable that the project will be completed and used for intended function. The Company amortizes capitalized software costs on a straight-line basis over the estimated useful term, which is 3 years.

*Customer Relationships*

The Company records customer relationship intangible assets at fair value as of the date of acquisition and amortizes the costs on a straight-line basis over their estimated useful lives. The Company's customer relationship intangible assets have useful lives of 7.5 years.

*Trademarks/Trade name*

The Company records trademarks and tradename intangible assets at fair value as of the date of acquisition and amortizes the costs on a straight-line basis over their estimated useful lives. The Company has determined that the Waitr trademark intangible asset is an indefinite-lived asset and therefore is not subject to amortization but is evaluated annually for impairment. The Bite Squad trade name asset is being amortized over its estimated useful life of 3 years.

**Impairment of Long-Lived and Other Intangible Assets**

The Company reviews the recoverability of its long-lived assets, including acquired technology, capitalized software costs, and property and equipment, when events or changes in circumstances occur that indicate that the carrying value of the asset may not be recoverable. Recoverability of finite and other long-lived assets is measured by comparing the carrying amount of an asset group to the future undiscounted net cash flows expected to be generated by that asset group. The Company groups assets for purposes of such review at the lowest level for which identifiable cash flows of the asset group are largely independent of the cash flows of the other groups of assets and liabilities. The amount of impairment to be recognized for finite and indefinite-lived intangible assets and other long-lived assets is calculated as the difference between the carrying value and the fair value of the asset group, generally measured by discounting estimated future cash flows based in part on financial results and the Company's expectation of future performance.

**Goodwill**

Goodwill represents the excess purchase price over tangible and intangible assets acquired, less liabilities assumed arising from business combinations. The Company conducts its goodwill impairment test annually as of October 1, or more frequently if indicators of impairment exist. When performing the annual impairment test, the Company may elect to utilize a qualitative assessment to evaluate whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If the qualitative assessment indicates that goodwill impairment is more likely than not, the Company performs a quantitative impairment test. The Company would recognize an impairment charge for the amount by which the reporting unit's carrying amount exceeds its fair value, if any, not to exceed the carrying amount of goodwill.

**Leases**

The Company accounts for leases under the provisions of ASC Topic 840, *Leases*, which requires that leases be evaluated and classified as operating or capital leases for financial reporting purposes. The terms used for the evaluation include renewal option periods in instances in which the exercise of the renewal option can be reasonably assured and failure to exercise such option would result in an economic penalty. Leases are classified as capital leases whenever the terms of the lease transfer substantially all of the risks and rewards of ownership to the lessee. All other leases are recorded as operating leases. As of December 31, 2020, 2019, and 2018, all of the Company's material leases were operating leases.

The Company's lease agreements provide for rental payments that increase on an annual basis. The Company recognizes rent expense on operating leases on a straight-line basis over the non-cancellable lease term. Operating leases with landlord-funded leasehold improvements are considered tenant allowances and are amortized as a reduction of rent expense over the non-cancellable lease term. Deferred rent liability, which is calculated as the difference between contractual lease payments and the rent expense, is recorded in other current liabilities and other noncurrent liabilities in the consolidated balance sheets.

**Stock-Based Compensation**

The Company measures compensation expense for all stock-based awards, including stock options, restricted stock units ("RSUs") and restricted stock awards ("RSAs"), in accordance with ASC Topic 718, *Compensation — Stock Compensation*. Stock-based compensation is measured at fair value on grant date and recognized as compensation expense ratably over the course of the requisite service period for awards expected to vest. The resulting expense is recorded either in operations and support, sales and marketing, research and development, or general and administrative expense, depending on the department of the recipient. The Company recognizes forfeitures of stock-based awards as they occur. In the case of an award pursuant to which a performance condition must be met for the award to vest, no stock-based compensation cost is recognized until such time as the performance condition is considered probable of being met, if at all. If the assessment of probability of the performance condition changes, the impact of the change in estimate would be recognized in the period of change. Because of the non-cash nature of share-based compensation, it is added back to net income in arriving at net cash provided by operating activities in our statement of cash flows.

The Company uses an option-pricing model to determine the fair value of stock options. Determining the fair value of stock-based awards at the grant date requires judgment. The determination of the grant date fair value of options using an option-pricing model is affected by the Company's estimated common stock value, as well as assumptions regarding a number of other complex and subjective variables. These assumptions include:

*Risk-free rate:* Risk-free interest rates are derived from U.S. Treasury securities as of the option grant date.

*Volatility:* Volatility of the Company's stock price is estimated based on a combination of published historical volatilities of comparable publicly traded companies.

*Expected term:* The expected term calculation for option awards considers a combination of the Company's historical and estimated future exercise behavior.

*Forfeiture rate:* The Company elects to recognize actual forfeitures of stock-based awards as they occur.

If any of the assumptions used in the option-pricing model change significantly, stock-based compensation for future awards may differ materially compared to the awards granted.

**Debt Issuance Costs**

The Company incurs debt issuance costs in connection with its debt facilities and related amendments. Amounts paid directly to lenders are classified as issuance costs and are recorded as a reduction of the carrying value of the debt. Debt issuance costs are amortized using the effective interest rate method to interest expense on the Company's consolidated statements of operations. See *Note 9 – Debt* for additional details.

**Convertible Notes**

The Company accounts for convertible notes in accordance with ASC Topic 470-20, *Debt with Conversion and Other Options*. Convertible notes are classified as liabilities measured at amortized cost, net of debt discounts from the allocation of proceeds. Interest expense is recognized using the effective interest method over the expected term of the debt instrument pursuant to ASC Topic 835, *Interest*.

*Beneficial Conversion Feature*

If the amount allocated to the convertible notes results in an effective per share conversion price that is less than the fair value of the Company's common stock on the commitment date, the intrinsic value of this beneficial conversion feature is recorded as a discount to the convertible notes, with a corresponding increase to additional paid in capital. The beneficial conversion feature discount is equal to the difference between the effective conversion price and the fair value of the Company's common stock at the commitment date, unless limited by the remaining proceeds allocated to the convertible notes.

**Earnings per Common Share**

Basic earnings (loss) per share is computed by dividing net income (loss) attributable to common stockholders by the weighted-average number of common stock outstanding during the period, without consideration for common stock equivalents. Diluted earnings (loss) per share attributable to common stockholders is computed by dividing net income (loss) attributable to common stockholders by the weighted-average number of common stock outstanding during the period and potentially dilutive common stock equivalents, including stock options, RSAs, RSUs and warrants, except in cases where the effect of the common stock equivalent would be antidilutive.

Under GAAP, certain instruments granted in stock-based payment transactions are considered participating securities prior to vesting and are therefore required to be included in the earnings allocation in calculating earnings per share under the two-class method. Companies are required to treat unvested stock-based payment awards with a right to receive non-forfeitable dividends as a separate class of securities in calculating earnings per share, except in cases where the effect of the inclusion of the participating securities would be antidilutive.

**Fair Value Measurements**

The Company records the fair value of assets and liabilities in accordance with ASC Topic 820, *Fair Value Measurement*. ASC 820 defines fair value as the price received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and in the principal or most advantageous market for that asset or liability. Based on the guidance in ASC 820, the Company uses a three-tier fair value hierarchy, prioritizing and defining the types of inputs used to measure fair value depending on the degree to which they are observable. Each fair value measurement is reported in one of the three levels, which is determined by the lowest level input that is significant to the fair value measurement in its entirety. The levels are as follows:

Level 1 — Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2 — Quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument.

Level 3 — Unobservable inputs reflecting the Company's own assumptions about the inputs used in pricing the asset or liability at fair value.

Certain financial instruments are required to be recorded at fair value. Other financial instruments, including cash, are recorded at cost, which approximates fair value. Additionally, accounts receivable, accounts payable and accrued expenses approximate fair value because of the short-term nature of these financial instruments.

**Insurance Reserves**

The Company maintains insurance coverage for business risks in customary amounts believed to be sufficient for our operations, including, but not limited to, workers' compensation, auto and general liability. These plans contain various retention levels for which we provide accruals based on the aggregate of the liability for claims incurred and an estimate for claims incurred but not reported. We review our estimates of claims costs and adjust our estimates when appropriate.

**Loss Contingencies**

The Company is involved in various legal proceedings that arise from the normal course of business activities. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages. The Company records a liability when the Company believes that it is both probable that a loss has been incurred and the amount of the loss or a range of loss can be reasonably estimated. If the Company determines that a loss is reasonably possible, the Company discloses the possible loss in the notes to the consolidated financial statements, including the amount of the loss or range of loss if estimable. Significant judgment is required to determine both probability and the estimated amount of loss. The Company reviews developments in contingencies that could affect previously recorded provisions and disclosures related to such contingencies and adjusts these provisions and disclosures accordingly to reflect the impact of negotiations, settlements, rulings, advice of legal counsel, and updated information.

The Company typically recognizes estimated losses from legal contingencies as other expense in the consolidated statement of operations. Legal fees associated with such actions are expensed as incurred and recognized as general and administrative expense in the consolidated statement of operations.

**Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentration of credit risk consist primarily of accounts receivable. From time to time, the Company assesses the credit worthiness of its payment processing service provider and restaurants on the Platforms. Credit risk on accounts receivable is minimized through use of a reputable payment processing service provider as well as a diverse group of restaurants dispersed across several geographic areas. The Company has not experienced material losses related to receivables from individual restaurants or groups of restaurants and is not expecting a change from this historical norm.

Additionally, the Company regularly maintains cash in excess of federally insured limits at financial institutions. The Company makes such deposits with entities it believes are of high credit quality and has not incurred any losses related to these balances. Management believes its credit risk, with respect to these financial institutions, to be minimal.

**Segments**

The Company operates in a single segment. Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker ("CODM") in making decisions regarding resource allocation and assessing performance. The Company has determined that its Chief Executive Officer is the CODM. To date, the Company's CODM has made such decisions and assessed performance at the Company-level.

**Revenue**

The Company generates revenue ("transaction fees") primarily when diners place an order on one of the Platforms. In the case of diner subscription fees for our unlimited delivery subscription program, revenue is recognized for the receipt of the monthly fee in the applicable month for which the delivery service applies to. Revenue consists of the following for the periods indicated (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018 |
| Transaction fees | $ 203,471 | $ 186,189 | $ 65,930 |
| Setup and integration fees | 453 | 5,270 | 2,882 |
| Other | 404 | 216 | 461 |
| **Total Revenue** | **$ 204,328** | **$ 191,675** | **$ 69,273** |

Transaction fees represent the revenue recognized from the Company's obligation to process orders on the Platforms. The performance obligation is satisfied when the Company successfully processes an order placed on one of the Platforms and the restaurant receives the order at their location. The obligation to process orders on the Platforms represents a series of distinct performance obligations satisfied over time that the Company combines into a single performance obligation. Consistent with the recognition objective in ASC Topic 606, *Revenue from Contracts with Customers*, the variable consideration due to the Company for processing orders is recognized on a daily basis. As an agent of the restaurant in the transaction, the Company recognizes transaction fees earned from the restaurant on the Platform on a net basis. Transaction fees also include a fee charged to the end user customer when they request the order be delivered to their location. Revenue is recognized for diner fees once the delivery service is completed. The contract period for substantially all restaurant contracts is one month as both the Company and the restaurant have the ability to unilaterally terminate the contract by providing notice of termination.

The Company records a receivable when it has an unconditional right to the consideration. The balance of accounts receivable, net was $2,954 and $3,272 as of December 31, 2020 and December 31, 2019, respectively, comprised primarily of credit card receivables due from the credit card processor.

During the years ended December 31, 2019 and 2018, the Company received non-refundable upfront setup and integration fees for onboarding certain restaurants. Setup and integration activities primarily represented administrative activities that allowed the Company to fulfill future performance obligations for these restaurants and did not represent services transferred to the restaurant. However, the non-refundable upfront setup and integration fees charged to restaurants resulted in a performance obligation in the form of a material right related to the restaurant's option to renew the contract each day rather than provide a notice of termination. Revenue related to setup and integration fees was historically recognized ratably over a two-year period. In connection with modifications to the Company's fee structure in July 2019, the Company discontinued offering fee arrangements with the upfront, one-time setup and integration fee.

