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

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**FORM 10-Q**

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(Mark One)

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

For the quarterly period ended September 30, 2022

**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

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**WAITR HOLDINGS INC.**

(Exact name of Registrant as specified in its Charter)

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**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**214 Jefferson Street, Suite 200  
Lafayette, Louisiana**

(Address of principal executive offices)

**26-3828008**

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

**70501**

(Zip Code)

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

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Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

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

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

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

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[TABLE CONTENTS](#)

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

The number of shares of Registrant's Common Stock outstanding as of November 9, 2022 was 207,818,373.

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## Table of Contents

	<u>Page</u>
<b>PART I</b>	
<b><a href="#">Financial Information</a></b>	1
Item 1. <a href="#">Condensed Consolidated Financial Statements (unaudited)</a>	1
<a href="#">Condensed Consolidated Balance Sheets as of September 30, 2022 and December 31, 2021</a>	1
<a href="#">Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2022 and 2021</a>	2
<a href="#">Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2022 and 2021</a>	3
<a href="#">Condensed Consolidated Statements of Stockholders' Equity for the three and nine months ended September 30, 2022 and 2021</a>	4
<a href="#">Notes to Condensed Consolidated Financial Statements</a>	6
Item 2. <a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	29
Item 3. <a href="#">Quantitative and Qualitative Disclosures About Market Risk</a>	43
Item 4. <a href="#">Controls and Procedures</a>	44
<b>PART II</b>	
<b><a href="#">Other Information</a></b>	45
Item 1. <a href="#">Legal Proceedings</a>	45
Item 1A. <a href="#">Risk Factors</a>	46
Item 2. <a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a>	48
Item 3. <a href="#">Defaults Upon Senior Securities</a>	48
Item 4. <a href="#">Mine Safety Disclosures</a>	48
Item 5. <a href="#">Other Information</a>	48
Item 6. <a href="#">Exhibits</a>	49
<a href="#">Signatures</a>	50

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**PART I. FINANCIAL INFORMATION****Item 1. Condensed Consolidated Financial Statements**

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

	September 30, 2022	December 31, 2021
	Unaudited	
<b><u>ASSETS</u></b>		
<b>CURRENT ASSETS</b>		
Cash	\$ 20,118	\$ 60,111
Accounts receivable, net	3,102	3,027
Capitalized contract costs, current	1,490	1,170
Prepaid expenses and other current assets	5,180	8,706
<b>TOTAL CURRENT ASSETS</b>	<b>29,890</b>	<b>73,014</b>
Property and equipment, net	2,180	3,763
Capitalized contract costs, noncurrent	3,496	3,183
Goodwill	9,536	130,624
Intangible assets, net	41,447	43,126
Operating lease right-of-use assets	3,244	4,327
Other noncurrent assets	858	1,070
<b>TOTAL ASSETS</b>	<b>\$ 90,651</b>	<b>\$ 259,107</b>
<b><u>LIABILITIES AND STOCKHOLDERS' EQUITY</u></b>		
<b>LIABILITIES:</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 4,545	\$ 7,018
Restaurant food liability	1,661	3,327
Accrued payroll	1,370	2,988
Short-term loans for insurance financing	1,224	3,142
Income tax payable	121	74
Operating lease liabilities	1,175	1,581
Other current liabilities	18,483	19,309
<b>TOTAL CURRENT LIABILITIES</b>	<b>28,579</b>	<b>37,439</b>
Long term debt - related party	55,941	81,977
Accrued medical contingency	—	53
Operating lease liabilities, net of current portion	2,276	3,034
Other noncurrent liabilities	20	2,115
<b>TOTAL LIABILITIES</b>	<b>86,816</b>	<b>124,618</b>
Commitments and contingent liabilities (Note 11)		
<b>STOCKHOLDERS' EQUITY:</b>		
Common stock, \$0.0001 par value; 249,000,000 shares authorized and 206,420,738 and 146,094,300 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	20	15
Additional paid in capital	535,299	503,609
Accumulated deficit	(531,484)	(369,135)
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>3,835</b>	<b>134,489</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 90,651</b>	<b>\$ 259,107</b>

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>REVENUE</b>	\$ 25,141	\$ 43,448	\$ 91,352	\$ 143,545
<b>COSTS AND EXPENSES:</b>				
Operations and support	13,457	25,043	49,719	86,654
Sales and marketing	8,263	4,965	21,489	13,481
Research and development	935	1,310	3,488	3,163
General and administrative	7,762	10,843	31,520	33,534
Depreciation and amortization	3,599	3,070	9,664	8,952
Goodwill impairment	53,898	—	121,088	—
Intangible and other asset impairments	—	186	—	186
(Gain) loss on disposal of assets	55	11	(33)	170
<b>TOTAL COSTS AND EXPENSES</b>	<b>87,969</b>	<b>45,428</b>	<b>236,935</b>	<b>146,140</b>
<b>LOSS FROM OPERATIONS</b>	<b>(62,828)</b>	<b>(1,980)</b>	<b>(145,583)</b>	<b>(2,595)</b>
<b>OTHER (INCOME) EXPENSES AND (GAINS) LOSSES, NET</b>				
Interest expense	1,198	1,751	4,363	5,333
Other (income) expense	9,422	(16,006)	12,356	(10,907)
<b>NET INCOME (LOSS) FROM CONTINUING OPERATIONS BEFORE INCOME TAXES</b>	<b>(73,448)</b>	<b>12,275</b>	<b>(162,302)</b>	<b>2,979</b>
Income tax expense	14	25	47	82
<b>NET INCOME (LOSS) FROM CONTINUING OPERATIONS</b>	<b>\$ (73,462)</b>	<b>\$ 12,250</b>	<b>\$ (162,349)</b>	<b>\$ 2,897</b>
<b>INCOME (LOSS) PER SHARE:</b>				
Basic	\$ (0.40)	\$ 0.10	\$ (0.98)	\$ 0.02
Diluted	\$ (0.40)	\$ 0.09	\$ (0.98)	\$ 0.02
<b>Weighted average shares used to compute net income (loss) per share:</b>				
Weighted average common shares outstanding – basic	183,766,396	119,823,181	166,086,439	115,961,454
Weighted average common shares outstanding – diluted	183,766,396	130,167,296	166,086,439	128,279,820

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

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

	<b>Nine Months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>Cash flows from operating activities:</b>		
Net (loss) income	\$ (162,349)	\$ 2,897
Adjustments to reconcile net (loss) income to net cash used in operating activities:		
Non-cash interest expense	1,417	1,948
Induced conversion expense related to Notes	9,499	—
Stock-based compensation	4,588	6,100
(Gain) loss on disposal of assets	(33)	170
Depreciation and amortization	9,664	8,952
Goodwill impairment	121,088	—
Intangible and other asset impairments	—	186
Amortization of capitalized contract costs	930	686
Change in estimate of accrued medical contingency	—	(16,715)
Change in fair value of contingent consideration liability	(551)	—
Other	(80)	(93)
Changes in assets and liabilities:		
Accounts receivable	(75)	583
Capitalized contract costs	(1,563)	(1,749)
Prepaid expenses and other current assets	3,526	16
Other noncurrent assets	229	(311)
Accounts payable	(2,473)	373
Restaurant food liability	(1,666)	(903)
Income tax payable	47	(38)
Accrued payroll	(1,618)	(3,389)
Accrued medical contingency	(53)	(218)
Other current liabilities	(3,054)	1,032
Other noncurrent liabilities	826	(102)
<b>Net cash used in operating activities</b>	<b>(21,701)</b>	<b>(575)</b>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(224)	(717)
Internally developed software	(6,335)	(6,432)
Purchase of domain names	(27)	—
Acquisitions, net of cash acquired	—	(25,435)
Proceeds from sale of property and equipment	56	21
<b>Net cash used in investing activities</b>	<b>(6,530)</b>	<b>(32,563)</b>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of stock	10,266	7,900
Payments on long-term loan	(20,000)	(14,472)
Borrowings under short-term loans for insurance financing	2,811	5,209
Payments on short-term loans for insurance financing	(4,729)	(5,605)
Payments on acquisition loans	—	(178)
Payments on finance lease obligation	(4)	—
Proceeds from exercise of stock options	—	12
Taxes paid related to net settlement on stock-based compensation	(106)	(932)
<b>Net cash used in financing activities</b>	<b>(11,762)</b>	<b>(8,066)</b>
<b>Net change in cash</b>	<b>(39,993)</b>	<b>(41,204)</b>
Cash, beginning of period	60,111	84,706
Cash, end of period	<b>\$ 20,118</b>	<b>\$ 43,502</b>
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid during the period for interest	\$ 2,946	\$ 3,385
<b>Supplemental disclosures of non-cash investing and financing activities:</b>		
Conversion of convertible notes to stock	\$ 16,949	\$ —
Stock issued as consideration in acquisition	—	13,724
Noncash impact of operating lease assets upon adoption	—	5,833
Noncash impact of operating lease liabilities upon adoption	—	6,232

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

**WAITR HOLDINGS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2022**  
(in thousands, except share data)  
(unaudited)

**Three Months Ended September 30, 2022**

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
<b>Balances at June 30, 2022</b>	<b>163,448,742</b>	<b>\$ 16</b>	<b>\$ 515,624</b>	<b>\$ (458,022)</b>	<b>\$ 57,618</b>
Net loss	—	—	—	(73,462)	(73,462)
Vesting of restricted stock units	1,005,327	—	—	—	—
Taxes paid related to net settlement on stock-based compensation	—	—	(79)	—	(79)
Stock-based compensation	—	—	1,338	—	1,338
Stock issued for conversion of Notes	27,000,000	3	15,271	—	15,274
Issuance of common stock, net	14,966,669	1	3,145	—	3,146
<b>Balances at September 30, 2022</b>	<b>206,420,738</b>	<b>\$ 20</b>	<b>\$ 535,299</b>	<b>\$ (531,484)</b>	<b>\$ 3,835</b>

**Nine Months Ended September 30, 2022**

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
<b>Balances at December 31, 2021</b>	<b>146,094,300</b>	<b>\$ 15</b>	<b>\$ 503,609</b>	<b>\$ (369,135)</b>	<b>\$ 134,489</b>
Net loss	—	—	—	(162,349)	(162,349)
Vesting of restricted stock units	1,873,279	—	—	—	—
Taxes paid related to net settlement on stock-based compensation	—	—	(106)	—	(106)
Stock-based compensation	—	—	4,588	—	4,588
Stock issued for conversion of Notes	31,411,500	3	16,944	—	16,947
Issuance of common stock, net	27,041,659	2	10,264	—	10,266
<b>Balances at September 30, 2022</b>	<b>206,420,738</b>	<b>\$ 20</b>	<b>\$ 535,299</b>	<b>\$ (531,484)</b>	<b>\$ 3,835</b>

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

**WAITR HOLDINGS INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2021**  
(in thousands, except share data)  
(unaudited)

**Three Months Ended September 30, 2021**

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
<b>Balances at June 30, 2021</b>	<b>116,701,277</b>	<b>\$ 11</b>	<b>\$ 466,192</b>	<b>\$ (373,259)</b>	<b>\$ 92,944</b>
Net income	—	—	—	12,250	12,250
Exercise of stock options and vesting of restricted stock units	667,207	1	3	—	4
Taxes paid related to net settlement on stock-based compensation	—	—	(115)	—	(115)
Stock-based compensation	—	—	1,635	—	1,635
Equity issued for asset acquisitions	2,564,103	—	3,179	—	3,179
Issuance of common stock	6,683,823	1	7,899	—	7,900
<b>Balances at September 30, 2021</b>	<b>126,616,410</b>	<b>\$ 13</b>	<b>\$ 478,793</b>	<b>\$ (361,009)</b>	<b>\$ 117,797</b>

**Nine Months Ended September 30, 2021**

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
<b>Balances at December 31, 2020</b>	<b>111,259,037</b>	<b>\$ 11</b>	<b>\$ 451,991</b>	<b>\$ (363,906)</b>	<b>\$ 88,096</b>
Net income	—	—	—	2,897	2,897
Exercise of stock options and vesting of restricted stock units	2,518,780	1	11	—	12
Taxes paid related to net settlement on stock-based compensation	—	—	(932)	—	(932)
Stock-based compensation	—	—	6,100	—	6,100
Equity issued for asset acquisitions	6,154,770	—	13,724	—	13,724
Issuance of common stock	6,683,823	1	7,899	—	7,900
<b>Balances at September 30, 2021</b>	<b>126,616,410</b>	<b>\$ 13</b>	<b>\$ 478,793</b>	<b>\$ (361,009)</b>	<b>\$ 117,797</b>

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

**WAITR HOLDINGS INC.**  
**NOTES TO CONDENSED 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 (the “Platform”), providing delivery, carryout and dine-in options, connecting restaurants, merchants, drivers and diners in cities across the United States. The Platform uses the “deliver anything ASAP” model making it easy for consumers to order food, alcohol, convenience, grocery, flowers, auto parts and more. The Platform also includes proprietary in-stadium mobile ordering technology, providing an enhanced fan experience at sports and entertainment venues. Additionally, Waitr facilitates access to third parties that provide payment processing solutions for restaurants and other merchants, pursuant to the acquisition of the Cape Payment Companies (as defined below) on August 25, 2021 (see *Note 5 – Business Combinations*).

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

### **Basis of Presentation**

The unaudited interim condensed 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”) as they apply to interim financial information. Accordingly, the interim condensed consolidated financial statements do not include all of the information and notes required by GAAP for complete annual financial statements, although the Company believes that the disclosures made are adequate to make information not misleading. 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.

The unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto, together with management’s discussion and analysis of financial condition and results of operations, contained in our Annual Report on Form 10-K for the year ended December 31, 2021 (the “2021 Form 10-K”). The interim condensed consolidated financial statements are unaudited, but in the Company’s opinion, include all adjustments that are necessary for a fair presentation of the results for the periods presented. The interim results are not necessarily indicative of results that may be expected for any other interim period or the fiscal year.

### **Segments**

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 (the “CODM”) in making decisions regarding resource allocation and assessing performance. The Company has determined that its Chief Executive Officer is the CODM of the Company.

Our operations revolve around two primary areas of service: (i) delivery services, which include operations related to the Company’s technology platform for online ordering and delivery (“Delivery Services”), and (ii) third-party payment processing referral services, which include operations related to facilitating access to third parties that provide payment processing solutions for restaurants and other merchants (“Third-Party Payment Processing Referral Services”). Prior to the three months ended September 30, 2022, the Company concluded that we had one operating segment as the operations of Third-Party Payment Processing Referral Services were not material to the Company’s consolidated operations. The CODM monitored performance of the Company on a consolidated basis during such time, with financial data related to Third-Party Payment Processing Referral Services being reviewed primarily for purposes of monitoring the achievement of an earnout provision associated with the acquisition of the Cape Payment Companies (see *Note 5 – Business Combinations*).

During the three months ended September 30, 2022, as the Third-Party Payment Processing Referral Services area became more significant to the operations of the Company, primarily on a percentage of revenue basis, our CODM began to manage operations and assess the Company’s performance based on the operations of the Delivery Services and Third-Party Payment Processing Referral Services areas separately. We quantitatively and qualitatively reassessed our segment reporting and determined the Third-Party Payment Processing Referral Services Segment is material to the group and now

have two operating segments. See *Note 15 – Segment Information* for additional information on the Company’s segments and *Note 4 - Revenue* for additional information on revenue derived by segments.

### **Reclassifications**

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

### **Principles of Consolidation**

The accompanying unaudited condensed 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 unaudited condensed consolidated financial statements in accordance with GAAP requires the Company to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Significant estimates and judgments relied upon in preparing these condensed 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;
- determination of agent vs. principal classification for revenue recognition purposes;
- 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, liabilities assumed and contingent consideration 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.

### **Significant Accounting Policies**

See “**Recent Accounting Pronouncements**” below for a description of accounting principle changes adopted during the nine months ended September 30, 2022. There have been no material changes to our significant accounting policies described in the 2021 Form 10-K.

### **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 unaudited condensed consolidated financial statements.

### **Recently Adopted Accounting Standards**

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 was effective for and adopted by the Company on January 1, 2022. The adoption of ASU 2020-06 did not have a material impact on the Company's disclosures or consolidated financial statements.

### ***Pending Accounting Standards***

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*, which creates an exception to the general recognition and measurement principle in ASC 805 by requiring companies to apply ASC 606, *Revenue from Contracts with Customers*, to recognize and measure contract assets and contract liabilities from contracts with customers acquired in a business combination. The guidance additionally clarifies that companies should apply the definition of a performance obligation in ASC 606 when recognizing contract liabilities assumed in a business combination. ASU 2021-08 is effective for the Company on January 1, 2023. The Company does not expect ASU 2021-08 will have a material impact on the Company's disclosures or consolidated financial statements.

### **3. Going Concern**

Pursuant to the requirements of ASC 205-40, *Going Concern*, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. This evaluation initially does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented as of the date the financial statements are issued. When substantial doubt exists under this methodology, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company's ability to continue as a going concern. The mitigating effect of management's plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the financial statements are issued, and (2) it is probable that the plans, when implemented, will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued.

The Company has had recurring losses from operations and declines in cash positions. As reflected in the accompanying unaudited condensed consolidated financial statements, the Company has an accumulated deficit of \$531,484 as of September 30, 2022. The Company has had a trend of negative cash flow from operations during each quarter of 2022. For the nine months ended September 30, 2022, the Company had negative cash flow from operations of \$21,701. Additionally, the Company's cash position was impacted by the utilization of \$20,000 in cash to pay down debt in May 2022. The Company's cash position has declined from \$60,111 at December 31, 2021 to \$20,118 as of September 30, 2022. In an effort to alleviate these conditions, management is implementing certain initiatives with the goal to improve revenue and its cash position, including a comprehensive rebranding, consolidation of the Company's technology platforms into a single application and cost reductions. The initiatives include (i) collaborations with convenience stores, (ii) delivery from retailers in a variety of industries, (iii) the entry into new markets, (iv) the development of a proprietary stadium ordering application and (v) the entry into sponsorship agreements to serve as the exclusive mobile ordering platform at certain stadiums and arenas. Additionally, management evaluated its existing cost structure and implemented cost saving initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. Management also plans to raise additional capital through equity raises, including under the ATM Program (see *Note 13 – Stockholders' Equity*).

The Company's plans are designed to provide the Company with adequate liquidity to meet its obligations for at least the twelve-month period following the date these financial statements are issued; however, the plans are dependent on conditions and factors, many of which are outside of the Company's control. There can be no assurance that we will be able to generate positive cash flow from operations in any future period. Additionally, we may be unable to raise additional equity capital or enter into any financing arrangements when needed on favorable terms or at all. Accordingly, management could not conclude that it was probable that the plans will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. As such, the Company has concluded that substantial doubt exists about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

The accompanying unaudited condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business for the twelve-month period following the date the financial statements are issued. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset

amounts or the amounts and classification of liabilities that might result should the Company be unable to continue as a going concern.

#### 4. Revenue

The following table presents our revenue disaggregated by offering. Revenue consists of the following for the periods indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Delivery Services Segment:</b>				
Delivery Transaction Fees	\$ 21,806	\$ 41,411	\$ 81,138	\$ 140,138
Other revenue	491	1,028	2,077	2,398
<b>Total Delivery Services Segment</b>	<b>22,297</b>	<b>42,439</b>	<b>83,215</b>	<b>142,536</b>
<b>Third-Party Payment Processing Referral Services Segment<sup>(1)</sup></b>	<b>2,844</b>	<b>1,009</b>	<b>8,137</b>	<b>1,009</b>
<b>Total Revenue</b>	<b>\$ 25,141</b>	<b>\$ 43,448</b>	<b>\$ 91,352</b>	<b>\$ 143,545</b>

<sup>(1)</sup> Amounts for the three and nine months ended September 30, 2021 include revenue from the Cape Payment Companies beginning on the acquisition date of August 25, 2021, through September 30, 2021.

#### *Revenue from Contracts with Customers*

##### *Delivery Services Segment*

The Delivery Services Segment includes operations related to the Company's technology platform for online ordering and delivery. While food ordering and delivery is the primary component of the Delivery Services Segment, the Company recently added online ordering and delivery of various other products such as flowers, auto parts, alcohol and luxury goods. The Company generates revenue ("Delivery Transaction Fees") in the Delivery Services Segment primarily when diners or customers place an order on the Platform.

Delivery Transaction Fees represent the revenue recognized from the Company's obligation to process orders on the Platform. The performance obligation is satisfied when the Company successfully processes an order placed on the Platform and the restaurant receives the order at their location. The obligation to process orders on the Platform 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 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 Delivery Transaction Fees earned from the restaurant on the Platform on a net basis. Delivery 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.

In addition to Delivery Transaction Fees, revenue in the Delivery Services Segment includes other revenue sources such as paid placement revenue for prominent positioning of a restaurant on the Platform and revenue related to fees received for the early distribution of earnings to independent contractor drivers.

##### *Third-Party Payment Processing Referral Services Segment*

The Company generates revenue from Third-Party Payment Processing Referral Services by facilitating access to third-party payment processing solution providers. Revenue from such services primarily consists of residual payments received from third-party payment processing solution providers, based on the volume of transactions a payment processing solution provider performs for the merchant. The Company also occasionally receives a bonus up-front fee from third-party payment processing solution providers, paid at the time of a merchant's initial transaction with a payment processing solution provider, based on a price specified in the agreement between the merchant and the payment processing solution provider.

Third-party payment processing referral fees represent revenue recognized from the Company's offering of referral services, connecting a merchant with a third-party payment processing service. The Company's performance obligation in its contracts with payment processors is for an unknown or unspecified quantity of transactions and the consideration received is contingent upon the number of transactions submitted by the merchant and processed by the payment processor. Accordingly, the total transaction price is variable. The performance obligation is satisfied when the third-party payment processor finalizes the processing of a transaction through the payment system and transaction volume is available from the payment processor to the Company. Consistent with the recognition objective in ASC 606, the variable consideration due to the Company for serving as the facilitator of the arrangement between the third-party payment processor and merchant is recognized on a daily basis. The Company is the agent in these arrangements as it establishes the relationship between the third-party payment processor and merchant, and thus, recognizes revenue on a net basis. The third-party payment processor is considered the customer of the Company as no direct contract exists between the merchant and the Company.

### ***Accounts Receivable***

The Company records a receivable when it has an unconditional right to the consideration. See *Note 6 – Accounts Receivable, Net* for additional details on the Company's accounts receivable.

### ***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 incentives 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, which the Company has determined to be five years. 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.

Deferred costs related to obtaining contracts with restaurants were \$3,142 and \$2,968 as of September 30, 2022 and December 31, 2021, respectively, out of which \$986 and \$818, respectively, was classified as current. Amortization of expense for the costs to obtain a contract were \$234 and \$192 for the three months ended September 30, 2022 and 2021, respectively, and \$663 and \$514 for the nine months ended September 30, 2022 and 2021, 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 onboarding restaurants onto the Platform 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 the period of benefit, which the Company has determined to be five years.

Deferred costs related to fulfilling contracts with restaurants were \$1,844 and \$1,385 as of September 30, 2022 and December 31, 2021, respectively, out of which \$504 and \$352, respectively, was classified as current. Amortization of expense for the costs to fulfill a contract were \$121 and \$71 for the three months ended September 30, 2022 and 2021, respectively, and \$325 and \$172 for the nine months ended September 30, 2022 and 2021, respectively.

## **5. Business Combinations**

### ***2021 Acquisitions***

#### ***Cape Payment Acquisition***

On August 25, 2021, the Company completed the acquisition of certain assets and properties of ProMerchant LLC, Cape Cod Merchant Services LLC and Flow Payments LLC (collectively referred to herein as the "Cape Payment Companies") (the "Cape Payment Acquisition"). The Cape Payment Companies facilitate merchant access to third-party payment processing solution providers and receive residual payments from the payment providers. The purchase price for the Cape Payment Companies consisted of \$12,032 in cash and an aggregate of 2,564,103 shares of the Company's common stock valued at \$1.24 per share (the closing price of the Company's common stock on August 24, 2021). The Cape Payment Acquisition included an earnout provision which provided for a one-time payment to the sellers if the Cape

Payment Companies exceed certain future revenue targets. The earnout provision, if any, is payable no later than March 30, 2023, and was valued at \$1,686 as of the acquisition date. As of September 30, 2022 and December 31, 2021, the earnout provision was valued at \$1,388 and \$1,939, respectively (see *Note 14 - Fair Value Measurements*).

The Cape Payment Acquisition was considered a business combination in accordance with ASC 805 and was accounted for using the acquisition method. The results of operations of the Cape Payment Companies are included in our condensed consolidated financial statements beginning on the acquisition date, August 25, 2021, and were immaterial at such time. Pro forma results were also deemed immaterial to the Company.

During the three months ended September 30, 2022, our operations related to the business acquired from the Cape Payment Companies became more significant to the operations of the Company. See *Note 2 - Basis of Presentation and Summary of Significant Accounting Policies* and *Note 15 - Segment Information* for additional details.

#### *Delivery Dudes Acquisition*

On March 11, 2021, the Company completed the acquisition of certain assets and properties from Dude Holdings LLC (“Delivery Dudes”), a third-party delivery business primarily serving the South Florida market, for \$11,500 in cash and 3,562,577 shares of the Company’s common stock valued at \$2.96 per share (the closing price of the Company’s common stock on March 11, 2021) (the “Delivery Dudes Acquisition”).