The contract modifications in July 2019 and the effect of such modifications on our measure of progress towards the performance obligations resulted in accelerated recognition of deferred revenue related to the modified contracts. Included in revenue during the year ended December 31, 2019 is a cumulative adjustment to setup and integration fee revenue of $3,005, which was previously included in deferred revenue as of August 1, 2019. The cumulative adjustment to revenue was partially offset by write-offs of uncollected setup and integration fees within accounts receivable of $797 and refunds of previously paid setup and integration fees of $320. Further, a portion of our capitalized contract costs pertaining to or allocable to terminated restaurant contracts was recognized in the year ended December 31, 2019, resulting in an impairment loss of $852. The July 2019 contract modifications had no impact on revenue during the year ended December 31, 2020.

*Costs to Obtain a Contract with a Customer*

The Company recognizes an asset for the incremental costs of obtaining a contract with a restaurant and recognizes the expense over the course of the period when the Company expects to recover those costs. The Company has determined that certain internal sales incentive commissions earned at the time when an initial contract is executed meet these requirements. Capitalized sales incentives are amortized to sales and marketing expense on a straight-line basis over the period of benefit. The Company applies a practical expedient to expense costs as incurred for costs to obtain a contract with a customer when the amortization period would have been one year or less.

As a result of the changes in the terms of the contracts related to the modified fee structure introduced in July 2019, the Company changed its estimate of the useful life of the asset for costs to obtain a contract to better reflect the estimated period in which the asset will remain in service. Effective August 1, 2019, the estimated useful life of the asset for costs to obtain a contract from customers, previously estimated at two years, was increased to five years. The change in estimate had no material impact on the Company's results of operations for the years ended December 31, 2020 and 2019.

Deferred costs related to obtaining contracts with restaurants totaled $2,424 and $701 as of December 31, 2020 and 2019, respectively, out of which $567 and $143, respectively, was classified as current. Amortization of expense for the costs to obtain a contract were $397, $606, and $541 for the years ended December 31, 2020, 2019, and 2018, respectively.

*Costs to Fulfill a Contract with a Customer*

The Company also recognizes an asset for the costs to fulfill a contract with a restaurant when they are specifically identifiable, generate or enhance resources used to satisfy future performance obligations, and are expected to be recovered. The Company has determined that certain costs related to menu and other setup and integration activities meet the capitalization criteria under ASC Topic 340-40, *Other Assets and Deferred Costs*. Costs related to these implementation activities are deferred and then amortized to operations and support expense on a straight-line basis over a period of benefit.

As a result of the changes in the terms of the contracts related to the modified fee structure introduced in July 2019, the Company changed its estimate of the useful life of the asset for costs to fulfill a contract to better reflect the estimated period in which the asset will remain in service. Effective August 1, 2019, the estimated useful life of the asset for costs to fulfill a contract from customers, previously estimated at two years, was increased to five years. The change in estimate had no material impact on the Company's results of operations for the years ended December 31, 2020 and 2019.

Deferred costs related to fulfilling contracts with restaurants totaled $742 and $270 as of December 31, 2020 and 2019, respectively, out of which $170 and $56 was classified as current. Amortization of expense for the costs to fulfill a contract were $98, $1,030, and $972 for the years ended December 31, 2020, 2019, and 2018, respectively.

**Income Taxes**

The Company files federal and state income tax returns in each of the jurisdictions in which it operates. The Company accounts for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are calculated based upon the temporary differences between the financial statement and income tax bases of assets and liabilities using the enacted tax rates applicable in a given year. A valuation allowance is provided when it is more likely than not that all or some portion of the deferred tax assets will not be realized. The Company did not consider future book income as a source of taxable income when assessing if a portion of the deferred tax assets is more likely than not to be realized. However, scheduling the reversal of existing deferred tax liabilities indicated that a portion of the deferred tax assets are not likely to be realized. Therefore, valuation allowances were established against some, but not all, of the Company's deferred tax assets. In the event the Company determines that it would be able to realize deferred tax assets that have valuation allowances established, an adjustment to the deferred tax assets would be recognized as a component of income tax expense through continuing operations.

The calculation of income tax liabilities involves significant judgment in estimating the impact of uncertainties and complex tax laws. The Company's tax returns are subject to examination by the various federal and state income-taxing authorities in the normal course of business. Such examinations may result in future assessments of additional tax, interest, and penalties. The Company utilizes a two-step approach in recognizing and measuring uncertain tax positions ("tax contingencies"). The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates it is more likely than not that the position will be sustained on audit. The second step is to measure the tax benefit as the largest amount, which is more than 50% likely to be realized upon ultimate settlement. The Company accounts for income taxes related to tax contingencies and recognizes interest and penalties related to tax contingencies in income tax expense in the consolidated statements of operations. The Company has not recorded any tax contingencies as of December 31, 2020 and December 31, 2019.

**Recent Accounting Pronouncements**

The Company considered the applicability and impact of all ASUs. ASUs not listed below were assessed and determined to be either not applicable or are expected to have minimal impact on these consolidated financial statements. Throughout fiscal year 2020, the Company qualified as an "emerging growth company" pursuant to the provisions of the JOBS Act. As an emerging growth company, the Company elected to use the extended transition period for complying with certain new or revised financial accounting standards provided pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended. Effective January 1, 2021, the Company is no longer an emerging growth company.

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40)*, which simplifies the accounting for convertible instruments by reducing the number of accounting models for convertible debt, resulting in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. The guidance also addresses how convertible instruments are accounted for in the diluted earnings per share calculation. ASU 2020-06 is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years, with early adoption permitted no earlier than fiscal years beginning after December 15, 2020. The Company is currently evaluating the impacts of the provisions of ASU 2020-06 on its consolidated financial statements and related disclosures.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which simplifies the accounting for income taxes by removing certain exceptions to the general principles for income taxes and also improves consistent application by clarifying and amending existing guidance. ASU 2019-12 is effective for public business entities for fiscal years, and interim periods within those years, beginning after December 15, 2020. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. Early adoption is permitted, with the amendments to be applied on a retrospective, modified retrospective or prospective basis, depending on the specific amendment. The Company will adopt ASU 2019-12 effective as of January 1, 2021. The Company does not believe the adoption of ASU 2019-12 will have a material impact on the Company's disclosures or consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15, *Intangible – Goodwill and Other – Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That is a Service Contract*, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal use software license). The accounting for the service element of a hosting arrangement that is a service contract is not affected by these amendments. The amendments in this ASU are effective for public business entities for fiscal years, and interim periods within those years, beginning after December 15, 2019. The Company adopted ASU 2018-15 on January 1, 2020. The adoption of ASU 2018-15 did not have a material impact on the Company's disclosures or the consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820) – Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement*, which removes, modifies or adds disclosure requirements regarding fair value measurements. The amendments in this ASU are effective for all entities beginning after December 15, 2019, with amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and narrative description of measurement uncertainty requiring prospective adoption and all other amendments requiring retrospective adoption. The Company adopted ASU 2018-13 on January 1, 2020. The adoption of ASU 2018-13 did not have a material impact on the Company's disclosures or the consolidated financial statements.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation – Stock Compensation (Topic 718)*, to simplify the accounting for share-based payments to non-employees by aligning it with the accounting for share-based payments to employees, with certain exceptions. Under the new standard, equity-classified non-employee awards will be initially measured on the grant date and re-measured only upon modification, rather than at each reporting period. Measurement will be based on an estimate of the fair value of the equity instruments to be issued. ASU 2018-07 is effective for public business entities in fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. For all other entities, the standard is effective in fiscal years beginning after December 15, 2019 and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted, including in an interim period for which financial statements have not been issued or made available for issuance but not before an entity adopts ASC 606. The Company adopted this standard on January 1, 2020. The Company's adoption of this ASU did not have a material impact on the consolidated financial statements.

In July 2017, the FASB issued ASU No. 2017-11, *Earnings Per Share (Topic 260), Distinguishing Liabilities from Equity (Topic 480) and Derivatives and Hedging (Topic 815): I. Accounting for Certain Financial Instruments with Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception*. Part I of ASU 2017-11 addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced based on the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. Part II of ASU 2017-11 addresses the difficulty of navigating ASC Topic 480, *Distinguishing Liabilities from Equity*, because of the existence of extensive pending content in ASC 480. This pending content is the result of the indefinite deferral of accounting requirements about mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable noncontrolling interests. Part II of ASU 2017-11 does not have an accounting effect. ASU 2017-11 is effective for public business entities for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. For all other entities, the standard is effective for fiscal years beginning after December 15, 2019 and interim periods within fiscal years beginning after December 15, 2020. Early adoption is permitted. The Company will adopt this standard effective as of January 1, 2021. The Company is currently evaluating the impacts of the provisions of ASU 2017-11 on its consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, to replace the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company will be required to use a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. ASU 2016-13 is effective for public business entities for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. For all other entities, the standard is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted for all entities beginning after December 15, 2018, including interim periods within those fiscal years. The Company will adopt ASU 2016-13 effective as of January 1, 2021. The Company does not believe the adoption of ASU 2016-13 will have a material impact on the Company's disclosures or consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The principal objective of ASU 2016-02 is to increase transparency and comparability among organizations by recognizing "right-of-use" lease assets and lease liabilities on the consolidated balance sheet. ASU 2016-02 continues to retain a distinction between finance and operating leases but requires lessees to recognize a right-of-use asset representing its right to use the underlying asset for the lease term and a corresponding lease liability on the balance sheet for all leases with terms greater than twelve months. In June 2020, the FASB issued ASU No. 2020-05, which amends the effective date of ASU No. 2016-02 to give immediate relief to certain entities as a result of the widespread adverse economic effects and business disruptions caused by the COVID-19 pandemic. The Company is no longer an emerging growth company effective January 1, 2021, and as a result, the relief granted under ASU 2020-05 will not apply and ASU No. 2016-02 is now effective for the Company on January 1, 2021. The Company will apply the modified retrospective transition approach, with no adjustment to prior comparative periods, and will elect the optional practical expedient package, which includes retaining the current classification of leases. Additionally, the Company will utilize the practical expedient allowing the use of hindsight in determining the lease term and in assessing impairment of its operating lease right-of-use assets. Under ASC Topic 842, the Company expects to record in the consolidated balance sheet as of January 1, 2021, lease liabilities for operating leases entered into prior to December 31, 2020 of approximately $5 million, representing the present value of its future operating lease payments, and corresponding right-of-use assets of approximately $4.7 million, based upon the operating lease liabilities adjusted for deferred rent. The Company does not expect the adoption of ASC Topic 842 will have a material impact on its consolidated statement of operations or cash flows.

## 3. Business Combinations

***Other Acquisitions***

During the years ended December 31, 2020 and 2019, the Company completed various asset acquisitions, which were accounted for under the acquisition method of accounting. The purchase consideration for each acquisition was allocated to the assets acquired which primarily consisted of customer relationships (restaurants and end consumers) and software. The customer relationship intangible assets and acquired software are amortized on a straight-line basis over 7.5 years and three years, respectively. The amortization periods reflect the pattern in which the economic benefits of the acquired assets are consumed. The results of operations of the acquired businesses are included in our consolidated financial statements beginning on their acquisition dates and were immaterial. Pro forma results were immaterial to the operations of the Company.

In December 2020, the Company completed an asset acquisition for total consideration of $525, with the full value allocated to customer relationship intangible assets. During the year ended December 31, 2019, the Company completed three separate asset acquisitions. The total consideration for the acquisitions amounted to $1,645. The acquisitions included customer relationship intangible assets valued at $1,343 and acquired software valued at $250.

***Bite Squad Merger***

In January 2019, the Company completed the acquisition of Bite Squad (the "Bite Squad Merger"). Founded in 2012 and based in Minneapolis, Bite Squad operates an online ordering platform, similar to Waitr's platform, through the Bite Squad platform. Total merger consideration was $335,858, consisting of $197,404 paid in cash, the pay down of $11,880 of indebtedness of Bite Squad and an aggregate of 10,591,968 shares of the Company's common stock valued at $11.95 per share.