The Delivery Dudes Acquisition was considered a business combination in accordance with ASC 805 and was accounted for using the acquisition method. The results of operations of Delivery Dudes are included in our unaudited condensed consolidated financial statements beginning on the acquisition date, March 11, 2021.

#### ***Additional Information***

Included in general and administrative expenses in the consolidated statement of operations in certain periods are direct and incremental costs, consisting of legal and professional fees, related to business combinations and asset acquisitions. During the three and nine months ended September 30, 2021, the Company incurred direct and incremental costs of \$171 and \$840, respectively, related to the Delivery Dudes Acquisition.

#### ***Pro-Forma Financial Information***

The supplemental condensed consolidated results of the Company for the nine months ended September 30, 2021 on an unaudited pro forma basis as if the Delivery Dudes Acquisition had been consummated on January 1, 2021 are included in the table below (in thousands).

	<b>Nine months ended September 30, 2021</b>	
Net revenue	\$	146,021
Net income	\$	3,261

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 period presented and are not indicative of consolidated results of operations in future periods. Acquisition costs and other non-recurring charges incurred are included in the period presented.

## 6. Accounts Receivable, Net

Accounts receivable consist of the following (in thousands):

	September 30, 2022	December 31, 2021
Credit card receivables	\$ 1,159	\$ 1,354
Residual commissions receivable	1,445	1,342
Receivables from restaurants and customers	778	660
Accounts receivable	3,382	3,356
Less: allowance for doubtful accounts and chargebacks	(280)	(329)
<b>Accounts receivable, net</b>	<b>\$ 3,102</b>	<b>\$ 3,027</b>

## 7. Intangibles Assets and Goodwill

### Intangible Assets

Intangible assets with finite useful lives are amortized using the straight-line method over their estimated useful lives and include internally developed software, as well as software to be otherwise marketed, and trademarks/trade name/patents and customer relationships. The Company has determined that the trademark intangible asset and domain names related to the rebranding initiative are indefinite-lived assets and therefore are not subject to amortization but are evaluated annually for impairment. The Bite Squad, Delivery Dudes and Cape Payment Companies trade name intangible assets, however, are being amortized over their estimated useful lives.

Intangible assets are stated at cost or acquisition-date fair value less accumulated amortization and consist of the following (in thousands):

	As of September 30, 2022			
	Gross Carrying Amount	Accumulated Amortization	Accumulated Impairment	Intangible Assets, Net
Intangible assets subject to amortization:				
Software	\$ 42,021	\$ (14,017)	\$ (11,779)	\$ 16,225
Trademarks/Trade name/Patents	6,549	(5,948)	—	601
Customer Relationships	96,510	(17,549)	(57,378)	21,583
<b>Total intangible assets subject to amortization</b>	<b>145,080</b>	<b>(37,514)</b>	<b>(69,157)</b>	<b>38,409</b>
Trademarks, not subject to amortization	3,038	—	—	3,038
<b>Total</b>	<b>\$ 148,118</b>	<b>\$ (37,514)</b>	<b>\$ (69,157)</b>	<b>\$ 41,447</b>
	As of December 31, 2021			
	Gross Carrying Amount	Accumulated Amortization	Accumulated Impairment	Intangible Assets, Net
Intangible assets subject to amortization:				
Software	\$ 35,686	\$ (9,632)	\$ (11,779)	\$ 14,275
Trademarks/Trade name/Patents	6,549	(5,585)	—	964
Customer Relationships	96,510	(14,256)	(57,378)	24,876
<b>Total intangible assets subject to amortization</b>	<b>138,745</b>	<b>(29,473)</b>	<b>(69,157)</b>	<b>40,115</b>
Trademarks, not subject to amortization	3,011	—	—	3,011
<b>Total</b>	<b>\$ 141,756</b>	<b>\$ (29,473)</b>	<b>\$ (69,157)</b>	<b>\$ 43,126</b>

During the nine months ended September 30, 2022, the Company capitalized approximately \$6,335 of software costs related to the development of the Platform.

See “Impairments” below for details of impairment testing for intangible assets during the nine months ended September 30, 2022. The Company recorded amortization expense of \$3,091 and \$2,354 for the three months ended September 30, 2022 and 2021, respectively, and \$8,041 and \$6,419 for the nine months ended September 30, 2022 and 2021, respectively. Estimated future amortization expense of intangible assets subject to amortization as of September 30, 2022 is as follows (in thousands):

	Amortization
The remainder of 2022	\$ 1,948
2023	11,871
2024	10,006
2025	7,420
2026	3,469
Thereafter	3,695
<b>Total future amortization</b>	<b>\$ 38,409</b>

## Goodwill

Prior to the three months ended September 30, 2022, we concluded that we had one reporting unit for purposes of goodwill impairment testing. During the three months ended September 30, 2022, we quantitatively and qualitatively reassessed our segment reporting and determined the Third-Party Payment Processing Referral Services Segment is material to the group and now have two reporting units for purposes of goodwill impairment testing. See *Note 2 - Basis of Presentation and Summary of Significant Accounting Policies* for additional information.

The following table presents changes in the carrying value of goodwill for the Company’s single reporting unit prior to the allocation of goodwill to segments (in thousands). See “Impairments” below for a discussion of goodwill impairment testing for the reporting unit.

<b>Balance as of December 31, 2021</b>	\$ 130,624
March 15, 2022 impairment	(67,190)
Balance prior to segment allocation	63,434
September 30, 2022 impairment	(51,991)
Remaining goodwill to be allocated to segments	<b>\$ 11,443</b>

During the three months ended September 30, 2022, the Company reallocated its goodwill from a single reporting unit to the Delivery Services Segment and the Third-Party Payment Processing Referral Services Segment based on a relative fair value analysis using several probability weighted scenarios. The following table presents changes in the carrying value of goodwill for the Company’s segments (in thousands). See “Impairments” below for a discussion of goodwill impairment for the segments.

	Delivery Services Segment	Third-Party Payment Processing Referral Services Segment	Total
<b>Goodwill allocation to segments</b>	\$ 1,907	\$ 9,536	\$ 11,443
September 30, 2022 impairment	(1,907)	—	(1,907)
<b>Balance as of September 30, 2022</b>	<b>\$ —</b>	<b>\$ 9,536</b>	<b>\$ 9,536</b>

## Impairments

The Company has historically conducted its goodwill and intangible asset impairment test annually in October, or more frequently if indicators of impairment exist. The Company conducts the impairment test in accordance with FASB ASC Topic 360, *Impairment and Disposal of Long-Lived Assets* (“ASC 360”) for certain long-lived assets, including capitalized contract costs, developed technology, customer relationships, and trade names, and in accordance with FASB ASC Topic 350, *Intangibles – Goodwill and Other* (“ASC 350”) for the reporting unit’s goodwill.

ASC 360 requires long-lived assets to be tested for impairment using a three-step impairment test. Step 1 of the test is giving consideration to whether indicators of impairment of long-lived assets are present. If indicators are present, the Company proceeds to Step 2 to determine whether an impairment loss should be recognized. As a part of Step 2, the Company performs 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. ASC 350 requires goodwill and other indefinite lived assets to be tested for impairment at the reporting unit level. See the discussion below of impairment testing conducted as of March 15, 2022 and September 30, 2022. 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 could change in future periods. There can be no assurance that additional goodwill or intangible assets will not be impaired in future periods.

#### ***March 15, 2022 Impairment Analysis***

As a result of a significant decline in the Company's share price and market capitalization in mid-March 2022, as well as other macroeconomic and industry related conditions during the first quarter of 2022, the Company conducted an impairment test as of the valuation date of March 15, 2022. For purposes of testing for goodwill impairment, the Company had one reporting unit at such time. 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.

Given the results of the qualitative assessment and indications of possible impairment, the Company proceeded to Step 2 to determine whether an impairment loss should be recognized. The Company's primary long-lived assets, customer relationships and developed technology, were tested for impairment under the guidance in ASC 360. The undiscounted cash flows for the long-lived assets were above the carrying amounts and the Company determined that the long-lived asset group was recoverable, and no impairment existed as of March 15, 2022. The customer relationships intangible asset and developed technology assets were valued using an undiscounted cash flow model. The analysis for each of the long-lived assets represents 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.

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 and capital expenditures), discount rate, long-term growth rate and tax rates 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 350 analysis, the Company recognized a non-cash pre-tax impairment loss of \$67,190 during the three months ended March 31, 2022 to write down the carrying value of goodwill to its implied fair value. There was no goodwill impairment charge recognized during the three months ended June 30, 2022.

#### ***September 30, 2022 Impairment Analysis***

As a result of continued declines in the Company's share price and market capitalization during the second and third quarters of 2022, the Company conducted an additional impairment test as of the valuation date of September 30, 2022. The Company engaged a third-party to assist management in estimating the fair values of long-lived assets and the reporting units for purposes of impairment testing under ASC 360 and ASC 350.

#### **Impairment Analysis on Single Reporting Unit Prior to Allocation of Goodwill to Segments**

Given the results of the qualitative assessment and indications of possible impairment, the Company proceeded to Step 2 to determine whether an impairment loss should be recognized for the single reporting unit prior to the allocation of goodwill to segments. The Company's primary long-lived assets, customer relationships and developed technology, were tested for impairment under the guidance in ASC 360. The undiscounted cash flows for the long-lived assets were above the carrying amounts and the Company determined that the long-lived asset group was recoverable, and no impairment existed as of September 30, 2022. The customer relationships intangible asset and developed technology assets were valued using methods in a manner similar to the March 15, 2022 impairment analysis, and represent Level 3 measurements as both were 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.

For ASC 350 testing purposes, the Company estimated the fair value of the single reporting unit giving consideration to the Income Approach and the Market Approach in a manner similar to the March 15, 2022 impairment analysis discussed above. As a result of the ASC 350 analysis, the Company recognized a non-cash pre-tax impairment loss of \$51,991 during the three months ended September 30, 2022 to write down the carrying value of goodwill in the reporting unit to its implied fair value.

#### Impairment Analysis on Segments

In conjunction with the reallocation of goodwill, the Company tested the goodwill at its Delivery Services Segment and Third-Party Payment Processing Referral Services Segment as of September 30, 2022.

The Company's long-lived assets in each of the segments, including customer relationships and developed technology, were tested for impairment under the guidance in ASC 360. The undiscounted cash flows for the long-lived assets were above the carrying amounts for each segment and the Company determined that the long-lived asset groups were recoverable, and no impairment existed as of September 30, 2022. The customer relationships intangible assets and developed technology assets were valued using methods in a manner similar to the March 15, 2022 impairment analysis discussed above, and represent Level 3 measurements as both were 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.

For ASC 350 testing purposes, the Company estimated the fair value of the Delivery Services Segment and the Third-Party Payment Processing Referral Services Segment giving consideration to the Income Approach and the Market Approach in a manner similar to the March 15, 2022 impairment analysis discussed above. The impairment assessment indicated that the fair value of the Third-Party Payment Processing Referral Services Segment exceeded its carrying value, and therefore did not result in a goodwill impairment. The fair value of the Delivery Services Segment was less than its carrying value, and as a result, the Company recognized a non-cash pre-tax impairment loss of \$1,907 during the three months ended September 30, 2022 to write down the carrying value of goodwill in the Delivery Services Segment to its implied fair value.

The non-cash impairment losses discussed above are included in the unaudited condensed consolidated statement of operations under the caption "goodwill impairment" and totaled \$53,898 and \$121,088 for the three and nine months ended September 30, 2022, respectively.

#### **8. Other Current Liabilities**

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

	September 30, 2022	December 31, 2021
Accrued insurance expenses	\$ 6,125	\$ 3,932
Accrued estimated workers' compensation expenses	305	644
Accrued medical contingency	366	370
Accrued legal contingency	1,250	1,250
Accrued sales tax payable	121	175
Accrued cash incentives	160	3,130
Other accrued expenses	3,151	3,685
Contingent consideration liability	1,388	—
Unclaimed property	2,710	2,372
Other current liabilities	2,907	3,751
<b>Total other current liabilities</b>	<b>\$ 18,483</b>	<b>\$ 19,309</b>

## 9. Debt

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

	Coupon Rate Range in 2021 through 3Q22	Effective Interest Rate at September 30, 2022	Maturity	September 30, 2022	December 31, 2021
Term Loan	5.125% - 7.125%	13.51%	May 2024	\$ 15,280	\$ 35,007
Notes	4.0% - 6.0%	6.37%	May 2024	42,339	49,504
				\$ 57,619	\$ 84,511
Less: unamortized debt issuance costs on Term Loan				(1,433)	(2,099)
Less: unamortized debt issuance costs on Notes				(245)	(435)
<b>Long term debt - related party</b>				<b>\$ 55,941</b>	<b>\$ 81,977</b>
			August 2022 - March 2023		
Short-term loans for insurance financing	3.99% - 4.85%	n/a		1,224	3,142
<b>Total outstanding debt</b>				<b>\$ 57,165</b>	<b>\$ 85,119</b>

Interest expense related to the Company's outstanding debt totaled \$1,198 and \$1,751 for the three months ended September 30, 2022 and 2021, respectively, and \$4,363 and \$5,333 for the nine months ended September 30, 2022 and 2021, respectively. Interest expense includes interest on outstanding borrowings and amortization of debt issuance costs and debt discount. See *Note 17 – Related Party Transactions* for additional information regarding the Company's related party long-term debt.