The Bite Squad Merger was considered a business combination in accordance with ASC 805, and was accounted for using the acquisition method. Under the acquisition method of accounting, total merger consideration, acquired assets and assumed liabilities are recorded based on their estimated fair values on the acquisition date, with the excess of the fair value of merger consideration over the fair value of the assets less liabilities acquired recorded as goodwill.

The results of operations of Bite Squad are included in our consolidated financial statements beginning on the acquisition date, January 17, 2019. Revenue and net loss attributable to Bite Squad for the year ended December 31, 2019 totaled approximately $95,079 and $213,497, respectively.

In connection with the Bite Squad Merger, the Company incurred direct and incremental costs of $6,956, including debt modification expense of $375, consisting of legal and professional fees, which are included in general and administrative expenses in the consolidated statement of operations in the year ended December 31, 2019.

*Pro-Forma Financial Information (Unaudited)*

The supplemental condensed consolidated results of the Company on an unaudited pro forma basis as if the Bite Squad Merger had been consummated on January 1, 2019 are as follows (in thousands):

| | Twelve Months Ended December 31, 2019 |
|---|---|
| Net Revenue | $ 195,961 |
| Net Loss | 292,419 |

These pro forma results were based on estimates and assumptions, which the Company believes are reasonable. They are not the results that would have been realized had the Company been a consolidated company during the periods presented and are not indicative of consolidated results of operations in future periods. The pro forma results include adjustments primarily related to acquisition accounting adjustments and interest expense associated with the related Additional Term Loans (see *Note 9 - Debt*) in connection with the Bite Squad Merger. Acquisition costs and other non-recurring charges incurred are included in the period presented.

***Landcadia Business Combination***

The merger between Waitr Incorporated and Landcadia Holdings, Inc. closed in November 2018 (the “Landcadia Business Combination”). The Landcadia Business Combination was accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded, in accordance with GAAP. Landcadia Holdings, Inc. was treated as the “acquired” company for financial reporting purposes. Accordingly, for accounting purposes, the Landcadia Business Combination was treated as the equivalent of Waitr Incorporated issuing stock for the net assets of Landcadia Holdings, Inc., accompanied by a recapitalization. The net assets of Landcadia Holdings, Inc. were stated at historical cost, with no goodwill or other intangible assets recorded. Reported amounts from operations included herein prior to the Landcadia Business Combination are those of Waitr Incorporated. The shares and earnings per share available to holders of the Company’s common stock, prior to the Landcadia Business Combination, have been retroactively restated to reflect the exchange ratio established in the Landcadia Business Combination (0.8970953 Waitr Holdings Inc. shares to 1.0 Waitr Incorporated share). The pro forma information of the Landcadia Business Combination has been excluded as the amounts are not material. The aggregate consideration for the Landcadia Business Combination was $300,000, consisting of $71,680 in cash and 22,831,697 shares of the Company’s common stock valued at $10.00 per share.

## 4. Accounts Receivable, Net

Accounts receivable consist of the following (in thousands):

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Credit card receivables | $ 3,013 | $ 2,803 |
| Receivables from restaurants and customers | 334 | 950 |
| Accounts receivable | $ 3,347 | $ 3,753 |
| Less: allowance for doubtful accounts and chargebacks | (393) | (481) |
| **Accounts receivable, net** | **$ 2,954** | **$ 3,272** |

The activity in the allowance for doubtful accounts and chargebacks is as follows (in thousands):

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| **Balance, beginning of the year** | $ 481 | $ 175 |
| Additions to expense | 591 | 481 |
| Write-offs, net of recoveries and other adjustments | (679) | (175) |
| **Balance, end of the year** | **$ 393** | **$ 481** |

During the year ended December 31, 2019, the Company recognized the write-off of $797 of accounts receivable for uncollected setup and integration fees as a reduction of setup and integration fee revenue. See *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* for additional details.

## 5. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Prepaid insurance expense | $ 4,291 | $ 5,859 |
| Other current assets | 2,366 | 2,470 |
| **Prepaid expenses and other current assets** | **$ 6,657** | **$ 8,329** |

**6. Property and Equipment, Net**

Property and equipment are stated at cost less accumulated depreciation and consist of the following (in thousands):

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Computer equipment | $ 7,254 | $ 6,052 |
| Furniture and fixtures | 1,280 | 1,182 |
| Leasehold improvements | 350 | 344 |
| | $ 8,884 | $ 7,578 |
| Less: Accumulated depreciation | (5,381) | (3,506) |
| **Property and equipment, net** | **$ 3,503** | **$ 4,072** |

The Company recorded depreciation expense for property and equipment for the years ended December 31, 2020, 2019, and 2018 of $2,086, $2,048, and $1,096, respectively.

**7. Intangibles Assets and Goodwill**

*Intangible Assets*

Intangible assets with finite useful lives are amortized using the straight-line method over their useful lives and include internally developed software, as well as software to be otherwise marketed, and trademarks/trade name/patents and customer relationships. Intangible assets are stated at cost or acquisition-date fair value less accumulated amortization and consist of the following (in thousands):

| | As of December 31, 2020 | | | |
|---|---|---|---|---|
| | Gross Carrying Amount | Accumulated Amortization | Accumulated Impairment | Intangible Assets, Net |
| Software | $ 25,204 | $ (6,099) | $ (11,825) | $ 7,280 |
| Trademarks/Trade name/Patents | 5,405 | (3,526) | — | 1,879 |
| Customer Relationships | 82,845 | (10,702) | (57,378) | 14,765 |
| **Total** | **$ 113,454** | **$ (20,327)** | **$ (69,203)** | **$ 23,924** |

| | As of December 31, 2019 | | | |
|---|---|---|---|---|
| | Gross Carrying Amount | Accumulated Amortization | Accumulated Impairment | Intangible Assets, Net |
| Software | $ 21,223 | $ (4,113) | $ (11,795) | $ 5,315 |
| Trademarks/Trade name/Patents | 5,405 | (1,725) | — | 3,680 |
| Customer Relationships | 82,343 | (8,199) | (57,378) | 16,766 |
| **Total** | **$ 108,971** | **$ (14,037)** | **$ (69,173)** | **$ 25,761** |

During the year ended December 31, 2020, the Company capitalized approximately $3,982 of software costs related to the development of the Platforms. Additionally, during the year ended December 31, 2020, the Company acquired customer relationship intangible assets valued at $525 in connection with an acquisition (see *Note 3 – Business Combinations*). The Company recorded amortization expense for the years ended December 31, 2020, 2019, and 2018 of $6,291, $13,726, and $127, respectively.

Estimated future amortization expense of intangible assets is as follows (in thousands):

| | Amortization |
|---|---|
| 2021 | $ 7,375 |
| 2022 | 5,894 |
| 2023 | 3,998 |
| 2024 | 2,705 |
| 2025 | 2,705 |
| Thereafter | 1,242 |
| **Total future amortization** | **$ 23,919** |

*Goodwill*

The Company's goodwill balance is as follows as of December 31, 2020 and 2019 (in thousands):

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| **Balance, beginning of period** | $ 106,734 | $ 1,408 |
| Acquisitions during the period | — | 224,538 |
| Impairments during the period | — | (119,212) |
| **Balance, end of period** | **$ 106,734** | **$ 106,734** |

The Company recorded $224,538 of goodwill during the year ended December 31, 2019 as a result of the allocation of the purchase price over assets acquired and liabilities assumed in the Bite Squad Merger (see *Note 3 – Business Combinations*). There were no accumulated goodwill impairment charges at January 1, 2019. A goodwill impairment charge of $119,212 was recognized during the year December 31, 2019 (see *Impairments* below).

*Impairments*

During the years ended December 31, 2020 and 2019, the Company recognized impairment losses of $30 and $334, respectively, for the portion of previously capitalized software that was replaced due to the release of new developed software. In July 2019, the Company ceased the operations of a grocery delivery service related to the GoGoGrocer asset acquisition and concluded that the carrying value of the acquired customer relationship asset was non-recoverable, resulting in an impairment loss of $83 during the year ended December 31, 2019. The impairment losses are included in intangible and other asset impairments in the consolidated statements of operations.

The Company conducts its goodwill and intangible asset impairment test annually as of October 1, or more frequently if indicators of impairment exist. For purposes of testing for goodwill impairment, the Company has one reporting unit. In 2019, as a result of adverse changes in market conditions from increased competition having negatively affected the Company's order and revenue growth, thereby contributing to a sustained decline in the Company's market capitalization, the Company conducted its impairment test as of September 30, 2019. The impairment test was conducted in accordance with ASC Topic 360, *Impairment and Disposal of Long-Lived Assets*, for certain long-lived assets, including capitalized contract costs, developed technology, customer relationships, and trade names, and in accordance with ASC Topic 350, *Intangibles – Goodwill and Other*, for the reporting unit's goodwill. The Company engaged a third party to assist management in estimating the fair values of long-lived assets and the reporting unit for purposes of impairment testing under ASC 360 and ASC 350.

ASC 360 requires long-lived assets to be tested for impairment using a three-step impairment test. Step 1 of the test gives consideration to whether indicators of impairment of long-lived assets are present. Given the sustained decline in the Company's market capitalization in 2019, indications were that an impairment may exist and the Company proceeded to Step 2 to determine whether an impairment loss should be recognized. As a part of Step 2, the Company performed a recoverability test by comparing the sum of the estimated undiscounted future cash flows attributable to the long-lived assets in question to their carrying amounts. Given that the undiscounted cash flows for the long-lived assets were below the carrying amounts, the Company proceeded to perform Step 3 of the test by measuring the amount of impairment to the long-lived assets. An impairment loss is measured by the excess of the carrying amount of the long-lived asset over its implied fair value. As a result of this analysis, the Company recognized non-cash pre-tax impairment losses for the long-lived assets of $71,982 for the year ended December 31, 2019, described in more detail below.

ASC 350 requires goodwill and other indefinite lived assets to be tested for impairment at the reporting unit level. For ASC 350 testing purposes, the Company compared the fair value of the reporting unit with its carrying amount. The fair value of the reporting unit was estimated giving consideration to the Income Approach, including the discounted cash flow method, and the Market Approach, including the similar transactions method and guideline public company method. Significant inputs and assumptions in the ASC 350 analysis included forecasts (e.g., revenue, operating costs, capital expenditures, etc.), discount rate, long-term growth rate, tax rates, etc. for the reporting unit under the Income Approach and market-based enterprise value to revenue multiples under the Market Approach.

As a result of the ASC 360 and ASC 350 analyses, the Company recognized a total non-cash pre-tax impairment loss of $191,194 during the year ended December 31, 2019 to write down the carrying values of goodwill and intangible assets, including capitalized contract costs, customer relationships and developed technology, to their implied fair values. See below for additional details related to the methodology taken to estimate the fair value for the long-lived assets for purposes of the ASC 360 impairment testing.

The developed technology asset was valued using the replacement cost methodology which considers the direct replacement and opportunity costs associated with the underlying technology. The developed technology analysis represented a Level 3 measurement as it was based on unobservable inputs reflecting the Company’s assumptions used in pricing the asset at fair value. These inputs required significant judgments and estimates at the time of the valuation.

The customer relationships were valued using the Income Approach, specifically, the multi-period excess earnings method, which measures the after-tax cash flows attributable to the existing customer relationships after deducting the operating costs and contributory asset charges associated with supporting the existing customer relationships. The customer relationships analysis represented a Level 3 measurement as it was based on unobservable inputs reflecting the Company’s assumptions used in developing a fair value estimate. These inputs required significant judgments and estimates at the time of the valuation.

The trade names were valued using the Income Approach, specifically, the relief from royalty rate method, which measures the cash flow streams attributable to the trade names in the form of royalty payments that would be paid to the owner of the trade names in return for the rights to use the trade names. The trade names analysis represented a Level 3 measurement as it was based on unobservable inputs reflecting the Company’s assumptions used in developing a fair value estimate. These inputs required significant judgments and estimates at the time of the valuation.

The total non-cash impairment loss of $191,194 resulting from the ASC 360 and ASC 350 analyses in 2019 included goodwill and intangible asset impairment losses of $119,212 and $71,982, respectively, which are included in the consolidated statement of operations under the captions “goodwill impairment” and “intangible and other asset impairments,” respectively, during the year ended December 31, 2019. The intangible asset impairment loss of $71,982 included $57,295 for the impairment of customer relationships and $10,872 for the impairment of developed technology. Additionally, $3,815 of capitalized contracts costs, related to future revenue generation that was effectively subsumed in the customer relationship value, were impaired.

Determining the fair value of a reporting unit and intangible assets requires the use of estimates and significant judgments that are based on a number of factors including actual operating results. It is reasonably possible that the judgments and estimates described above could change in future periods. There can be no assurance that additional goodwill or intangible assets will not be impaired in future periods.

## 8. Other Current Liabilities

Other current liabilities consist of the following (in thousands):

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| Accrued advertising expenses | $ 12 | $ 451 |
| Accrued insurance expenses | 3,392 | 949 |
| Accrued estimated workers' compensation expenses | 1,725 | 2,338 |
| Accrued medical contingency | 448 | 680 |
| Accrued legal contingency | — | 2,000 |
| Accrued sales tax payable | 418 | 681 |
| Other accrued expenses | 4,061 | 3,469 |
| Unclaimed property | 1,679 | 1,131 |
| Other current liabilities | 2,046 | 1,594 |
| **Total other current liabilities** | **$ 13,781** | **$ 13,293** |

## 9. Debt

The Company's outstanding debt obligations are as follows (in thousands):

| | Coupon Rate Range in 2020 | Effective Interest Rate | Maturity | December 31, 2020 | December 31, 2019 |
|---|---|---|---|---|---|
| Term Loans | 5.125% - 7.125% | 9.49% | November 2023 | $ 49,479 | $ 69,545 |
| Notes | 4.0% - 6.0% | 6.49% | November 2023 | 49,504 | 61,132 |
| Promissory notes | n/a | 10.00% | Various through August 2022 | 154 | 284 |
| | | | | $ 99,137 | $ 130,961 |
| Less: unamortized debt issuance costs on Term Loans | | | | (3,541) | (5,115) |
| Less: unamortized debt issuance costs on Notes | | | | (1,224) | (2,602) |
| **Total long-term debt** | | | | **$ 94,372** | **$ 123,244** |
| | | | | | |
| Short-term loans for insurance financing | 3.49% - 3.99% | n/a | August 2021 | 2,726 | 3,612 |
| **Total outstanding debt** | | | | **$ 97,098** | **$ 126,856** |

Annual maturities of outstanding debt, net of discounts are as follows (in thousands):

| | Debt Maturity |
|---|---|
| 2021 | $ 2,726 |
| 2022 | 154 |
| 2023 | 94,218 |
| **Total debt** | **$ 97,098** |

Interest expense related to the Company's outstanding debt totaled $9,458, $9,408 and $1,822 for the years ended December 31, 2020, 2019 and 2018, respectively. Interest expense includes interest on outstanding borrowings and amortization of debt issuance costs.

*Amendments to Loan Agreements*

In July 2020, the Company entered into an amendment to the Credit Agreement and an amendment to the Convertible Notes Agreement (together, the "Amended Loan Agreements"), pursuant to which the interest rates under each of the Credit Agreement and Convertible Notes Agreement were reduced by 200 basis points for a one-year period and the maturity dates under such agreements were extended by one year upon the payment of $10,500 of the Term Loans. The Company evaluated the amendments in the Amended Loan Agreements under ASC 470-50, "*Debt Modification and Extinguishment*", and concluded that the amendments did not meet the characteristics of debt extinguishments under ASC 470-50. Accordingly, the amendments were treated as a debt modification, and thus, no gain or loss was recorded. A new effective interest rate for each of the Term Loans and Notes that equates the revised cash flows to the carrying amount of the original debt is computed and applied prospectively. See *Debt Facility* and *Notes* below for definitions of certain capitalized terms included above.

*Limited Waiver and Conversion Agreement*

In May 2020, the Company entered into a Limited Waiver and Conversion Agreement (the "Waiver and Conversion Agreement"), pursuant to which the lenders agreed to waive the requirement to prepay the Term Loans arising as a result of the May 2020 ATM Offering (see *Note 14 – Stockholders' Equity*). In consideration of the prepayment waiver, the Company made a payment on the Term Loans and the lenders converted a portion of the Notes into shares of the Company's common stock as discussed below under *Debt Facility* and *Notes*. The Waiver and Conversion Agreement provided for a conversion rate of 746.269 shares of the Company's common stock per one thousand principal amount of the Notes (calculated based on the closing price of $1.34 per share of the Company's common stock on Nasdaq on April 30, 2020). The Company evaluated the amendments in the Waiver and Conversion Agreement under ASC 470-50 and concluded that the amendments did not meet the characteristics of debt extinguishments under ASC 470-50. Accordingly, the amendments were treated as a debt modification, and thus, no gain or loss was recorded. A new effective interest rate that equated the revised cash flows to the carrying amount of the original debt was computed and applied prospectively through July 15, 2020, the effective date of the Amended Loan Agreements. See *Debt Facility* and *Notes* below for definitions of certain capitalized terms included above.

*Debt Facility*

In November 2018, the Company entered into an agreement with Luxor Capital Group, LP ("Luxor Capital") (as amended or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement provided for a senior secured first priority term loan facility (the "Debt Facility") in the aggregate principal amount of $25,000 (the "Original Term Loans"). An amendment to the Credit Agreement in January 2019 provided an additional $42,080 under the Debt Facility (the "Additional Term Loans" and together with the Original Term Loans, the "Term Loans"), the proceeds of which were used to consummate the Bite Squad Merger. The Term Loans are guaranteed by certain subsidiaries of the Company. In connection with the Debt Facility, the Company issued to Luxor Capital warrants which are currently exercisable for 399,726 shares of the Company's common stock (see *Note 14 – Stockholders' Equity*).

The Company made payments on the Term Loans in 2020 pursuant to the Waiver and Conversion Agreement and the July 2020 amendment to the Credit Agreement, in the amounts of $12,500 and $10,500, respectively. Interest on borrowings under the Debt Facility is payable quarterly, in cash or, at the election of the Company, as a payment-in-kind, with interest paid-in-kind being added to the aggregate principal balance.

The Credit Agreement includes a number of customary covenants that, among other things, limit or restrict the ability of the Company and its subsidiaries to incur additional debt, incur liens on assets, engage in mergers or consolidations, dispose of assets, pay dividends or repurchase capital stock and repay certain junior indebtedness. The Credit Agreement also includes customary affirmative covenants, representations and warranties and events of default. We believe that we were in compliance with all covenants under the Credit Agreement as of December 31, 2020.

*Notes*

In November 2018, the Company issued unsecured convertible promissory notes to Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP (the "Luxor Entities") in the aggregate principal amount of $60,000 (the "Notes") pursuant to an agreement, herein referred to as the "Convertible Notes Agreement".

Interest on the Notes is payable quarterly, in cash or, at the Company's election, up to one-half of the dollar amount of an interest payment due can be paid-in-kind. Interest paid-in-kind is added to the aggregate principal balance. Pursuant to the Waiver and Conversion Agreement, Luxor converted $12,500 of the Notes into 9,328,362 shares of the Company's common stock during 2020.

The Notes include customary anti-dilution protection, including broad-based weighted average adjustments for issuances of additional shares (down-round features). Upon maturity, the outstanding Notes (and any accrued but unpaid interest) will be repaid in cash or converted into shares of common stock, at the holder's election. The Notes are convertible at the holder's election into shares of the Company's common stock at a rate of $12.51 per share.

The Company's payment obligations on the Notes are not guaranteed. The Convertible Notes Agreement contains negative covenants, affirmative covenants, representations and warranties and events of default that are substantially similar to those that are set forth in the Credit Agreement (except those that relate to collateral and related security interests, which are not contained in the Convertible Notes Agreement or otherwise applicable to the Notes). We believe that we were in compliance with all covenants under the Convertible Notes Agreement as of December 31, 2020.

*Promissory Notes*

The Company's promissory notes relate to interest-free notes used to fund portions of two asset acquisitions in 2019 (see *Note 3 – Business Combinations*). The promissory notes are payable in monthly installments until maturity. The Company recorded the promissory notes at fair value and is imputing interest over the life of the notes using a rate that represents the estimated effective interest rate at which the Company could obtain financing at the time the acquisitions occurred. The current portion of the promissory notes, totaling $243, is included in other current liabilities in the consolidated balance sheet at December 31, 2020.

*Short-Term Loans*

The Company's short-term loans include loans to finance portions of certain annual insurance premium obligations. The loans are payable in monthly installments until maturity.

## 10. Income Taxes

The Company provides for income taxes using an asset and liability approach under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to periods in which the taxes become payable.

The provision for federal and state income taxes consists of the following (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018 |
| **Current** | | | |
| Federal | $ — | $ — | $ (477) |
| State | 122 | 81 | 50 |
| **Deferred** | — | — | — |
| Federal | — | — | — |
| State | — | — | — |
| **Income tax expense (benefit)** | **$ 122** | **$ 81** | **$ (427)** |

The differences between income taxes expected by applying the U.S. federal statutory tax rate of 21% and the amount of income taxes provided for are as follows (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018 |
| Tax at statutory rate | $ 3,351 | $ (61,077) | $ (7,295) |
| State income taxes | 378 | (7,863) | (995) |
| Stock-based compensation | (204) | 1,418 | 366 |
| Non-deductible expenses | (376) | 481 | 125 |
| Interest expense | 1,451 | — | 48 |
| Work opportunity tax credit | (6,625) | (2,410) | (611) |
| Goodwill and acquired intangibles | (4,168) | 8,434 | — |
| Other | 566 | (1,060) | — |
| Deferred tax asset revisions | 4,271 | — | — |
| Change in valuation allowance | 1,478 | 62,158 | 7,935 |
| **Income tax expense (benefit)** | **$ 122** | **$ 81** | **$ (427)** |

The tax effects of temporary differences giving rise to deferred income tax assets and liabilities are as follows (in thousands):

| | As of December 31, 2020 | As of December 31, 2019 |
|---|---|---|
| **Deferred tax assets:** | | |
| Stock-based compensation | $ 1,110 | $ 226 |
| Incentive compensation | 368 | — |
| Medical contingency | 4,306 | 4,323 |
| Bad debt reserve | 97 | 119 |
| Charitable contribution carryover | 34 | 33 |
| Unearned revenue | 2 | 114 |
| Workers' compensation reserve | 426 | 473 |
| Deferred rent | 69 | 80 |
| Non-deductible goodwill | 18,210 | 21,088 |
| Non-deductible other intangibles | 14,799 | 14,584 |
| Net operating losses | 32,603 | 33,357 |
| Work opportunity tax credit | 12,204 | 3,817 |
| Interest expense carryforward | — | 2,098 |
| Total deferred tax assets | 84,228 | 80,312 |
| Valuation allowance | (81,207) | (79,729) |
| Net deferred tax assets | **3,021** | **583** |
| **Deferred tax liabilities:** | | |
| Fixed assets | (2,237) | (339) |
| Capitalized contract costs | (782) | (239) |
| Prepaid sponsorship | (2) | (5) |
| Total deferred tax liabilities | **$ (3,021)** | **$ (583)** |
| **Net deferred tax asset (liability)** | **$ —** | **$ —** |

A partial valuation allowance of $81,207 and $79,729 has been recorded as of December 31, 2020 and 2019, respectively, as the Company has generated net operating losses prior to the second quarter of 2020, and the Company did not consider future book income as a source of taxable income when assessing if a portion of the deferred tax assets is more likely than not to be realized.