### Term Loan

The Company maintains an agreement with Luxor Capital Group, LP ("Luxor Capital") (as amended or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement provides for a senior secured first priority term loan (the "Term Loan") which is guaranteed by certain subsidiaries of the Company. In connection with the Term Loan, the Company issued to Luxor Capital warrants which are exercisable for 624,989 shares of the Company's common stock at September 30, 2022 (see *Note 13 – Stockholders' Equity*). See *Amendments to Loan Agreements* below for additional details on the Term Loan and Credit Agreement.

Interest on the Term Loan 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 Company elected to pay the interest payment of \$273 due on September 30, 2022 in-kind, resulting in such amount being added to the principal balance of the Term Loan. 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.

### Notes

Additionally, the Company issued unsecured convertible promissory notes (the "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") pursuant to an agreement, herein referred to as the "Convertible Notes Agreement". The net carrying value of the Notes as of September 30, 2022 and December 31, 2021 totaled \$42,094 and \$49,069, respectively. See *Amendments to Loan Agreements* and *Conversion Agreements* below for additional details on the Notes.

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. The Company elected to pay one-half of the \$669 interest payment due on September 30, 2022 in-kind, resulting in

approximately \$335 being added to the principal balance of the Notes. Interest expense related to the Notes was comprised of the following for the three and nine months ended September 30, 2022 and 2021 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Contractual interest expense	\$ 669	\$ 666	\$ 2,157	\$ 1,662
Amortization of debt discount	37	147	138	735
	<b>\$ 706</b>	<b>\$ 813</b>	<b>\$ 2,295</b>	<b>\$ 2,397</b>

The Notes include customary anti-dilution protection, including broad-based weighted average adjustments for issuances of additional shares. 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 \$8.00 per share at September 30, 2022, subject to certain "blocker" limitations limiting the amount of shares into which the Notes can be converted.

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).

#### *Amendments to Loan Agreements*

On May 9, 2022, the Company entered into an amendment to the Credit Agreement and an amendment to the Convertible Notes Agreement (together, the "May 9, 2022 Amended Loan Agreements"). The May 9, 2022 Amended Loan Agreements provide, among other things, (i) that going forward on a quarterly basis, 50% of the proceeds of any at-the-market public common stock issuances by the Company will be applied to the prepayment of the Term Loan and (ii) a six-month extension of the maturity date of the Credit Agreement and Convertible Notes Agreement until May 15, 2024. Additionally, pursuant to the amendment to the Credit Agreement, the Company made a \$20,000 prepayment on the Term Loan on May 9, 2022. See *Note 18 - Subsequent Events* for details on a Term Loan prepayment made in October 2022.

The Company evaluated the amendments in the May 9, 2022 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 Loan and Notes that equates the revised cash flows to the carrying amount of the original debt is computed and applied prospectively.

On May 12, 2022, the Company entered into an additional amendment to the Convertible Notes Agreement (the "May 12, 2022 Amended Convertible Notes Agreement") which provides that subsequent to the payment in full of the Term Loan outstanding under the existing Credit Agreement, on a quarterly basis, 50% of the proceeds of any future at-the-market public common stock issuances received by the Company will be applied to prepayment of the Notes under the Convertible Notes Agreement. The provisions of the May 12, 2022 Amended Convertible Notes Agreement did not contain changes to the Convertible Notes Agreement that warranted an evaluation of debt modification or extinguishment.

#### *Conversion Agreements*

On May 13, 2022, the Company entered into a conversion agreement (the "May 2022 Conversion Agreement"), pursuant to which the lenders under the Convertible Notes Agreement were permitted to convert \$750 of the outstanding principal amount of the Notes into shares of Company common stock at a conversion rate of 5,882 shares of Company common stock per one thousand dollars of principal amount of the Notes (calculated based on a per share price of \$0.17 of Company common stock on Nasdaq), notwithstanding the conversion rate then in effect pursuant to the terms of the Notes.

On July 22, 2022, the Company entered into a conversion agreement (the "July 2022 Conversion Agreement"), pursuant to which the lenders under the Convertible Notes Agreement were permitted to convert \$6,750 of the outstanding principal amount of the Notes into shares of Company common stock at a conversion rate of 4,000 shares of Company common stock per one thousand dollars of principal amount of the Notes (calculated based on a per share price of \$0.25 of Company common stock on Nasdaq), notwithstanding the conversion rate then in effect pursuant to the terms of the Notes.

Accordingly, pursuant to the May 2022 Conversion Agreement, the Luxor Entities converted \$750 principal amount of the Notes into 4,411,500 shares of Company common stock during the three months ended June 30, 2022, and pursuant to the July 2022 Conversion Agreement, the Luxor Entities converted \$6,750 principal amount of the Notes into 27,000,000 shares of Company common stock during the three months ended September 30, 2022 (see *Note 13 - Stockholders' Equity*).

In accordance with ASC 470-20, “*Debt with Conversion and Other Options*”, the fair value of the securities transferred in the induced conversion over the fair value of securities issuable pursuant to the original conversion terms is recognized as induced conversion expense. Accordingly, (i) upon the induced conversion related to the May 2022 Conversion Agreement, the Company recognized \$930 of expense with a corresponding entry to equity of \$1,673 and a net reduction of the Notes of \$743, consisting of the \$750 of principal, net of related discount, and (ii) upon the induced conversion related to the July 2022 Conversion Agreement, the Company recognized \$8,569 of expense with a corresponding entry to equity of \$15,275 and a net reduction of the Notes of \$6,706, consisting of the \$6,750 of principal, net of related discount.

Induced conversion expense is included in other expense in the unaudited condensed consolidated statement of operations and totaled \$8,569 and \$9,499 for the three and nine months ended September 30, 2022, respectively.

#### *Short-Term Loans*

The Company has outstanding short-term loans as of September 30, 2022 for the purpose of financing portions of its 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 Company recorded income tax expense of \$14 and \$25 for the three months ended September 30, 2022 and 2021, respectively, and \$47 and \$82 for the nine months ended September 30, 2022 and 2021, respectively. The Company’s income tax expense is entirely related to state taxes in various jurisdictions. The Company recorded a full valuation allowance against net deferred tax assets as of September 30, 2022 and December 31, 2021 as the Company has historically generated net operating losses, 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.

During 2020, the Company was permitted to defer payment of the employer portion of certain payroll taxes under the Coronavirus Aid, Relief and Economic Security (CARES) Act. The Company did not defer any payroll taxes after December 31, 2020. As of September 30, 2022, the Company has \$667 of employer payroll tax deferrals outstanding, all of which will be paid in 2022. This amount is reflected in other current liabilities in the accompanying unaudited condensed consolidated balance sheet.

### **11. Commitments and Contingent Liabilities**

#### *Sponsorship Agreement*

On July 23, 2022 (the “Effective Date”), the Company entered into a multi-year sponsorship agreement (the “MetLife Sponsorship Agreement”) with New Meadowlands Stadium Company, LLC (“NMSC”), pursuant to which the Company will be the exclusive mobile ordering platform used at MetLife Stadium. Pursuant to the MetLife Sponsorship Agreement, NMSC agrees to provide the Company with certain promotions, programs and benefits throughout each Contract Year of the agreement. The term “Contract Year” under the MetLife Sponsorship Agreement refers to each year of the agreement with the first Contract Year beginning on the Effective Date and ending on March 31, 2023, and each subsequent Contract Year beginning on April 1 and ending on the last day of the following March. The term of the MetLife Sponsorship Agreement is five Contract Years and will expire on March 31, 2027. The MetLife Sponsorship Agreement provides for customary representations, warranties, and indemnification from the parties.

In connection with the MetLife Sponsorship Agreement, the Company has committed to pay an aggregate of \$9,128 in sponsorship fees which will be amortized over the performance period on a straight-line basis. The sponsorship fees are generally payable in quarterly installments and include the following amounts by Contract Year: \$1,650 in year one, \$1,732 in year two, \$1,820 in year three, \$1,920 in year four and \$2,006 in year five.

Included in the unaudited condensed consolidated statement of operations for the three and nine months ended September 30, 2022, is \$413 of sales and marketing expense related to the MetLife Sponsorship Agreement.

#### *Workers Compensation and Auto Policy Claims*

We establish a liability under our workers' compensation and auto insurance policies for claims incurred within our self-insured retention levels and an estimate for claims incurred but not yet reported. As of September 30, 2022 and December 31, 2021, \$6,360 and \$4,305, respectively, in outstanding workers' compensation and auto policy reserves are included in the unaudited condensed consolidated balance sheet.

#### *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. The plaintiff sought 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. On June 22, 2021, the Company entered into a License, Release and Settlement Agreement (the "Settlement") to settle all claims related to this lawsuit. Pursuant to the Settlement, the Company paid the plaintiff \$4,700 in cash on July 1, 2021. In connection with the Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, unless extended by eight additional months in exchange for a one-time payment of \$800. During the three months ended March 31, 2022, the Company accrued an \$800 reserve in connection with its option to extend the license period by an additional eight months. The \$800 legal reserve and \$4,700 legal settlement are included in other expense in the unaudited condensed consolidated statement of operations for the nine months ended September 30, 2022 and 2021, respectively.

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', LLC, et al v. Waitr Holdings Inc.*, which is currently pending in the United States District Court for the Western District of Louisiana. The plaintiffs assert claims for breach of contract and violation of the duty of good faith and fair dealing, and they 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 at issue. In February 2022, the parties reached a proposed settlement in principle to resolve the litigation in its entirety and requested a stay of the pending litigation. This proposed settlement in principle was subject to District Court approval and entry into a settlement agreement between the parties, and contemplated a total potential settlement fund of \$2,500 of Company shares of common stock. Ultimately, no settlement agreement was executed by the parties nor was District Court approval obtained. Consequently, the stay of the litigation was briefly lifted until the District Court certified its ruling on a motion for summary judgment for immediate appeal. The litigation is currently stayed while the matter proceeds on appeal. Based on the settlement negotiations, the Company accrued a \$1,250 reserve in connection with this lawsuit during the three months ended December 31, 2021. The accrued legal contingency is included in other current liabilities in the unaudited condensed consolidated balance sheet at September 30, 2022.

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, seeking damages based upon these allegations. 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 consolidated, and an amended complaint was filed in October 2020. The Company filed a motion to dismiss in February 2021. The Court assigned that motion to the Magistrate Judge, who issued her Report and Recommendation to the District Court Judge that the motion be granted in all respects. On August 10, 2022, the Court ruled in favor of the Company and its former officers and directors on all claims and dismissed the case with prejudice. The deadline for appeal has passed with no action from plaintiffs; the judgment dismissing the case with prejudice is now final.

In October, 2017, the Company was named as a defendant in the matter of *Michael Boone and Jennifer Walters, individually and on behalf of their minor child Grace Boone, vs. Waitr Inc.*, pending in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana. The action arises from a pedestrian/vehicle collision that occurred in November 2016, and the alleged substantial damages as a result thereof. This matter was not resolved through mediation. A trial date has not been set and discovery is ongoing. The Company intends to vigorously defend this lawsuit.

In May 2020, the Company was named as a defendant in *Mary Ritchey, Individually and as Conservator for A.M., a minor, vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0722 LWC*, and *Robert P. McPherson vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0764 LWC*, consolidated and which is currently pending in the Circuit Court of the First Circuit, State of Hawaii. This action is a result of an automobile accident that occurred in October 2018 involving an employee of a Company subsidiary and the alleged substantial injuries and damages as a result thereof. Discovery is ongoing, as well as the motion practice. Trial is currently set for 2023. The Company 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, vehicle accidents involving employees and independent contractor drivers resulting in claims alleging personal injuries and medical expenses, labor and employment claims, allegations of intellectual property infringement, and workers' compensation benefit claims as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr believes that it maintains insurance with standard deductibles that generally covers liability for potential damages in many of these matters where coverage is available on acceptable terms (it is not maintained for claims involving intellectual property), insurance coverage is not guaranteed, there are limits to insurance coverage and in certain instances claims are met with denial of coverage positions by the carriers; accordingly, we could suffer material losses as a result of these claims, the denial of coverage for such claims, or damages awarded for any such claim that exceeds coverage. Litigation is unpredictable and we may determine in the future that certain existing claims have greater exposure or liability than previously understood.