The Company has the following net operating loss carryforwards and tax credit carryforwards (in thousands):

| | As of December 31, 2020 | As of December 31, 2019 | Beginning Year of Expiration |
|---|---|---|---|
| Federal net operating losses | $ 134,494 | $ 138,001 | 2034 |
| State net operating losses | 110,573 | 106,384 | 2034 |
| Tax credit carryforwards | 12,204 | 3,817 | 2037 |
| **Total carryforwards** | **$ 257,271** | **$ 248,202** | |

Since the Company has net operating losses carrying forward, all of the Company's federal and state income tax returns, which were filed beginning with the 2014 tax year, are subject to examination by the respective taxing authorities. Additionally, Internal Revenue Code (IRC) Section 382 provides an annual limitation with respect to the ability of a corporation to utilize its tax attributes, as well as certain built-in-losses, against future U.S. taxable income in the event of a change in ownership. The Landcadia Business Combination resulted in a change in ownership for purposes of IRC Section 382, however, the Company has determined that the amount of net operating loss carryforwards subject to limitation under IRC Section 382 is immaterial.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security ("CARES") Act was enacted and signed into law and GAAP requires recognition of the tax effects of new legislation during the reporting period that includes the enactment date. The CARES Act includes changes to the tax provisions that benefit business entities and makes certain technical corrections to the Tax Cuts and Jobs Act (the "Tax Act") that was signed into law on December 22, 2017. The tax relief measures for businesses include a five-year net operating loss carryback, suspension of annual deduction limitation of 80% of taxable income from net operating losses generated in a tax year beginning after December 31, 2017, changes in the deductibility of interest, acceleration of alternative minimum tax credit refunds, payroll tax relief, and a technical correction to allow accelerated deductions for qualified improvement property. The CARES Act also provides other non-tax benefits to assist those impacted by the pandemic. The Company evaluated the impact of the CARES Act and determined that there was no significant impact to the income tax provision for the year.

As of December 31, 2020, the Company recognized $1,409 in employer payroll tax deferrals under the CARES Act, of which 50% will be paid in 2021 and 50% will be paid in 2022. These amounts are reflected in other current and non-current liabilities in the accompanying audited consolidated balance sheet.

## 11. Correction of Prior Period Error

During the third quarter of 2020, the Company identified and corrected an error that affected previously issued consolidated financial statements. The error related to the understatement of an accrual for a workers' compensation claim at December 31, 2018 (the "Medical Contingency"). The Company became liable for a claim due to the insolvency of a previous workers compensation insurer, Guarantee Insurance Company ("GIC"), and the subsequent determination by the Louisiana Insurance Guaranty Association, the agency created by the Louisiana insurance guaranty act to pay for claims of insolvent members ("LIGA"), that coverage was ineligible. During the third quarter of 2020, the Company discovered the error upon receipt of information from a third-party administrator regarding an increase in the estimated amount of loss exposure for the claim. Upon review of this information, management determined that the original estimate provided by this third-party administrator was not correct based on the information known at December 31, 2018 related to the severity of the Medical Contingency. As a result, the Company engaged a third-party actuary to assist in the calculation of the estimated loss exposure and determined that the accrued liability recorded at December 31, 2018 for the claim was understated by approximately $17,505, which resulted in additional expense for the year ended December 31, 2018 of $17,505.

The Company assessed the materiality of the error, both quantitatively and qualitatively, in accordance with the SEC's Staff Accounting Bulletin No. 99, and concluded that the error was not material to any of its previously reported financial statements based upon qualitative aspects of the error. However, as the error was large quantitatively, the Company determined that the cumulative correction of this error would have a material effect on the financial results for the three and nine months ended September 30, 2020. Accordingly, in order to present the impact of the updated estimated liability for the claim, previously issued financial statements have been revised and are presented "As Revised" in the tables below. The cumulative impact of the error correction on the Company's retained earnings and stockholders' equity as of December 31, 2019 was a reduction of approximately $17,505. Any further changes in the Medical Contingency going forward are related to payments made in connection with the Medical Contingency. Additionally, any changes in the assumptions, including life span and medical condition related to the Medical Contingency would be considered a change in estimate. No such changes occurred during the years ended December 31, 2019 or 2020.

The revised estimated loss exposure would have been reflected in other expense in the consolidated statement of operations for the year ended December 31, 2018. The estimated loss exposure would have been reflected in other expense due to the one-time nature of the expense, which the Company does not consider to be an ongoing part of its operations. The understatement of the loss exposure in fiscal 2018 did not have an impact to the consolidated statement of operations for 2019 or 2020. The long-term portion of the related liability is included in the consolidated balance sheets as accrued medical contingency, with the current portion included in other current liabilities, for the affected years. The Company's liability for workers' compensation claims incurred and an estimate for claims incurred but not yet reported ("IBNR"), other than the accrued medical contingency, remains in the accrued workers compensation liability line on the consolidated balance sheet, with the current portion included in other current liabilities.

A summary of the effects of the error correction on reported amounts as of and for the years ended December 31, 2018 and 2019 is presented below. The information in the tables below represents income statement, balance sheet and cash flow statement line items affected by the revision. As shown in the tables below, there was no impact to net cash used in operating activities in 2018 or 2019.

***Revised Consolidated Statement of Operations (in thousands)***

| | Year Ended December 31, 2018 | | |
|---|---|---|---|
| | As Reported | Adjustment | As Revised |
| Other expenses | $ 2 | $ 17,505 | $ 17,507 |
| Net loss before income taxes | (34,738) | (17,505) | (52,243) |
| Net loss | (34,311) | (17,505) | (51,816) |
| Net loss per share - basic and diluted | $ (2.18) | $ (1.11) | $ (3.29) |

***Revised Consolidated Cash Flow Statements (in thousands)***

| | Year Ended December 31, 2019 | | | Year Ended December 31, 2018 | | |
|---|---|---|---|---|---|---|
| | As Reported | Adjustment | As Revised | As Reported | Adjustment | As Revised |
| Cash flows from operating activities: | | | | | | |
| Net loss | $ (291,306) | $ — | $ (291,306) | $ (34,311) | $ (17,505) | $ (51,816) |
| Changes in liabilities: | | | | | | |
| Accrued medical contingency | — | (680) | (680) | — | 17,883 | 17,883 |
| Accrued workers' compensation liability | (446) | 285 | (161) | (342) | (646) | (988) |
| Other current liabilities | (3,012) | 395 | (2,617) | 4,213 | 268 | 4,481 |
| Net cash used in operating activities | (73,477) | — | (73,477) | (15,842) | — | (15,842) |

***Revised Consolidated Balance Sheets (in thousands)***

| | December 31, 2019 | | | December 31, 2018 | | |
|---|---|---|---|---|---|---|
| | As Reported | Adjustment | As Revised | As Reported | Adjustment | As Revised |
| Other current liabilities | $ 12,630 | $ 663 | $ 13,293 | $ 4,508 | $ 268 | $ 4,776 |
| Total current liabilities | 31,988 | 663 | 32,651 | 13,595 | 268 | 13,863 |
| Accrued medical contingency - long term | — | 17,203 | 17,203 | — | 17,883 | 17,883 |
| Accrued workers' compensation liability - long term | 463 | (361) | 102 | 908 | (646) | 262 |
| Total liabilities | 156,065 | 17,505 | 173,570 | 97,061 | 17,505 | 114,566 |
| Accumulated deficit | (362,237) | (17,505) | (379,742) | (70,931) | (17,505) | (88,436) |
| Total stockholders' equity | 22,908 | (17,505) | 5,403 | 129,491 | (17,505) | 111,986 |

## 12. Commitments and Contingencies

*Lease Commitments*

As of December 31, 2020, the Company leases offices in Lake Charles and Lafayette, Louisiana, as well as smaller offices throughout the United States. The office leases expire on various dates through August 2026. The terms of the lease agreements provide for rental payments that periodically increase. The Company recognizes rent expense on a straight-line basis over the lease term. For the majority of the Company's lease agreements, the Company may renew its leases at fair value after the initial lease term. The rent expenses for the years ended December 31, 2020, 2019, and 2018 were $1,721, $726, and $423, respectively. Future minimum lease payments are as follows (in thousands):

| Year ended December 31, | Amount |
|---|---|
| 2021 | $ 1,353 |
| 2022 | 1,175 |
| 2023 | 890 |
| 2024 | 816 |
| 2025 | 803 |
| Thereafter | 535 |
| **Total minimum lease payments** | **$ 5,572** |

*Sales Tax Contingent Liability*

The Company received an assessment from the State of Mississippi Department of Revenue (the "MDR"), in connection with their audit of Waitr for the period from April 2017 through January 2019, claiming additional sales taxes due. The assessment related to the MDR's assertion that sales taxes are due on the delivery fees charged to end user customers when an order is placed on the Waitr platform. The total asserted claim, plus estimated accrued interest and penalties, amounted to approximately $300 at December 31, 2019. The Company disagreed with the MDR's assertion. Pursuant to a legislative ruling on this matter which went into effect on July 1, 2020, delivery fee revenue was determined to be a non-taxable transaction, resulting in the Company no longer having exposure for this claim. Accordingly, the assessed taxes are no longer due and the MDR abated all penalties related to such assessment.

*Medical Contingency Claim*

In November 2017, GIC, the Company's former workers' compensation insurer, was ordered into receivership for purposes of liquidation by the Second Judicial Circuit Court in Leon County, Florida. At the time of the court order, GIC was administering the Company's outstanding workers' compensation claims. Upon entering receivership, the guaranty associations of the states where GIC operated began reviewing outstanding claims administered by GIC for continued claim coverage eligibility based on guaranty associations' eligibility criteria. LIGA determined that the Company's enterprise value exceeded the $25,000 eligibility threshold for claims coverage. As such, LIGA assessed one of the Company's outstanding claims as ineligible for coverage.

During the third quarter of 2020, the Company discovered an error upon the receipt of information from a third-party administrator regarding the estimated amount of loss exposure for a certain workers' compensation claim (the Medical Contingency claim), and determined the original estimate provided by the third-party administrator was in error based on the information known at December 31, 2018. The Company engaged a third-party actuary to assist in the calculation of the estimated loss exposure and determined that the expense and accrued liability recorded at December 31, 2018 for the Medical Contingency claim were understated by approximately $17,505. In order to present the impact of the estimated liability for the claim, the Company's previously issued financial statements have been revised. See *Note 11 – Correction of Prior Period Error* for additional details. The additional expense associated with the estimated loss exposure impacted 2018. As of December 31, 2020 and 2019, the long-term portion of the estimated Medical Contingency claim totaled $16,987 and $17,203, respectively, and is included in the consolidated balance sheet as accrued medical contingency. The current portion of the Medical Contingency totaled $448 and $680 as of December 31, 2020 and 2019, respectively, and is included in other current liabilities.

*Workers' Compensation and Auto Policy Claims*

We establish a liability under our workers' compensation and auto insurance policies for claims incurred and an estimate for IBNR claims. As of December 31, 2020 and 2019, $4,697 and $2,377, respectively, in outstanding workers' compensation and auto policy claims are included in the consolidated balance sheet. The short-term portions of the liability for our workers' compensation and auto insurance claims are included in other current liabilities.

*Legal Matters*

In July 2016, Waiter.com, Inc. filed a lawsuit against Waitr Inc. in the United States District Court for the Western District of Louisiana, alleging trademark infringement based on Waitr's use of the "Waitr" trademark and logo, Civil Action No.: 2:16-CV-01041. Plaintiff seeks injunctive relief and damages relating to Waitr's use of the "Waitr" name and logo. During the third quarter of 2020, the trial date was rescheduled to June 2021, and in September 2020, the court ruled on various motions, certain of which ruled against defenses the Company had advanced. Waitr believes that the damages case lacks merit and that it has a defense to the infringement claims alleged. Waitr continues to vigorously defend the suit.

In February 2019, the Company was named a defendant in a lawsuit titled *Halley, et al vs. Waitr Holdings Inc.* filed in the United States District Court for the Eastern District of Louisiana on behalf of plaintiff and similarly situated drivers alleging violations of the Fair Labor Standards Act ("FLSA") and state and federal wage law, and in March 2019, the Company was named a defendant in a lawsuit titled *Montgomery v. Waitr Holdings Inc*. filed in the United States District Court for the Eastern District of Louisiana on behalf of plaintiff and similarly situated drivers, alleging violations of FLSA and Louisiana Wage Payment Act. The parties to the *Halley* and *Montgomery* matters jointly filed with the court a motion for preliminary approval of a settlement agreement whereby the Halley and Montgomery plaintiffs, on behalf of themselves and similarly situated drivers, would dismiss the lawsuits against the Company in consideration for the Company issuing up to 1,556,420 shares of Waitr common stock to be allocated to participating class members pursuant to a formula set forth in the settlement agreement. On April 28, 2020, the court granted the motion and issue notice to putative class members. Following the expiration of the class period, the court held a fairness hearing on August 19, 2020. The court approved a final judgment pursuant to which the Company paid 873,720 shares of common stock to the participating class members on October 7, 2020 to settle the lawsuits. Included in the consolidated statements of operations in other expenses for the years ended December 31, 2020 and 2019, is $1.0 million and $2.0 million, respectively, related to the settlement.

In April 2019, the Company was named as a defendant in a class action complaint filed by certain current and former restaurant partners, captioned *Bobby's Country Cookin', et al v. Waitr,* which is currently pending in the United States District Court for the Western District of Louisiana. Plaintiffs allege, among other things, claims for breach of contract, violation of the duty of good faith and fair dealing, and unjust enrichment, and seek recovery on behalf of themselves and two separate classes. Based on the current class definitions, as many as 10,000 restaurant partners could be members of the two separate classes that the representative plaintiffs are attempting to certify. Plaintiff's deadline to file a motion for class certification is October 2021. Waitr maintains that the underlying allegations and claims lack merit, and that the classes, as pled, are incapable of certification. Waitr intends to vigorously defend the suit.

In September 2019, Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC were named as defendants in a putative class action lawsuit entitled *Walter Welch, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC*. The case was filed in the Western District of Louisiana, Lake Charles Division. In the lawsuit, the plaintiff asserts putative class action claims alleging, inter alia, that various defendants made false and misleading statements in securities filings, engaged in fraud, and violated accounting and securities rules. A similar putative class action lawsuit, entitled *Kelly Bates, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC*, was filed in that same court in November 2019. These two cases were recently consolidated, and an amended complaint was filed in October 2020. The Company filed a motion to dismiss in February 2021. Waitr believes that this lawsuit lacks merit and that it has strong defenses to all of the claims alleged. Waitr intends to vigorously defend this lawsuit.

In addition to the lawsuits described above, Waitr is involved in other litigation arising from the normal course of business activities, including, without limitation, labor and employment claims, lawsuits and claims involving personal injuries, physical damage and workers' compensation benefits suffered as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr believes that it maintains insurance that generally covers liability for potential damages in many of these matters, insurance coverage is not guaranteed, often these claims are met with denial of coverage positions by the carriers, and there are limits to insurance coverage; accordingly, we could suffer material losses as a result of these claims or the denial of coverage for such claims.

## 13. Stock-Based Awards and Cash-Based Awards

On June 16, 2020, the Company's stockholders approved the Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (the "Amended 2018 Plan"), which is an amendment and restatement of the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "2018 Incentive Plan"). The Amended 2018 Plan permits the granting of awards in the form of incentive stock options, non-qualified stock options, stock appreciation rights, RSAs, RSUs, performance-based awards, and other stock-based or cash-based awards. The Amended 2018 Plan was adopted principally to serve as a successor plan to the 2018 Incentive Plan, and to increase the number of shares of common stock reserved for issuance of equity-based awards by 13,500,000 shares, which is in addition to the share reserve amount that remained available under the 2018 Incentive Plan prior to the adoption of the Amended 2018 Plan. Additionally, the Amended 2018 Plan extended the provision for automatic increases in shares reserved for issuance on January 1st of each year to January 1, 2030. The automatic increases each year are equal to 5% of the total number of outstanding shares of the Company's common stock on December 31st of the preceding calendar year. As of December 31, 2020, there were 6,659,056 shares of common stock available for future grants pursuant to the Amended 2018 Plan. The Company also has outstanding equity awards under the 2014 Stock Plan (as amended in 2017, the "Amended 2014 Plan"). Effective November 16, 2018, no further grants will be made under the Company's Amended 2014 Plan.

### Stock-Based Awards

The Company has granted non-qualified and incentive stock options, RSAs and RSUs under its incentive plans. Once stock options vest, recipients are allowed to purchase the Company's common stock at a fixed and specified exercise price that varies depending on the stock options' strike price. Stock-based compensation is measured at fair value on grant date and recognized as compensation expense ratably over the course of the requisite service period for awards expected to vest. The Company recognizes forfeitures of stock-based awards as they occur. Total compensation expense related to awards under the Company's incentive plans was $5,166, $7,240, and $9,580 for the years ended December 31, 2020, 2019, and 2018, respectively.

#### *Stock Options*

On January 3, 2020, 9,572,397 stock options were granted under the 2018 Incentive Plan to the Company's chief executive officer (the "Grimstad Option"), with an aggregate grant date fair value of $2,297. The exercise price of the options is $0.37, and the options will vest 50% on each of the first two anniversaries of the grant date. The options have a five-year exercise term. There were no grants of stock options other than the Grimstad Option during the year ended December 31, 2020. Stock option grants during the years ended 2019 and 2018 generally vest over a period of approximately three to four years and have ten-year exercise terms.

The fair value of each stock option grant was estimated as of the grant date using an option-pricing model with the following assumptions or ranges of assumptions, as applicable. Due to the Company's limited historical data as a publicly traded company, expected volatility for stock options is based on the historical and implied volatility of comparable publicly traded companies.

| | 2020 | 2019 | 2018 |
|---|---|---|---|
| Weighted-average fair value at grant | $ 0.24 | $ 5.08 | $ 5.06 |
| Risk free interest rate | 1.54% | 2.53% - 2.58% | 2.1% - 3.1% |
| Expected volatility | 100.6% | 50.5% - 51.3% | 44.6% - 47.03% |
| Expected option life (years) | 3.25 | 6.0 | 0.75 - 6.0 |

The Company recognized compensation expense for stock options of $1,449, $1,257, and $9,008 for the years ended December 31, 2020, 2019, and 2018, respectively. As of December 31, 2020, there was $1,387 of unrecognized compensation cost related to nonvested stock options under the Company's incentive plans, with a current weighted average remaining vesting period of approximately one year.

The stock option activity under the Company's incentive plans during the years ended December 31, 2020, 2019 and 2018 is as follows:

| | Number of Shares | Weighted Average Exercise Price | Weighted Average Grant Date Fair Value |
|---|---|---|---|
| **Balance, December 31, 2017** | **4,490,016** | **$ 0.53** | **$ 2.35** |
| Granted | 947,966 | 5.19 | 5.06 |
| Modified | (64,329) | 1.90 | 4.06 |
| Exercised | (4,224,983) | 0.52 | 2.39 |
| Forfeited | (267,837) | 0.35 | 1.74 |
| **Balance, December 31, 2018** | **880,833** | **$ 5.53** | **$ 5.20** |
| Granted | 301,419 | 10.13 | 5.08 |
| Exercised | (12,040) | 0.36 | 2.95 |
| Forfeited | (650,963) | 9.10 | 5.37 |
| Expired | (73,528) | 4.82 | 4.61 |
| **Balance, December 31, 2019** | **445,721** | **$ 3.66** | **$ 5.04** |
| Granted | 9,572,397 | 0.37 | 0.24 |
| Exercised | (62,119) | 0.71 | 3.73 |
| Forfeited | (100,739) | 5.65 | 5.72 |
| Expired | (102,003) | 3.33 | 5.40 |
| **Balance, December 31, 2020** | **9,753,257** | **$ 0.43** | **$ 0.33** |

The 64,329 of options modified in 2018 represent the share conversion to reflect the exchange ratio established in the Landcadia Business Combination (see *Note 3 – Business Combinations)*. The options exercised in 2018 include the conversion of vested stock options that were outstanding prior to the closing of the Landcadia Business Combination into shares of common stock of the post-Landcadia Business Combination Company.

Outstanding stock options, which were fully vested and expected to vest and exercisable are as follows as of December 31, 2020 and 2019:

| | As of December 31, 2020 | | As of December 31, 2019 | |
|---|---|---|---|---|
| | Options Fully Vested and Expected to Vest | Options Exercisable | Options Fully Vested and Expected to Vest | Options Exercisable |
| Number of Options | 9,753,257 | 132,846 | 445,721 | 220,446 |
| Weighted-average remaining contractual term (years) | 4.07 | 6.82 | 7.88 | 7.47 |
| Weighted-average exercise price | $ 0.43 | $ 3.20 | $ 3.66 | $ 2.26 |
| Aggregate Intrinsic Value (in thousands) | $ 23,285 | $ 178 | $ 6 | $ 6 |

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (the difference between the fair value of the common stock and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their in-the-money options on each date. This amount will change in future periods based on the fair value of the Company's stock and the number of options outstanding. The aggregate intrinsic value of awards exercised during the years ended December 31, 2020, 2019 and 2018 (excluding option exercises related to the Landcadia Business Combination) was $61, $52 and $5,250, respectively. Upon exercise, the Company issued new common stock.

***Restricted Stock***

The Company's restricted stock grants include performance-based and time-based vesting awards. The fair value of restricted shares is typically determined based on the closing price of the Company's common stock on the date of grant.

*Performance-Based Awards*

On April 23, 2020, 3,134,325 performance-based RSUs were granted under the 2018 Incentive Plan to Mr. Grimstad, with an aggregate grant date fair value of $3,542 (the "Grimstad RSU Grant"). The Grimstad RSU Grant vests in full in the event of a change of control, as defined in Mr. Grimstad's employment agreement with the Company (the "Employment Agreement"), subject to his continuous employment with the Company through the date of a change of control; provided, however, that the Grimstad RSU Grant shall fully vest in the event that Mr. Grimstad terminates his employment for good reason or he is terminated by the Company for reason other than misconduct. No stock-based compensation expense will be recognized for the Grimstad RSU Grant until such time that is probable that the performance goal will be attained, or at the time that Mr. Grimstad terminates his employment for good reason or he is terminated by the Company for reason other than misconduct, should either occur.

*Awards with Time-Based Vesting*

During the year ended December 31, 2020, 4,267,501 RSUs with time-based vesting were granted pursuant to the Company's 2018 Incentive Plan and the Amended 2018 Plan (with an aggregate fair value of $9,715), of which 1,400,000 RSUs were granted to non-employee directors vesting upon the earlier of June 30, 2021 and the date of the 2021 annual meeting of the Company's stockholders and 2,867,501 RSUs were granted to employees and consultants vesting generally between one to three years of the date of grant. The RSU grants vest in various manners in accordance with the terms specified in the applicable award agreement, all of which accelerate and vest upon a change of control.

The Company recognized compensation expense for restricted stock of $3,717, $5,983 and $572 during the years ended December 31, 2020, 2019 and 2018, respectively. Restricted stock grants during 2018 represented RSAs, all of which were either vested of forfeited as of December 31, 2019. Unrecognized compensation cost related to unvested time-based RSUs as of December 31, 2020, was $6,870, with a weighted average remaining vesting period of approximately 1.7 years. During the years ended December 31, 2020 and 2019, the total grant date fair value of restricted shares vested was $1,290 and $5,694, respectively.

The activity for restricted stock with time-based vesting under the Company's incentive plans is as follows:

| | Number of Shares | Weighted Average Grant Date Fair Value | Weighted Average Remaining Contractual Term (years) |
|---|---|---|---|
| **Nonvested at December 31, 2017** | — | — | — |
| Granted | 550,000 | $ 11.94 | |
| Shares vested | — | — | |
| **Nonvested at December 31, 2018** | **550,000** | **$ 11.94** | **1.78** |
| Granted | 5,004,664 | 2.29 | |
| Shares vested | (484,614) | 11.75 | |
| Forfeitures | (1,887,411) | 4.13 | |
| **Nonvested at December 31, 2019** | **3,182,639** | **$ 1.42** | **2.16** |
| Granted | 4,267,501 | 2.28 | |
| Shares vested | (946,387) | 1.36 | |
| Forfeitures | (1,945,150) | 1.44 | |
| **Nonvested at December 31, 2020** | **4,558,603** | **$ 2.23** | **1.71** |

**Cash-Based Awards**

***Performance Bonus Agreement***

On April 23, 2020, the Company entered into a performance bonus agreement with Mr. Grimstad. Pursuant to the bonus agreement, upon the occurrence of a change of control in which the holders of the Company's common stock receive per share consideration that is equal to or greater than $2.00, subject to adjustment in accordance with the 2018 Incentive Plan, the Company shall pay Mr. Grimstad an amount equal to $5,000 (the "Bonus"). In order to receive the Bonus, Mr. Grimstad must remain continuously employed with the Company through the date of the change of control; provided, however, that in the event Mr. Grimstad terminates his employment for good reason or the Company terminates his employment other than for misconduct, Mr. Grimstad will be entitled to receive the Bonus provided the change of control occurs on or before January 3, 2022. Compensation expense related to the bonus agreement will not be recognized until such time that is probable that the performance goal will be achieved.