## **12. Stock-Based Awards and Cash-Based Awards**

In June 2021, the Company's stockholders approved the Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (the "2018 Incentive Plan"), which permits the granting of awards in the form of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock, restricted stock units, performance-based awards, and other stock-based or cash-based awards. As of September 30, 2022, there were 5,903,757 shares of common stock available for future grants pursuant to the 2018 Incentive Plan. The Company also has outstanding equity awards under the 2014 Stock Plan (as amended in 2017, the "Amended 2014 Plan"). Total compensation expense related to awards under the Company's incentive plans was \$1,338 and \$1,635 for the three months ended September 30, 2022 and 2021, respectively, and \$4,588 and \$6,100 for the nine months ended September 30, 2022 and 2021, respectively.

### **Stock-Based Awards**

#### ***Stock Options***

During the nine months ended September 30, 2021, 500,000 stock options were granted under the 2018 Incentive Plan and were subsequently forfeited during such period. There were no grants of stock options during the nine months ended September 30, 2022. The Company determines the fair value of stock option grants on the grant date using an option-pricing model with various assumptions regarding the risk-free rate, volatility and expected term. As of March 31, 2022, all outstanding stock options were fully vested and there was no remaining unrecognized compensation cost related to stock options. The Company recognized compensation expense for stock options of \$258 for the three months ended September 30, 2021, and \$13 and \$950 for the nine months ended September 30, 2022 and 2021, respectively.

The stock option activity under the Company's incentive plans during the nine months ended September 30, 2022 and 2021 is as follows:

	Nine Months Ended September 30, 2022			Nine Months Ended September 30, 2021		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
<b>Balance, beginning of period</b>	<b>9,656,928</b>	<b>\$ 0.39</b>	<b>\$ 0.28</b>	<b>9,753,257</b>	<b>\$ 0.43</b>	<b>\$ 0.33</b>
Granted	—	—	—	500,000	2.78	2.19
Exercised	—	—	—	(12,012)	0.92	4.36
Forfeited	(26,911)	3.30	4.44	(524,830)	2.95	2.32
Expired	—	—	—	(34,151)	7.19	5.10
<b>Balance, end of period</b>	<b>9,630,017</b>	<b>\$ 0.38</b>	<b>\$ 0.27</b>	<b>9,682,264</b>	<b>\$ 0.39</b>	<b>\$ 0.29</b>

Outstanding stock options, which were fully vested and expected to vest and exercisable are as follows as of September 30, 2022 and December 31, 2021:

	As of September 30, 2022		As of December 31, 2021	
	Options Fully Vested and Expected to Vest	Options Exercisable	Options Fully Vested and Expected to Vest	Options Exercisable
Number of Options	9,630,017	9,630,017	9,656,928	4,870,026
Weighted-average remaining contractual term (years)	2.28	2.28	3.03	3.06
Weighted-average exercise price	\$ 0.38	\$ 0.38	\$ 0.39	\$ 0.40
Aggregate Intrinsic Value (in thousands)	\$ —	\$ —	\$ 3,543	\$ 1,773

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. There were no exercises of stock options during the nine months ended September 30, 2022. The aggregate intrinsic value of awards exercised during the three and nine months ended September 30, 2021 was \$1 and \$21, respectively.

### **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*

As of September 30, 2022, there were 3,134,325 performance-based RSUs outstanding under the Company's 2018 Incentive Plan. Such RSUs were granted to the Company's chief executive officer, Carl Grimstad, in April 2020 (the "Grimstad RSU Grant"). The Grimstad RSU Grant has an aggregate grant date fair value of \$3,542 and vests in full in the event of a change of control, as defined in Mr. Grimstad's employment agreement with the Company, 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 achieved, 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 nine months ended September 30, 2022, 8,790,000 RSUs with time-based vesting were granted pursuant to the 2018 Incentive Plan (with an aggregate grant fair value of value of \$3,545). The RSUs generally vest over three years in accordance with the terms specified in the applicable award agreements, all of which accelerate and vest upon a change of control.

The Company recognized compensation expense for restricted stock of \$1,338 and \$1,377 during the three months ended September 30, 2022 and 2021, respectively, and \$4,575 and \$5,150 during the nine months ended September 30, 2022 and 2021, respectively. Unrecognized compensation cost related to unvested time-based RSUs as of September 30, 2022 totaled \$12,055, with a weighted average remaining vesting period of approximately 2.3 years. The total fair value of restricted shares that vested during the three months ended September 30, 2022 and 2021 was \$323 and \$1,219, respectively, and \$544 and \$6,605 during the nine months ended September 30, 2022 and 2021, respectively.

The activity for restricted stock with time-based vesting under the Company’s incentive plans is as follows for the nine months ended September 30, 2022 and 2021:

	Nine Months Ended September 30, 2022			Nine Months Ended September 30, 2021		
	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (years)	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (years)
<b>Nonvested, beginning of period</b>	<b>8,614,746</b>	<b>\$ 2.15</b>	<b>2.50</b>	<b>4,558,603</b>	<b>\$ 2.23</b>	<b>1.71</b>
Granted	8,790,000	0.40		7,885,960	2.12	
Shares vested	(2,280,232)	1.96		(2,840,230)	2.22	
Forfeitures	(1,679,505)	1.09		(671,592)	2.25	
<b>Nonvested, end of period</b>	<b>13,445,009</b>	<b>\$ 1.17</b>	<b>2.29</b>	<b>8,932,741</b>	<b>\$ 2.13</b>	<b>2.68</b>

### **Cash-Based Awards**

#### *Performance Bonus Agreement*

On April 2020, the Company entered into a performance bonus agreement with Mr. Grimstad, which was extended through January 3, 2025 in connection with the extension of his employment agreement. Pursuant to the performance 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, 2025. Compensation expense related to the bonus agreement will not be recognized until such time that is probable that the performance goal will be achieved.

### **13. Stockholders’ Equity**

#### *Common Stock*

At September 30, 2022 and December 31, 2021, there were 249,000,000 shares of common stock authorized and 206,420,738 and 146,094,300 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 September 30, 2022 or December 31, 2021. The Company’s common stockholders are entitled to one vote per share.

#### *At-the-Market Offering*

In November 2021, the Company entered into a third amended and restated open market sale agreement 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 having an aggregate offering price of up to \$50,000, through Jefferies LLC (“Jefferies”) as its sales agent. There were no sales of common stock pursuant to the third amended and restated open market sale agreement after April 12, 2022. In August 2022, the Company entered into a fourth amended and restated open market sale agreement with respect to the ATM Program under which the Company may offer and sell, from time to time at its sole discretion, shares of its common stock having an aggregate offering price of up to \$50,000. The issuance and sale of shares by the Company under the open market sales agreements were made pursuant to the Company’s effective registration statements on Form S-3. Details of sales pursuant to the ATM Program are included in the table below. See *Note 18 - Subsequent Events* for additional details on the August 2022 ATM Program.

	Sales during nine months ended September 30, 2022		
	November 2021 ATM Program	August 2022 ATM Program	Total
Total shares sold	12,074,990	14,966,669	27,041,659
Average sales price per share	\$ 0.60	\$ 0.22	\$ 0.39
Gross proceeds (in thousands)	\$ 7,211	\$ 3,225	\$ 10,436
Net proceeds (in thousands)	\$ 7,120	\$ 3,146	\$ 10,266

### Preferred Stock

At September 30, 2022 and December 31, 2021, 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 September 30, 2022 or December 31, 2021.

### Notes

The Company has outstanding Notes which are convertible into shares of the Company’s common stock at a rate of \$8.00 per share. See *Note 9 – Debt* for additional information regarding the Notes.

Pursuant to the May 2022 Conversion Agreement, the Luxor Entities converted \$750 principal amount of the Notes into 4,411,500 shares of Company common stock during the three months ended June 30, 2022, calculated based on a per share price of \$0.17, notwithstanding the conversion rate then in effect pursuant to the terms of the Notes. In connection with the conversion, the Company recognized \$930 of induced conversion expense (see *Note 9 - Debt*).

Pursuant to the July 2022 Conversion Agreement, the Luxor Entities converted \$6,750 principal amount of the Notes into 27,000,000 shares of Company common stock during the three months ended September 30, 2022, calculated based on a per share price of \$0.25, notwithstanding the conversion rate then in effect pursuant to the terms of the Notes. In connection with the conversion, the Company recognized \$8,569 of induced conversion expense (see *Note 9 - Debt*).

### Warrants

In November 2018, the Company issued to Luxor Capital warrants which are exercisable for 624,989 shares of the Company’s common stock at September 30, 2022, with an exercise price of \$8.00 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 certain issuances of additional shares. Additionally, holders of the Debt Warrants have customary registration rights with respect to the shares underlying the Debt Warrants.

## 14. Fair Value Measurements

### Medical Contingency

Included in other income in the unaudited condensed consolidated statement of operations for the three and nine months ended September 30, 2021 is \$16,715 related to the change in estimate of a medical contingency (the “Medical Contingency”). The death of the individual in August 2021 associated with the Medical Contingency was new information the Company deemed a change in accounting estimate for the total liability.

The estimated loss exposure for the Medical Contingency as of December 31, 2021 was measured at fair value on a recurring basis and reflected the liability for unpaid medical expenses and dependent death benefits, totaling \$423. The analysis used in the measurement of the reserve for the Medical Contingency reflected the Company's assumptions regarding unpaid medical expenses and estimated death benefits used in developing the fair value estimate and was a Level 3 measurement. These inputs required significant judgments and estimates at the time of the valuation.

At March 31, 2022, management no longer deemed the Medical Contingency a liability requiring fair value measurement estimation as the remaining liability at such time consisted entirely of discrete costs related to certain unpaid medical expenses. Accordingly, the Medical Contingency was transferred out the Level 3 fair value hierarchy.

#### Contingent Consideration

The fair value of contingent consideration is measured at acquisition date, and at the end of each reporting period through the term of the arrangement, using the Black Scholes option-pricing model with assumptions for volatility and risk-free rate. Contingent consideration relates to the earnout provision in the Company's acquisition of the Cape Payment Companies in August 2021 and the future contingent payment based on the achievement of certain revenue targets (see *Note 5 – Business Combinations*). The contingent consideration liability was valued at \$1,939 at December 31, 2021 and is included in other non-current liabilities on the condensed consolidated balance sheet. As of September 30, 2022, the contingent consideration liability is valued at \$1,388 and is included in other current liabilities on the condensed consolidated balance sheet.

Expected volatility is based on a blended weighted average of the volatility rates for a number of similar publicly-traded companies. The risk-free rates are based on U.S. Treasury securities with similar maturities as the expected term of the earnout provision at the date of valuation. The fair value measurement was based on significant inputs not observable in the market and thus, represents Level 3 measurements within the fair value hierarchy. These inputs required significant judgments and estimates at the time of the valuation. The Company engaged a third-party specialist to assist management in estimating the fair value of the contingent consideration obligation.

#### Summary by Fair Value Hierarchy

The following table presents the Company's liabilities measured at fair value on a recurring basis as of September 30, 2022 and December 31, 2021 (in thousands):

	As of September 30, 2022			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Contingent consideration	\$ —	\$ —	\$ 1,388	\$ 1,388
<b>Total liabilities measured and recorded at fair value</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 1,388</b>	<b>\$ 1,388</b>
	As of December 31, 2021			
	Level 1	Level 2	Level 3	Total
<b>Liabilities</b>				
Accrued medical contingency	\$ —	\$ —	\$ 423	\$ 423
Contingent consideration	—	—	1,939	1,939
<b>Total liabilities measured and recorded at fair value</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 2,362</b>	<b>\$ 2,362</b>

The Company had no assets required to be measured at fair value on a recurring basis at September 30, 2022 or December 31, 2021.