**14. Stockholders' Equity**

***Common Stock***

At December 31, 2020 and 2019, there were 249,000,000 shares of common stock authorized and 111,259,037 and 76,579,175 shares of common stock issued and outstanding, respectively, with a par value of $0.0001. The Company did not hold any shares as treasury shares as of December 31, 2020 or December 31, 2019. The Company's common stockholders are entitled to one vote per share.

***Preferred Stock***

At December 31, 2020 and 2019, the Company was authorized to issue 1,000,000 shares of preferred stock ($0.0001 par value per share). There were no issued or outstanding preferred shares as of December 31, 2020 or December 31, 2019.

***At-the-Market Offerings***

In March 2020 and May 2020, the Company entered into open market sale agreements with respect to an at-the-market offering program (the “ATM Program”) under which the Company could offer and sell, from time to time at its sole discretion, shares of its common stock, through Jefferies LLC as its sales agent. The issuance and sale of shares by the Company under the agreements were made pursuant to the Company’s effective registration statement on Form S-3 which was filed on April 4, 2019. Details of sales pursuant to the ATM Program are included in the table below. Approximately $6,686 of the aggregate offering amount provided for in the March 2020 ATM Program remained unsold when the Company entered into the May 2020 ATM Program.

| | March 2020 ATM Program | May 2020 ATM Program | Total |
|---|---|---|---|
| Maximum aggregate offering price (in thousands) | $ 25,000 | $ 30,000 | |
| Total shares sold | 14,262,305 | 9,436,415 | 23,698,720 |
| Average sales price per share | $ 1.28 | $ 3.18 | $ 2.04 |
| Gross proceeds (in thousands) | $ 18,314 | $ 30,000 | $ 48,314 |
| Net proceeds (in thousands) | $ 18,024 | $ 29,550 | $ 47,574 |

***Conversion of Notes***

During the year ended December 31, 2020, in connection with the Waiver and Conversion Agreement, Luxor converted $12,500 of the Notes into 9,328,362 shares of the Company’s common stock (see *Note 9 – Debt*).

***Warrants***

In connection with the Debt Facility, the Company issued to Luxor Capital warrants which are currently exercisable for 399,726 shares of the Company’s common stock with an exercise price of $12.51 per share (the “Debt Warrants”). The Debt Warrants expire on November 15, 2022 and include customary anti-dilution protection, including broad-based weighted average adjustments for issuances of additional shares (down-round features). Additionally, the holders of the Debt Warrants have customary registration rights with respect to the shares underlying the Debt Warrants.

**15. Fair Value Measurements**

At December 31, 2020 and 2019, the Company had an outstanding medical contingency claim which is measured at fair value on a recurring basis (see *Note 12 – Commitments and Contingencies*). The long-term portion of the liability for such claim is included in the consolidated balance sheets under accrued medical contingency, with the short-term portion included within other current liabilities. The medical contingency claim is measured at fair value using a method that incorporates life-expectancy assumptions, along with projected annual medical costs for each future year, adjusted for inflation. An average annual inflation rate of 3.5% was used in the development of the actuarial estimate for medical costs, based on historical medical cost inflation trends as published by the U.S. Bureau of Labor Statistics. Additionally, the measurement includes factors to derive a probability-weighted average of future payments in order to reflect variations from the life-expectancy assumptions, using CDC National Vital Statistics Reports as a tool in the analysis. Projected cash flows are discounted using an interest rate consistent with the U.S. 30-year treasury yield curve rates.

The medical contingency claim analysis represents a Level 3 measurement as it was based on unobservable inputs reflecting the Company’s assumptions used in developing the fair value estimate. The inputs used in the measurement, particularly life expectancy and projected medical costs, are sensitive inputs to the measurement and changes to either could result in significantly higher or lower fair value measurements. The Company utilized historical transactional data regarding the claim, along with projections for future comprehensive medical care costs. These inputs required significant judgments and estimates at the time of the valuation.

The following table presents the Company’s liabilities measured at fair value on a recurring basis as of December 31, 2020 and December 31, 2019 (in thousands):

| | As of December 31, 2020 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| **Liabilities** | | | | |
| Accrued medical contingency | $ — | $ — | $ 17,435 | $ 17,435 |

| | As of December 31, 2019 | | | |
|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total |
| **Liabilities** | | | | |
| Accrued medical contingency | $ — | $ — | $ 17,883 | $ 17,883 |

The Company had no assets required to be measured at fair value on a recurring basis at December 31, 2020 or 2019. Adjustments to the accrued medical contingency are recognized in other expense on the consolidated statement of operations. There have been no transfers between levels during the years presented in the accompanying consolidated financial statements. The following table presents a reconciliation of liabilities classified as Level 3 financial instruments for the periods indicated (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018 |
| **Balance, beginning of the period** | **$ 17,883** | **$ 18,167** | **$ 906** |
| Increases/additions | 19 | — | 17,505 |
| Reductions/settlements | (467) | (284) | (244) |
| **Balance, end of the period** | **$ 17,435** | **$ 17,883** | **$ 18,167** |

In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company is required to record certain assets and liabilities at fair value on a non-recurring basis. The Company generally applies fair value concepts in recording assets and liabilities acquired in acquisitions (see *Note 3 – Business Combinations*). Fair value concepts are also generally applied in estimating the fair value of long-lived assets and a reporting unit in connection with impairment analyses (see *Note 7 – Intangible Assets and Goodwill*).

## 16. Earnings (Loss) Per Share Attributable to Common Stockholders

The calculation of basic and diluted earnings (loss) per share attributable to common stockholders for the years ended December 31, 2020, 2019 and 2018 is as follows (in thousands, except share and per share data):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018(1) |
| **Basic Earnings (Loss) per Share:** | | | |
| Net income (loss) | $ 15,836 | $ (291,306) | $ (51,816) |
| Gain on debt extinguishment recorded as a capital contribution | — | 1,897 | — |
| Net income (loss) attributable to common stockholders - basic | **$ 15,836** | **$ (289,409)** | **$ (51,816)** |
| Weighted average number of shares outstanding | 98,095,081 | 72,404,020 | 15,745,065 |
| Basic earnings (loss) per common share | **$ 0.16** | **$ (4.00)** | **$ (3.29)** |
| **Diluted Earnings (Loss) per Share:** | | | |
| Net income (loss) | $ 15,836 | $ (291,306) | $ (51,816) |
| Gain on debt extinguishment recorded as a capital contribution | — | 1,897 | — |
| Net income (loss) attributable to common stockholders - diluted | **$ 15,836** | **$ (289,409)** | **$ (51,816)** |
| Weighted average number of shares outstanding | 98,095,081 | 72,404,020 | 15,745,065 |
| Effect of dilutive securities: | | | |
| Stock options | 5,875,950 | — | — |
| Restricted stock units | 4,203,991 | — | — |
| Warrants | — | — | — |
| Weighted average diluted shares | 108,175,022 | 72,404,020 | 15,745,065 |
| Diluted earnings (loss) per common share | **$ 0.15** | **$ (4.00)** | **$ (3.29)** |

(1) Weighted average shares outstanding have been retroactively restated to reflect the exchange ratio established in the Landcadia Business Combination (see *Note 3 – Business Combinations*).

During 2019 and 2018, the Company calculated basic and diluted earnings (loss) per share using the two-class method. Participating securities during such years consisted of RSAs which contained rights to receive non-forfeitable dividends. The Company had net losses for the years ended December 31, 2019 and 2018, and accordingly, pursuant to the guidance under ASC 260, a portion of the net losses was not allocated to such securities under the two-class method. During 2020, there were no remaining RSAs and no other securities classified as participating securities.

The Company has outstanding Notes which are convertible into shares of the Company's common stock. See *Note 9 – Debt* for additional details on the Notes.

The following table includes securities outstanding at the end of the respective periods, which have been excluded from the fully diluted calculations because the effect on net earnings (loss) per common share would have been anti-dilutive or were performance-based shares for which the performance criteria had not yet been met:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2020 | 2019 | 2018 |
| **Antidilutive shares underlying stock-based awards:** | | | |
| Stock options | 63,295 | 445,721 | 880,833 |
| Restricted stock units | 267,974 | 3,182,639 | — |
| Warrants (1) | 399,726 | 399,726 | 25,399,726 |

(1) Includes 399,726 Debt Warrants as of each year-end and 25,000,000 public warrants as of December 31, 2018. See *Note 14 – Stockholders' Equity* for additional details on the Debt Warrants. The public warrants relate to warrants of Landcadia Holdings, Inc. prior to the consummation of the Landcadia Business Combination. All such warrants were exchanged for shares of the Company's common stock during the year ended December 31, 2019.

## 17. Related-Party Transactions

In November 2018, the Company entered into the Credit Agreement, and in January 2019, in connection with the Bite Squad Merger, the Company entered into an amendment to the Credit Agreement, with Luxor Capital and an amendment to the Convertible Notes Agreement with the Luxor Entities. On each of May 21, 2019 and July 15, 2020, the Company entered into amendments to the Credit Agreement with Luxor Capital and amendments to the Convertible Notes Agreement with the Luxor Entities. Additionally, on May 1, 2020, the Company entered into the Waiver and Conversion Agreement with respect to the Credit Agreement and Convertible Notes Agreement. See *Note 9 – Debt* for additional details regarding these transactions. Jonathan Green, a board member of the Company, is a partner at Luxor Capital.

During the period from January 1, 2020 through July 31, 2020, the Company reimbursed C Grimstad and Associates, a company owned by our chief executive officer ("CGA"), $262 for certain of its consultants that provided consulting services to the Company during this period. As of July 1, 2020, CGA is no longer providing consulting services and CGA did not mark-up or profit from these reimbursement transactions.

During the year ended December 31, 2020, Jefferies Financial Group ("JFG") beneficially owned more than 5% of our common stock at certain points of time. In conjunction with our ATM offering during this twelve-month period, JFG served as our sales agent for which we paid $740.

**18. Selected Quarterly Financial Data (Unaudited)**

Unaudited quarterly financial data are as follows (in thousands, except share and per-share data):

| | March 31 | June 30 | September 30 | December 31 |
|---|---|---|---|---|
| **Quarter Ended 2020** | | | | |
| Revenue | $ 44,243 | $ 60,506 | $ 52,734 | $ 46,845 |
| Income from operations | $ 732 | $ 13,851 | $ 7,730 | $ 4,862 |
| Net income (loss) | $ (2,102) | $ 10,653 | $ 4,644 | $ 2,641 |
| Income (loss) per share: (1) | | | | |
| Basic | $ (0.03) | $ 0.11 | $ 0.04 | $ 0.02 |
| Diluted | $ (0.03) | $ 0.10 | $ 0.04 | $ 0.02 |
| Weighted average common shares outstanding: | | | | |
| Basic | 76,884,717 | 95,053,207 | 109,181,847 | 110,996,943 |
| Diluted | 76,884,717 | 105,951,232 | 123,785,750 | 125,018,776 |
| **Quarter Ended 2019** | | | | |
| Revenue | $ 48,032 | $ 51,342 | $ 49,201 | $ 43,100 |
| Loss from operations (2) | $ (23,471) | $ (23,058) | $ (215,769) | $ (19,009) |
| Net loss (2) | $ (24,749) | $ (24,852) | $ (220,104) | $ (21,601) |
| Loss per share: (1) (2) | | | | |
| Basic | $ (0.38) | $ (0.32) | $ (2.89) | $ (0.28) |
| Diluted | $ (0.38) | $ (0.32) | $ (2.89) | $ (0.28) |
| Weighted average common shares outstanding: | | | | |
| Basic | 64,525,610 | 72,416,614 | 76,145,317 | 76,357,305 |
| Diluted | 64,525,610 | 72,416,614 | 76,145,317 | 76,357,305 |

(1) Income (loss) per share amounts are computed independently each quarter and full year based upon respective average shares outstanding. Therefore, the sum of the quarterly income (loss) per share amounts may not equal the annual amounts reported.

(2) Loss from operations and net loss in the third quarter of 2019 were impacted by goodwill and intangible and other asset impairments (see *Note 7 – Intangible Assets and Goodwill*).

**EXHIBIT 10.26**

**WAITR HOLDINGS INC. 2018 OMNIBUS INCENTIVE PLAN**
**RESTRICTED STOCK UNIT AWARD AGREEMENT**

**THIS RESTRICTED STOCK UNIT AWARD AGREEMENT** (the "**Agreement**"), is made and entered into effective ________________ (the "**Grant Date**"), by and between Waitr Holdings Inc., a Delaware corporation (the "**Company**"), and _______________ (the "**Participant**").

**RECITALS**

**WHEREAS**, the Company has adopted the Waitr Holdings Inc. 2018 Omnibus Incentive Plan, as amended (the "**Plan**");

**WHEREAS**, pursuant to Section 10 of the Plan, the Company desires to grant to the Participant an award of Restricted Stock Units (the **"Units"**) set forth in Section 2(a) below, subject to certain restrictions set forth in this Agreement, effective as of the Grant Date; and

**WHERE AS**, the Board of Directors or Compensation Committee of the Board of Directors of the Company (the "**Committee**") has duly made all determinations or delegations necessary or appropriate to the grants hereunder.

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**1.** **Definitions**. Any capitalized term used in this Agreement that is not defined in this Agreement will have the same meaning given to it in the Plan.

**2.** **Grant of Restricted Stock Units; Vesting**.

(a) Subject to the terms and conditions of the Plan, and the additional terms and conditions set forth in this Agreement, the Company hereby grants to the Participant an award of _____________ Restricted Stock Units (the "**Award**"). Each Unit is a notional amount that represents one unvested Share and constitutes the right, subject to the terms and conditions of the Plan and this Agreement, to distribution of a Share if and when the Unit vests.

(b) Except as otherwise provided for in this Section 2, provided that the Participant remains continuously employed with the Company as of each applicable vesting date, the Award shall vest as follows: _________ Units on each anniversary of the Grant Date in ____, _____ and _____.

(c) In the event that the Participant's employment with the Company is terminated for any reason, except as otherwise determined by the Committee, all unvested Units shall be canceled and forfeited.

(d) In the event of a Change in Control (as defined in the Plan), all of the Participant's unvested Units granted under this Award shall vest immediately in full upon the effective date of the Change in Control and be payable in accordance with Section 3.

**3.** **Timing; Form of Payment**. Once a Unit vests, the Participant will be entitled to receive a Share in its place or, in the Committee's discretion, an equivalent amount in cash (or partly in cash and partly in Shares). Delivery of the Shares or cash, as applicable, will be made as soon as administratively feasible following the vesting of the associated Unit, and in no event later than the sixtieth ($60^{th}$) day following the applicable vesting date. Any Shares paid will be credited to an account established for the benefit of the Participant with the Company's administrative agent. The Participant will have full legal and beneficial ownership of the Shares at that time.

**4.** **Certificates; Transferability**. Units awarded under Section 2 will be credited to a book entry account maintained by the Company on behalf of the Participant, and such book entry will appropriately record the terms, conditions and restrictions applicable to such Units. Neither unvested Units, nor the right to vote such Units and receive dividends thereon, may be sold, assigned, transferred, exchanged, pledged, hypothecated or otherwise encumbered.

**5.** **Rights as a Stockholder**. Unless and until a Unit has vested and the Share underlying it has been distributed to the Participant, the Participant will not be entitled to vote in respect of that Unit or that Share. Except as provided in this Section 5 or as otherwise required by law, the Participant shall not have any rights as a stockholder with respect to any Shares covered by the Units granted hereunder prior to the date on which Participant is recorded as the holder of those Shares on the records of the Company. Notwithstanding any other part of this Agreement, any quarterly or other regular, periodic dividends or distributions (as determined by the Company) paid on Shares will accrue with respect to (i) unvested Units, and (ii) Units that are vested but unpaid pursuant to Section 3, and in each case will be subject to the same forfeitures provisions (if any), and be paid out at the same time or time(s), as the underlying Units on which such dividends or other distributions have accrued.

**6.** **Withholding**. No later than the date as of which an amount first becomes includible as income of the Participant for any income and/or employment tax purposes with respect to any Unit, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, all federal, state, local and foreign income and/or employment taxes that are required by applicable law to be withheld with respect to such amount. The Participant authorizes the Company to withhold from his compensation to satisfy any income and/or employment tax withholding obligations in connection with the Award. If the Participant is no longer employed by the Company at the time any applicable taxes are due and must be remitted by the Company, the Participant agrees to pay applicable taxes to the Company, and the Company may delay distribution of the Shares underlying the Award until proper payment of such taxes has been made by the Participant. The Participant may satisfy such obligations under this Section 6 by any method authorized under this Agreement and the Plan.

**7.** **Plan**. The Participant hereby acknowledges receipt of a copy of the Plan. Notwithstanding any other provision of this Agreement, the Units are granted pursuant to the Plan, as in effect on the date of the Agreement, and are subject to the terms and conditions of the Plan, as the same may be amended from time to time; provided, however, that except as otherwise provided by the Plan, no amendment to either the Plan or this Agreement will deprive the Participant, without the Participant's consent, of any Units or of the Participant's rights under this Agreement. The interpretation and construction by the Committee of the Plan, this Agreement, the Units, and such rules and regulations as may be adopted by the Committee for the purpose of administering the Plan, will be final and binding upon the Participant.

**8.** **No Employment Rights**. No provision of the Plan or this Agreement will give the Participant any right to continue in the employ of the Company or any of its Affiliates, create any inference as to the length of employment of the Participant, affect the right of the Company or its Affiliates to terminate the employment of the Participant, with or without Cause, or give the Participant any right to participate in any employee welfare or benefit plan or other program of the Company or any of its Affiliates.

**9.** **Changes in Company's Capital or Organizational Structure**. The existence of the Units shall not affect in any way the right or authority of the Company or its shareholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Company's capital structure or its business, or any merger or consolidation of the Company, or any issue of preferred Shares ahead of or affecting the Shares or the rights thereof, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other act or proceeding, whether of a similar character or otherwise.

**10.** **Delays**. In accordance with the terms of the Plan, the Company shall have the right to suspend or delay any time period prescribed in this Agreement or in the Plan for any action if the Committee shall determine that the action may constitute a violation of any law or result in any liability under any law to the Company, an Affiliate or a shareholder in the Company until such time as the action required or permitted will not constitute a violation of law or result in liability to the Company, an Affiliate or a shareholder of the Company.

**11.** **Governing Law; Construction**. This Agreement and the Units will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without regard to conflicts of law principles. The jurisdiction and venue for any disputes arising under, or any action brought to enforce (or otherwise relating to), this Agreement will be exclusively in the courts in the State of Delaware, including the Federal Courts located therein (should Federal jurisdiction exist). Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the context requires.

**12.** **Entire Agreement**. This Agreement, together with the Plan and any other agreements incorporated herein by reference, constitutes the entire obligation of the parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, undertakings, offer letters, agreements, arrangements, and expressions of intent or understanding with respect thereto, whether written or oral. The Participant represents that, in executing this Agreement, he does not rely and has not relied upon any representation or statement not set forth herein made by the Company with regard to the subject matter, bases or effect of this Agreement or otherwise, and waives any claims based upon other representations or statements made by or on behalf of the Company related to the subject matter hereof.

**13.** **Amendment**. This Agreement may be amended as provided in the Plan.

**14.** **Waiver; Cumulative Rights**. The failure or delay of either party to require performance by the other party of any provision of this Agreement will not affect its right to require performance of such provision unless and until such performance has been waived in writing. Each right under this Agreement is cumulative and may be exercised in part or in whole from time to time.

**15.** **Counterparts**. This Agreement may be signed in two counterparts, each of which will be an original, but both of which will constitute one and the same instrument.

**16.** **Notices**. Any notices required or permitted under this Agreement must be in writing and may be delivered personally or by mail, postage prepaid, addressed to (a) the Company at Waitr Holdings Inc., 214 Jefferson Street, Lafayette, LA 70501, Attention: Chief Legal Officer and (b) the Participant at the Participant's address as shown on the Company's payroll records, or to such other address as the Participant, by notice to the Company, may designate in writing from time to time.

**17.** **Headings**. The headings in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.

**18.** **Severability**. If any provision of this Agreement is for any reason held to be invalid or unenforceable, such invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid or unenforceable provision were omitted.

**19.** **No Strict Construction**. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

**20.** **Successors and Assigns**. This Agreement will inure to the benefit of and be binding upon each successor and assign of the Company. All obligations imposed upon the Participant or a representative, and all rights granted to the Company under this Agreement, will be binding upon the Participant's or the representative's heirs, legal representatives and successors.

**21.** **Tax Consequences**. The Participant agrees to determine and be responsible for all tax consequences to the Participant with respect to the Units.

**22.** **Code Section 409A Compliance**. Notwithstanding any provision of this Agreement, to the extent that the Committee determines that any portion of the Units granted under this Agreement is subject to Internal Revenue Code Section 409A (**"Section 409A"**) and fails to comply with the requirements of Section 409A, notwithstanding anything to the contrary contained in the Plan or in this Agreement, the Committee reserves the right to amend, restructure, terminate or replace such portion of the Units in order to cause such portion of the Units to either not be subject to Section 409A or to comply with the applicable provisions of such section.

[signature page follows]

**IN WITNESS WHEREOF,** the Company and the Participant have executed this Agreement as of the date first written above.

**WAITR HOLDINGS INC**.

| | |
|---|---|
| By: | _________________________ |
| Name: | _________________________ |
| Title | Chief Executive Officer |

**PARTICIPANT**

| | |
|---|---|
| By: | _________________________ |

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in Registration Statements (Form S-8 Nos. 333-229684, 333-232984 and 333-241694 and Form S-3 Nos. 333-228722 and 333-230721) of Waitr Holdings Inc. of our report dated March 8, 2021, relating to the consolidated financial statements of Waitr Holdings Inc. appearing in this Annual Report on Form 10-K for the years ended December 31, 2020 and 2019.

/s/ Moss Adams LLP

Los Angeles, California
March 8, 2021

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**

I, Carl A. Grimstad, certify that:

1. I have reviewed this Annual Report on Form 10-K of Waitr Holdings Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 8, 2021

By: /s/ Carl A. Grimstad

Carl A. Grimstad
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

**EXHIBIT 31.2**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER**

I, Leo Bogdanov, certify that:

1. I have reviewed this Annual Report on Form 10-K of Waitr Holdings Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 8, 2021
By: /s/ Leo Bogdanov
Leo Bogdanov
Chief Financial Officer
(Principal Financial Officer)

**EXHIBIT 32.1**

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**

**PURSUANT TO 18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TOSECTION 906**
**OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Waitr Holdings Inc. (the “Company”) on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Carl A. Grimstad, certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates set forth and for the periods presented in the Report.

By: /s/ Carl A. Grimstad
Carl A. Grimstad
Chief Executive Officer and Chairman
of the Board
(Principal Executive Officer)

Date: March 8, 2021

**EXHIBIT 32.2**

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER**

**PURSUANT TO 18 U.S.C. SECTION 1350,**
**AS ADOPTED PURSUANT TOSECTION 906**
**OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Waitr Holdings Inc. (the “Company”) on Form 10-K for the year ended December 31, 2020 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Leo Bogdanov, certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates set forth and for the periods presented in the Report.

By: /s/ Leo Bogdanov
Leo Bogdanov
Chief Financial Officer
(Principal Financial Officer)

Date: March 8, 2021