Adjustments to the fair value of the accrued Medical Contingency were recognized in other income on the condensed consolidated statement of operations. The following table presents a reconciliation of the accrued Medical Contingency liability which was classified as a Level 3 financial instrument prior to March 31, 2022 (in thousands):

	Medical Contingency			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Balance, beginning of the period</b>	\$ —	\$ 17,182	\$ 423	\$ 17,435
Increases/additions	—	—	—	84
Reductions/settlements	—	(16,759)	(53)	(17,096)
Transfers out of Level 3	—	—	(370)	—
<b>Balance, end of the period</b>	<b>\$ —</b>	<b>\$ 423</b>	<b>\$ —</b>	<b>\$ 423</b>

Adjustments to the fair value of the contingent consideration liability at the end of each reporting period are recognized in income (loss) from operations in the condensed consolidated statement of operations. The following table presents a reconciliation of the contingent consideration liability classified as a Level 3 financial instrument for the three and nine months ended September 30, 2022 (in thousands):

	Contingent Consideration	
	Three Months Ended September 30, 2022	Nine Months Ended September 30, 2022
<b>Balance, beginning of the period</b>	\$ 2,043	\$ 1,939
Additions	—	—
Decrease in fair value	(655)	(551)
Reductions/settlements	—	—
<b>Balance, end of the period</b>	<b>\$ 1,388</b>	<b>\$ 1,388</b>

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 business combinations and asset acquisitions (see *Note 5 – 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*, for further discussion of the fair value of long-lived assets and the reporting unit associated with impairment testing conducted at March 15, 2022 and August 31, 2022. Additionally, in connection with the induced conversion of the Notes during the three months ended June 30, 2022 and the three months ended September 30, 2022, the Company applied fair value concepts. See *Note 9 – Debt* for further discussion.

## 15. Segment Information

As of September 30, 2022, the Company operates through two reportable operating segments based on two primary areas of service: (i) Delivery Services, which include operations related to the Company's technology platform for online ordering and delivery, and (ii) Third-Party Payment Processing Referral Services, which include operations related to facilitating access to third parties that provide payment processing solutions for restaurants and other merchants. For additional information about how our reportable segments derive revenue, refer to *Note 4 – Revenue*.

The accounting policies of the operating segments are the same as those described in our Annual Report on Form 10-K for the year ended December 31, 2021. The CODM does not evaluate operating segments using asset information and, accordingly, we do not report asset information by segment. There are no internal revenue transactions between our reportable segments.

The CODM evaluates segment performance primarily based on segment adjusted EBITDA. Segment adjusted EBITDA is defined as revenue less the following expenses: operations and support, sales and marketing, research and development, general and administrative and certain non-operating expenses associated with our segments. Excluded from segment adjusted EBITDA are non-cash items and other items that do not reflect our core operations. The following table

presents information about our segments, with a reconciliation of total segments adjusted EBITDA to income (loss) from operations of the consolidated Company (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Segments adjusted EBITDA:</b>				
Delivery Services Segment	\$ (4,737)	\$ 2,758	\$ (10,366)	\$ 13,554
Third-Party Payment Processing Referral Services Segment	67	310	294	310
<b>Total segments adjusted EBITDA</b>	<b>(4,670)</b>	<b>3,068</b>	<b>(10,072)</b>	<b>13,864</b>
<b>Reconciling items:</b>				
Interest expense	(1,198)	(1,751)	(4,363)	(5,333)
Income taxes	(14)	(25)	(47)	(82)
Depreciation and amortization expense	(3,599)	(3,070)	(9,664)	(8,952)
Goodwill impairment	(53,898)	—	(121,088)	—
Stock-based compensation expense	(1,338)	(1,635)	(4,588)	(6,100)
(Gain) loss on disposal of assets	(55)	(11)	33	(170)
Intangible and other asset impairments	—	(186)	—	(186)
Induced conversion expense related to Notes	(8,569)	—	(9,499)	—
Change in fair value of contingent consideration liability	655	—	551	—
Medical contingency change in estimate	—	16,715	—	16,715
Transaction related expenditures and other non-recurring adjustments	(776)	(855)	(2,812)	(2,159)
Accrued legal contingency and reserve	—	—	(800)	(4,700)
<b>Net income (loss) from continuing operations</b>	<b>\$ (73,462)</b>	<b>\$ 12,250</b>	<b>\$ (162,349)</b>	<b>\$ 2,897</b>

#### 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 three and nine months ended September 30, 2022 and 2021 is as follows (in thousands, except share and per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Basic earnings (loss) per share:</b>				
Net income (loss) attributable to common stockholders - basic	\$ (73,462)	\$ 12,250	\$ (162,349)	\$ 2,897
Weighted average number of shares outstanding	183,766,396	119,823,181	166,086,439	115,961,454
Basic earnings (loss) per common share	\$ (0.40)	\$ 0.10	\$ (0.98)	\$ 0.02
<b>Diluted earnings (loss) per share:</b>				
Net income (loss) attributable to common stockholders - diluted	\$ (73,462)	\$ 12,250	\$ (162,349)	\$ 2,897
Weighted average number of shares outstanding	183,766,396	119,823,181	166,086,439	115,961,454
Effect of dilutive securities:				
Stock options	—	6,733,754	—	7,604,969
Restricted stock units	—	3,610,361	—	4,713,397
Warrants	—	—	—	—
Weighted average diluted shares	183,766,396	130,167,296	166,086,439	128,279,820
Diluted earnings (loss) per common share	\$ (0.40)	\$ 0.09	\$ (0.98)	\$ 0.02

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. Based on the conversion price in effect at the end of the respective periods, the Notes were convertible into 5,292,316 and 4,737,237 shares, respectively, of the Company's common stock at September 30, 2022 and 2021. During the three and nine months ended September 30, 2021, the Company's weighted average common stock price was below the Notes conversion price for such periods. Accordingly, the shares were not considered in the diluted earnings per share calculation. For the three and nine months ended September 30, 2022, the shares were excluded from the fully diluted calculations because the Company had net losses for such periods and the effect on net loss per common share would have been anti-dilutive.

Additionally, 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 loss per common share would have been antidilutive:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Antidilutive shares underlying stock-based awards:</b>				
Stock options	9,630,017	19,800	9,630,017	19,800
Restricted stock units	16,579,334	6,838,412	16,579,334	6,838,412
Debt Warrants ( <i>see Note 13 - Stockholders' Equity</i> )	624,989	497,507	624,989	497,507

## 17. Related-Party Transactions

### *Credit Agreement and Convertible Notes Agreement*

In November 2018, the Company entered into the Credit Agreement, and in January 2019, the Company entered into an amendment to the Credit Agreement, and an amendment to the Convertible Notes Agreement with the Luxor Entities. In addition, on each of May 21, 2019, July 15, 2020, March 9, 2021 and May 9, 2022, 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 12, 2022, the Company entered into an amendment to the Convertible Notes Agreement with the Luxor Entities.

On May 1, 2020, the Company entered into a Limited Waiver and Conversion Agreement with respect to the Credit Agreement and Convertible Notes Agreement. On May 13, 2022, the Company entered into the May 2022 Conversion Agreement, and on July 22, 2022, the Company entered into the July 2022 Conversion Agreement, with respect to the Convertible Notes Agreement.

Pursuant to the May 9, 2022 amendment to the Credit Agreement, the Company made a \$20,000 prepayment on the Term Loan on such date.

Jonathan Green, a board member of the Company, is a partner at Luxor Capital. See *Note 9 - Debt* for additional details on related-party debt.

#### *Other Transactions with Related Parties*

As of September 30, 2022, we had over 30,000 restaurants on our Platform, some of which are affiliated with one current and one prior member of our board of directors (the “Board”). We estimate that we generated total revenue, inclusive of diner fees, of approximately \$60 and \$147 during the three months ended September 30, 2022 and September 30, 2021, respectively, and \$237 and \$610 during the nine months ended September 30, 2022 and 2021, respectively, from such restaurants that are affiliated with those current and prior members of our Board. Such restaurants enter into customary master service agreements with the Company, which are generally consistent with the other national partner agreements.

## **18. Subsequent Events**

### *August 2022 ATM Program*

In October 2022, the Company sold 1,378,498 shares of common stock pursuant to the August 2022 ATM for net proceeds of \$206. As of November 9, 2022, \$46,566 remained unsold under the August 2022 ATM.

Pursuant to a provision in the May 2022 amended loan agreement, the Company made a \$1,676 prepayment on the Term Loan on October 5, 2022, representing 50% of the net proceeds received by the Company for sales under the August 2022 ATM. As of November 9, 2022, the outstanding principal amount of the Term Loan totaled \$13,604.

### *Reverse Stock Split*

On October 20, 2022, the Company reconvened its special meeting of stockholders, whereby the Company’s stockholders approved an amendment to the Company’s Certificate of Incorporation to effect a reverse stock split, within a set range, without reducing the authorized number of shares of Company common stock, if and when determined by the Board in its sole discretion. The Board has since exercised such discretion and adopted resolutions on November 2, 2022 approving a reverse stock split at a ratio of 1:20 (the “Reverse Stock Split”). It is expected that the Reverse Stock Split will occur on or prior to 11:59 p.m. Eastern Time on November 21, 2022.

### *Amended Loan Agreements*

On November 8, 2022, ASAP Inc. (f/k/a Waitr Inc.), Waitr Intermediate Holdings, LLC, the lenders party thereto and Luxor Capital entered into an amendment to the Credit Agreement (the “November 2022 Amended Credit Agreement”) and the Company, the lenders party thereto and Luxor Capital entered into an amendment to the Convertible Notes Agreement (the “November 2022 Amended Convertible Notes Agreement”).

Pursuant to the November 2022 Amended Credit Agreement, commencing with the fiscal quarter ending December 31, 2022, the portion of the proceeds of any ATM public common stock issuances to be applied to the prepayment of the Term Loan under the Credit Agreement increases from 50% to 60%. The November 2022 Amended Convertible Notes Agreement includes (i) a reduction of the interest rate under the Convertible Notes Agreement from 6% to 4.5% per annum and (ii) an adjustment of the portion of an interest payment that can be paid in-kind, if elected by the Company, from 50% to approximately 33%. Additionally, pursuant to the November 2022 Amended Convertible Notes Agreement, subsequent to the payment in full of the Term Loan outstanding under the Credit Agreement, the portion of the proceeds of any future ATM public common stock issuances to be applied to the prepayment of the Notes under the Convertible Notes Agreement increases from 50% to 60%.

## Item 2. 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 unaudited condensed consolidated financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q (the “Form 10-Q”) and with the audited consolidated financial statements included in the Company’s 2021 Form 10-K filed with the SEC on March 11, 2022. 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 are set forth in the sections titled “Cautionary Statement Regarding Forward-Looking Statements” and “Risk Factors”.*

*Dollar amounts in this discussion are expressed in thousands, except as otherwise noted.*

### Overview

Waitr operates an online ordering technology platform (the “Platform”) using the “deliver anything ASAP” model, making it easy to order food, alcohol, convenience, grocery, flowers, auto parts and more. The Platform also includes proprietary in-stadium mobile ordering technology, providing an enhanced fan experience at sports and entertainment venues. The Platform provides delivery, carryout and dine-in options, connecting restaurants, merchants, drivers and diners in cities across the United States. Additionally, the Company facilitates access to third parties that provide payment processing solutions for restaurants and other merchants. Our strategy is to bring in the logistics infrastructure to underserved populations of restaurants, grocery stores and other merchants and establish strong market presence or leadership positions in the markets in which we operate.

Prior to the three months ended September 30, 2022, the Company concluded that we had one operating segment as the operations related to the facilitation of access to third parties that provide payment processing solutions to merchants and restaurants (“Third-Party Payment Processing Referral Services”) were not material to the Company’s consolidated operations. During the three months ended September 30, 2022, as Third-Party Payment Processing Referral Services became more significant to the operations of the Company, our CODM began to manage operations and assess the Company’s performance based on the operations of the delivery services related to our Platform (“Delivery Services”) and Third-Party Payment Processing Referral Services areas separately, and we now have two reportable operating segments. See Part I, Item 1, *Note 15 – Segment Information* for additional information on the Company’s segments.

In August 2022, we initiated our rebranding initiative and introduced our new “deliver anything ASAP” business model, expanding our food-delivery services to a broader array of products. Among our new business expansions is the Company’s proprietary in-stadium ordering technology, which allows fans to avoid the typical long lines at stadium concession areas. We have secured exclusive in-stadium mobile ordering agreements with MetLife Stadium, the New York Giants, the New York Jets, the New Orleans Saints, the University of Alabama, and Louisiana State University. Additionally, we secured a mobile ordering agreement with the Florida Panthers, the first arena deal for the Company with a National Hockey League team. During the third quarter of 2022, we also entered into a partnership with FoodBoss, an industry leading online food delivery search engine. We plan to continue to build on our ancillary revenue streams with the goal to diversify the Company beyond third-party food delivery, including continued emphasis on the facilitation of merchant access to third-party payment processing solution providers.

At September 30, 2022, we had over 30,000 restaurants, in approximately 1,000 cities, on the Platform. Average Daily Orders for the three months ended September 30, 2022 and 2021 were approximately 14,156 and 30,563, respectively, and revenue was \$25,141 and \$43,448, respectively. For the nine months ended September 30, 2022 and 2021, Average Daily Orders were 18,346 and 35,565, respectively, and revenue was \$91,352 and \$143,545, respectively.

### ***Going Concern***

The Company has concluded that as a result of recurring losses from operations and declines in cash positions, there exists substantial doubt about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements. The Company's results of operations and cash positions have been adversely impacted primarily by declines in order volumes. In an effort to alleviate these conditions, management is implementing certain initiatives with the goal to improve revenue and its cash position, including a comprehensive rebranding, consolidation of the Company's technology platforms into a single application and cost reductions. The Company's plans are designed to provide the Company with adequate liquidity to meet its obligations for at least the twelve-month period following the date these financial statements are issued; however, the plans are dependent on conditions and factors, many of which are outside of the Company's control. There can be no assurance that we will be successful in implementing our plans or that we will be able to generate positive cash flow from operations in any future period, nor can there be any assurance that we will be able to raise additional equity capital. The result of such inability, whether individually or in the aggregate, will adversely impact our financial condition. Accordingly, management could not conclude that it was probable that the plans will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. See "*Liquidity and Capital Resources*" below for additional details.

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

We have thus far been able to operate effectively during the COVID-19 pandemic. In response to economic hardships experienced during the COVID-19 pandemic, the U.S. federal government rolled out stimulus payments in the first quarter of 2021 which we believe had a positive impact on order volumes during such period. However, we also believe the stimulus payments resulted in increased driver labor costs as we were faced with challenges in maintaining an appropriate level of driver supply. In addition, early in the COVID-19 pandemic, we experienced an increase in revenue and orders due to increased consumer demand for delivery and more restaurants using our platform to facilitate both delivery and take-out. During the second quarter of 2021 and thereafter, we believe the impact of the stimulus payments on our order volumes began to decrease.

There remains uncertainty as to whether or not the pandemic will continue to impact diner behavior, and if so, in what manner. 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 the Company's 2021 Form 10-K and this quarterly report on Form 10-Q for the three months ended September 30, 2022. Management continues to monitor the impact of the COVID-19 outbreak and the possible effects on its financial position, liquidity, operations, industry and workforce.

### ***Nasdaq Compliance***

On July 26, 2022, the Company received approval (the "Approval") from the Nasdaq Listing Qualifications Department of the Nasdaq Stock Market (the "Nasdaq") of the Company's application to transfer the listing of its common stock from the Nasdaq Global Select Market to the Nasdaq Capital Market. The common stock was transferred to the Nasdaq Capital Market at the opening of trading on July 28, 2022. The Nasdaq Capital Market operates in substantially the same manner as the Nasdaq Global Select Market and the common stock continues to trade under the symbol "WTRH."

As previously disclosed, on January 26, 2022, the Company received a letter from the Nasdaq indicating that the Company was not in compliance with Nasdaq Listing Rule 5450(a)(1) because the closing bid price per share of the Company's common stock had closed below \$1.00 for the previous 30 consecutive business days (the "Bid Price Rule"). The Company was given until July 25, 2022 to regain compliance with the rule.

In response, the Company filed an application to transfer the listing of its common stock from the Nasdaq Global Select Market to the Nasdaq Capital Market. As a result of the Approval, the Company has been granted an additional 180-day grace period, or until January 23, 2023, to regain compliance with the Bid Price Rule. As a condition of the Approval imposed by Nasdaq Listing Rule 5810(c)(3)(a)(i), the Company notified the Nasdaq that it would seek to implement a reverse stock split, if necessary, to regain compliance with the Bid Price Rule. If we do not regain compliance with the Bid Price Rule in the relevant compliance period, the Staff may provide written notification to the Company that its securities will be delisted.

On October 20, 2022, the Company reconvened its special meeting of stockholders, whereby the Company's stockholders approved an amendment to the Company's Certificate of Incorporation to effect a reverse stock split of Company common stock, within a set range, without reducing the authorized number of shares of Company common stock, if and when determined by the Board in its sole discretion.

On November 2, 2022, the Board adopted resolutions approving the reverse stock split at a reverse stock split ratio of 1:20 (the "Reverse Stock Split") and authorized the Company to file a Certificate of Amendment (the "Certificate of Amendment") with the Secretary of State of the State of Delaware to amend the Company's Third Amended and Restated Certificate of Incorporation, as amended, to effect the Reverse Stock Split on or prior to the time of effectiveness at 11:59 pm on November 21, 2022, or such other date as may be determined by any authorized officer of the Company (the "Effective Time").

As a result of the Reverse Stock Split, every twenty (20) shares of the Company's common stock issued and outstanding immediately prior to the Reverse Stock Split will be reduced to a smaller number of shares, such that every 20 shares of common stock held by a stockholder immediately prior to the Reverse Stock Split will be combined and reclassified into one share of common stock. No fractional shares will be issued in connection with the reverse stock split. The Company's transfer agent, Continental Stock Transfer & Trust Company ("Continental"), will aggregate all fractional shares otherwise issuable to the holders of record of common stock and arrange for the sale of all fractional interests as soon as practicable after November 21, 2022 on the basis of the prevailing market prices of the common stock at the time of the sale. After such sale, Continental will pay to such holders of record their pro rata share of the total net proceeds derived from the sale of the fractional interests.

Trading of the Company's common stock on the Nasdaq Capital Market is expected to continue on a split-adjusted basis as of the opening of trading hours on November 22, 2022. Additionally, in connection with the Company's previously announced rebranding, it is expected that the Company's common stock will begin trading on the Nasdaq Capital Market under the new trading symbol "ASAP."

### **Smaller Reporting Company and Filer Status**

At the end of our current fiscal year (December 31, 2022), we will make the determination as to whether we will become a "smaller reporting company." If the aggregate worldwide market value of our common stock held by non-affiliates was less than \$60,000, as of the last business day of our second quarter ended June 30, 2022, we will be eligible to use the reporting requirements for a "smaller reporting company." As a result of our aggregate worldwide market value of our common stock held by non-affiliates being less than \$60,000 as of the last business day of our second quarter ended June 30, 2022, the Company qualified as a smaller reporting company for the filing of the Form 10-Q for the three months ended June 30, 2022, and could have chosen to reflect the smaller reporting company status at such time, but, regardless, must reflect the smaller reporting company status no later than the filing of the Form 10-Q for the three months ended March 31, 2023. Management expects that the Company will reflect the smaller reporting company status with the filing of our Form 10-K for the fiscal year ending December 31, 2022 and will follow the reporting requirements with respect to smaller reporting companies commencing with our Form 10-K for the fiscal year ending December 31, 2022.

Additionally, the aggregate worldwide market value of our common stock held by non-affiliates as of the last business day of our second quarter ended June 30, 2022 is used in the determination of our filer status for the filing of our Form 10-K for the year ending December 31, 2022 and for our quarterly reports on Form 10-Q for 2023. Based on the aggregate worldwide market value of our common stock held by non-affiliates as of the last business day of the second quarter ended June 30, 2022, we will be a non-accelerated filer for the year ending December 31, 2022, and accordingly, the due date for our Form 10-K will be 90 days from year-end and with respect to the filing of our Forms 10-Q thereafter, 45 days from each quarter-end.

### **Significant Accounting Policies and Critical Accounting 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 condensed 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;
- determination of agent vs. principal classification for revenue recognition purposes;
- 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, liabilities assumed and contingent consideration as part of a business combination.

Other than the changes disclosed in Part I, Item 1, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* to our unaudited condensed consolidated financial statements in this Form 10-Q, there have been no material changes to our significant accounting policies and estimates described in the 2021 Form 10-K.

### **New Accounting Pronouncements and Pending Accounting Standards**

See Part I, Item 1, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* for a description of accounting standards adopted during the nine months ended September 30, 2022. Also described in Note 2 are pending standards and their estimated effect on our condensed consolidated financial statements.

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

**Acquisitions.** The Delivery Dudes Acquisition and Cape Payment Acquisition were considered business combinations in accordance with ASC 805 and have been accounted for using the acquisition method. Under the acquisition method of accounting, total purchase consideration, acquired assets, assumed liabilities and contingent consideration are recorded based on their estimated fair values on the acquisition date. For each of these acquisitions, the excess of the fair value of purchase consideration over the fair value of the assets less liabilities acquired (and contingent consideration when applicable) has been recorded as goodwill on our condensed consolidated balance sheet as of September 30, 2022. The results of operations of Delivery Dudes and Cape Payment Companies are included in our consolidated financial statements beginning on the acquisition dates, March 11, 2021 and August 25, 2021, respectively.

In connection with the Delivery Dudes Acquisition, the Company incurred direct and incremental costs during the three and nine months ended September 30, 2021 of approximately \$171 and \$840, respectively, consisting of legal and professional fees, which are included in general and administrative expenses in the consolidated statement of operations in such periods.

**Changes in Fee Structure.** Our fee structure has changed at various times since our inception. 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. Any changes to our fee structure (whether externally to comply with governmental imposed caps or as a result of internal decision-making) could affect the comparability of our results of operations from period to period.

**Goodwill Impairment.** During the three and nine months ended September 30, 2022, we recognized non-cash goodwill impairment charges totaling \$53,898 and \$121,088, respectively, to write down the carrying value of goodwill to its implied fair value. 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 with respect to demand of our service offering. 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, a significant

number of restaurants tend to close on certain major holidays, including Thanksgiving, Christmas Eve and Christmas Day, among others. 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, severe weather-related events such as snowstorms, ice storms, hurricanes and tropical storms have adverse effects on order volume, particularly if they cause property damage or utility interruptions to our restaurant partners. The COVID-19 pandemic, as well as the federal government's responses thereto, have had an impact on our typical seasonality trends and could impact future periods.

**Acquisition Pipeline.** We continue to maintain and evaluate an active pipeline of potential acquisition targets and may pursue acquisitions in the future, both in the restaurant delivery space as well as other verticals, such as payments and other complimentary businesses. These potential 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 our targeted scale could adversely affect our working capital, which in turn, could slow our growth plans. 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.

**Our Restaurant, Diner and Driver Network.** A significant part of our growth is our ability to successfully expand our network of restaurants, diners and independent contractor drivers using the Platform. If we fail to retain existing restaurants, diners and independent contractor drivers using the Platform, or to add new restaurants, diners and independent contractor drivers to the Platform, 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 for our Delivery Services Segment. We currently do not have any defined key business metrics related to our Third-Party Payment Processing Referral Services Segment.

**Active Diners.** We count Active Diners as the number of unique diner accounts from which an order has been completed through the Platform 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 Platform 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 completed 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 Platform is a key revenue driver and, in conjunction with the number of Active Diners, a valuable measure of diner activity on our Platform 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 Platform 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 vary 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 Platform 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 completed orders during the same period. Average Order Size is an important metric for us because the average value of gross food sales on our Platform is a key revenue driver.

<b>Key Business Metrics<sup>(1)</sup></b>	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>	<b>2022</b>	<b>2021</b>
Active Diners (as of period end)	1,170,993	1,769,999	1,170,993	1,769,999
Average Daily Orders	14,156	30,563	18,346	35,565
Gross Food Sales (dollars in thousands)	\$ 70,754	\$ 128,534	\$ 258,136	\$ 433,553
Average Order Size (in dollars)	\$ 54.33	\$ 45.71	\$ 51.54	\$ 44.65

(1) The key business metrics include the operations of Delivery Dudes beginning on the acquisition date, March 11, 2021.

## **Basis of Presentation**

### **Revenue**

We generate revenue primarily when diners place an order on the Platform. We recognize revenue from diner orders when orders are delivered. Our revenue consists primarily of net Delivery Transaction Fees. Additionally, effective August 25, 2021, we generate revenue by facilitating merchant access to third-party payment processing solution providers.

### **Cost and Expenses:**

**Operations and Support.** Operations and support expense consists primarily of salaries, benefits, stock-based compensation and bonuses for employees engaged in operations and customer service, as well as territory managers, market success associates, restaurant onboarding, and driver logistics personnel, and payments to independent contractor drivers for delivery services. Operations and support expense also includes payment processing costs incurred on customer orders and the cost of software and related services providing support for diners, restaurants and drivers.

**Sales and Marketing.** Sales and marketing expense consists primarily of salaries, commissions, benefits, stock-based compensation and bonuses for personnel supporting sales and marketing efforts, including restaurant business development managers, marketing employees and contractors, and third-party marketing expenses such as social media and search engine marketing, online display advertisements, sponsorships and print marketing. Sales and marketing expense also includes referral agent commissions related to the facilitation of merchant access to third-party payment processing solution providers.

**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 Platform, net of costs capitalized for the development of the Platform. This expense also includes such items as software subscriptions that are necessary for the upkeep and maintenance of the Platform.

**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 other administrative employees as well as 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 and equipment, primarily consisting of tablets deployed in restaurants. We do not allocate depreciation and amortization expense to other line items.

**Other (Income) Expenses and (Gains) Losses, Net.** Other (income) expenses and (gains) losses, net, includes interest expense on outstanding debt, as well as any other items not considered to be incurred in the normal operations of the business, including accrued legal settlements and contingencies, expense related to the induced conversion of the Notes and income related to the change in estimate of the Medical Contingency.

## 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:

(in thousands, except percentages <sup>(1)</sup> )	Three Months Ended September 30,				Nine Months Ended September 30,			
	2022	% of Revenue	2021	% of Revenue	2022	% of Revenue	2021	% of Revenue
<b>Revenue</b>	\$ 25,141	100 %	\$ 43,448	100 %	\$ 91,352	100 %	\$ 143,545	100 %
<b>Costs and expenses:</b>								
Operations and support	13,457	54 %	25,043	58 %	49,719	54 %	86,654	60 %
Sales and marketing	8,263	33 %	4,965	11 %	21,489	24 %	13,481	9 %
Research and development	935	4 %	1,310	3 %	3,488	4 %	3,163	2 %
General and administrative	7,762	31 %	10,843	25 %	31,520	35 %	33,534	23 %
Depreciation and amortization	3,599	14 %	3,070	7 %	9,664	11 %	8,952	6 %
Goodwill impairment	53,898	214 %	—	— %	121,088	133 %	—	— %
Intangible and other asset impairments	—	— %	186	— %	—	— %	186	— %
(Gain) loss on disposal of assets	55	— %	11	— %	(33)	— %	170	— %
<b>Total costs and expenses</b>	<b>87,969</b>	<b>350 %</b>	<b>45,428</b>	<b>105 %</b>	<b>236,935</b>	<b>259 %</b>	<b>146,140</b>	<b>102 %</b>
<b>Loss from operations</b>	<b>(62,828)</b>	<b>(250) %</b>	<b>(1,980)</b>	<b>(5) %</b>	<b>(145,583)</b>	<b>(159) %</b>	<b>(2,595)</b>	<b>(2) %</b>
<b>Other (income) expenses and (gains) losses, net:</b>								
Interest expense	1,198	5 %	1,751	4 %	4,363	5 %	5,333	4 %
Other (income) expense	9,422	37 %	(16,006)	(37) %	12,356	14 %	(10,907)	(8) %
<b>Net income (loss) before income taxes</b>	<b>(73,448)</b>	<b>(292) %</b>	<b>12,275</b>	<b>28 %</b>	<b>(162,302)</b>	<b>(178) %</b>	<b>2,979</b>	<b>2 %</b>
Income tax expense	14	— %	25	— %	47	— %	82	— %
<b>Net income (loss)</b>	<b>\$ (73,462)</b>	<b>(292) %</b>	<b>\$ 12,250</b>	<b>28 %</b>	<b>\$ (162,349)</b>	<b>(178) %</b>	<b>\$ 2,897</b>	<b>2 %</b>

(1) Percentages may not foot due to rounding.

The following section includes a discussion of our results of operations for the three and nine months ended September 30, 2022 and 2021. The results of operations of Delivery Dudes and the Cape Payment Companies are included in our unaudited condensed consolidated financial statements beginning on the acquisition dates of March 11, 2021 and August 25, 2021, respectively (see Part I, Item 1, *Note 5 – Business Combinations*).

### Revenue

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Percentage Change	2022	2021	Percentage Change
	(dollars in thousands)			(dollars in thousands)		
Revenue	\$ 25,141	\$ 43,448	(42) %	\$ 91,352	\$ 143,545	(36) %

See Part I, Item 1, *Note 4 - Revenue* for details of revenue by operating segment. Revenue decreased for the three and nine months ended September 30, 2022 compared to the three and nine months ended September 30, 2021, primarily as a result of decreased order volumes in our Delivery Services Segment. Partially offsetting the impact of decreased order volumes was an increase in the Average Order Size in the 2022 periods compared to the 2021 periods. The Average Order Size was \$54.33 for the three months ended September 30, 2022, compared to \$45.71 for the three months ended September 30, 2021, an improvement of 19%. The Average Order Size was \$51.54 for the nine months ended September 30, 2022, compared to \$44.65 for the nine months ended September 30, 2021, an improvement of 15%.

Revenue for our Third-Party Payment Processing Referral Services Segment includes revenue from the Cape Payment Companies beginning on the acquisition date of August 25, 2021.

### Operations and Support

	Three Months Ended September 30,			Percentage Change	Nine Months Ended September 30,			Percentage Change
	2022	2021			2022	2021		
	(dollars in thousands)				(dollars in thousands)			
Operations and support	\$ 13,457	\$ 25,043		(46 %)	\$ 49,719	\$ 86,654		(43 %)
As a percentage of revenue	54 %	58 %			54 %	60 %		

Operations and support expenses decreased in dollar terms and as a percentage of revenue in the three and nine months ended September 30, 2022 compared to the three and nine months ended September 30, 2021, primarily due to lower driver operations costs in our Delivery Services Segment as a result of decreased order volumes.

### Sales and Marketing

	Three Months Ended September 30,			Percentage Change	Nine Months Ended September 30,			Percentage Change
	2022	2021			2022	2021		
	(dollars in thousands)				(dollars in thousands)			
Sales and marketing	\$ 8,263	\$ 4,965		66 %	\$ 21,489	\$ 13,481		59 %
As a percentage of revenue	33 %	11 %			24 %	9 %		

Sales and marketing expense increased in dollar terms and as a percentage of revenue in the three and nine months ended September 30, 2022 compared to the three and nine months ended September 30, 2021, primarily attributable to our Delivery Services Segment due to increased marketing spend, increased marketing support fees and the payment of stadium sponsorship agreement fees.

There was also an increase in referral agent commission expense related to our Third-Party Payment Processing Referral Services Segment. Referral agent commission expense for the 2021 periods represents results during the partial periods beginning on the acquisition date of August 25, 2021.

### Research and Development

	Three Months Ended September 30,			Percentage Change	Nine Months Ended September 30,			Percentage Change
	2022	2021			2022	2021		
	(dollars in thousands)				(dollars in thousands)			
Research and development	\$ 935	\$ 1,310		(29 %)	\$ 3,488	\$ 3,163		10 %
As a percentage of revenue	4 %	3 %			4 %	2 %		

Research and development expense is primarily related to costs associated with our Delivery Services Segment. The expense decreased in dollar terms in the three months ended September 30, 2022 compared to the three months ended September 30, 2021, primarily due to a decrease in product and engineering personnel during the third quarter of 2022. As a percentage of revenue, research and development expense increased slightly for the three months ended September 30, 2022, compared to the three months ended September 30, 2021, as a result of decreased order volumes.

Research and development expense increased in dollar terms and as a percentage of revenue in the nine months ended September 30, 2022 compared to the nine months ended September 30, 2021, primarily due to the hiring of product and engineering personnel in early 2022 to further develop and refine our Platform.

### General and Administrative

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Percentage Change	2022	2021	Percentage Change
	(dollars in thousands)			(dollars in thousands)		
General and administrative	\$ 7,762	\$ 10,843	(28 %)	\$ 31,520	\$ 33,534	(6 %)
As a percentage of revenue	31 %	25 %		35 %	23 %	

General and administrative expense decreased in dollar terms in the three and nine months ended September 30, 2022, compared to the three and nine months ended September 30, 2021, primarily due to decreased stock based compensation expense and decreased recruiting costs. For the nine months ended September 30, 2022, the decrease was partially offset by an increase in insurance expense. Decreased order volumes in the 2022 periods resulted in an increase in general and administrative expense as a percentage of revenue for the three and nine months ended September 30, 2022 compared to the three and nine months ended September 30, 2021.

### Depreciation and Amortization

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Percentage Change	2022	2021	Percentage Change
	(dollars in thousands)			(dollars in thousands)		
Depreciation and amortization	\$ 3,599	\$ 3,070	17 %	\$ 9,664	\$ 8,952	8 %
As a percentage of revenue	14 %	7 %		11 %	6 %	

Depreciation and amortization expense increased in dollar terms and as a percentage of revenue in the three and nine months ended September 30, 2022, compared to the three and nine months ended September 30, 2021, driven by an increase in amortization expense on intangible assets acquired in the Delivery Dudes Acquisition and Cape Payment Companies Acquisition.

### Goodwill Impairment

During the three and nine months ended September 30, 2022, we recognized non-cash goodwill impairment charges of \$53,898 and \$121,088, respectively, 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 significant decline in the Company's stock price in mid-March 2022, continuing through the third quarter of 2022, resulting in a market capitalization that was lower than the carrying value of the Company's consolidated stockholders' equity. See Part I, Item 1, *Note 7 – Intangible Assets and Goodwill* for additional details.

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

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2022	2021	Percentage Change	2022	2021	Percentage Change
	(dollars in thousands)			(dollars in thousands)		
Other (income) expenses and (gains) losses, net	\$ 10,620	\$ (14,255)	(175 %)	\$ 16,719	\$ (5,574)	(400 %)
As a percentage of revenue	42 %	(33)%		18 %	(4)%	

Other (income) expenses and (gains) losses, net for the three months ended September 30, 2022 primarily consisted of \$8,569 of expense associated with the induced conversion of the Notes (see Part I, Item 1, *Note 9 - Debt*) and \$1,174 of interest expense associated with the Term Loan and Notes. For the three months ended September 30, 2021, other (income) expenses and (gains) losses, net primarily consisted of \$16,715 of income related to a change in estimate of the Medical Contingency (see Part I, Item 1, *Note 14 - Fair Value Measurements*) and \$1,694 of interest expense associated with the Term Loan and Notes.

For the nine months ended September 30, 2022, other (income) expenses and (gains) losses, net primarily consisted of \$9,499 of induced conversion expense for the Notes and \$4,283 of interest expense associated with the Term Loan and Notes. For the nine months ended September 30, 2021, other (income) expenses and (gains) losses, net primarily consisted of \$16,715 of income from the change in estimate of the Medical Contingency, \$4,700 of expense for a legal settlement and \$5,214 of interest expense associated with the Term Loan and Notes.

### Income Tax Expense

Income tax expense for the three months ended September 30, 2022 and 2021 was \$14 and \$25, respectively, and \$47 and \$82 for the nine months ended September 30, 2022 and 2021, respectively. The Company's income tax expense is 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.

### Segments Adjusted EBITDA

The CODM evaluates segment performance primarily based on segment adjusted EBITDA. Segment adjusted EBITDA is defined as revenue less the following expenses: operations and support, sales and marketing, research and development, general and administrative and certain non-operating expenses associated with our segments. Excluded from segment adjusted EBITDA are non-cash items and other items that do not reflect our core operations. The following table presents information about our segments, with a reconciliation of total segments adjusted EBITDA to income (loss) from operations of the consolidated Company (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
<b>Segments adjusted EBITDA:</b>				
Delivery Services Segment	\$ (4,737)	\$ 2,758	\$ (10,366)	\$ 13,554
Third-Party Payment Processing Referral Services Segment	67	310	294	310
<b>Total segments adjusted EBITDA</b>	<b>(4,670)</b>	<b>3,068</b>	<b>(10,072)</b>	<b>13,864</b>
<b>Reconciling items:</b>				
Interest expense	(1,198)	(1,751)	(4,363)	(5,333)
Income taxes	(14)	(25)	(47)	(82)
Depreciation and amortization expense	(3,599)	(3,070)	(9,664)	(8,952)
Goodwill impairment	(53,898)	—	(121,088)	—
Stock-based compensation expense	(1,338)	(1,635)	(4,588)	(6,100)
(Gain) loss on disposal of assets	(55)	(11)	33	(170)
Intangible and other asset impairments	—	(186)	—	(186)
Induced conversion expense related to Notes	(8,569)	—	(9,499)	—
Change in fair value of contingent consideration liability	655	—	551	—
Medical contingency change in estimate	—	16,715	—	16,715
Transaction related expenditures and other non-recurring adjustments	(776)	(855)	(2,812)	(2,159)
Accrued legal contingency and reserve	—	—	(800)	(4,700)
<b>Net income (loss) from continuing operations</b>	<b>\$ (73,462)</b>	<b>\$ 12,250</b>	<b>\$ (162,349)</b>	<b>\$ 2,897</b>

A discussion of operational results by segment is included in **Results of Operations** above.

## Liquidity and Capital Resources

### Overview

Pursuant to the requirements of ASC 205-40, *Going Concern*, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. This evaluation initially does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented as of the date the financial statements are issued. When substantial doubt exists under this methodology, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company's ability to continue as a going concern. The mitigating effect of management's plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the financial statements are issued, and (2) it is probable that the plans, when implemented, will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued.

The Company has concluded that as a result of recurring losses from operations and declines in cash positions, there exists substantial doubt about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements. The Company's results of operations and cash positions have been adversely impacted primarily by declines in order volumes. Our primary source of liquidity during the nine months ended September 30, 2022 has been proceeds from the issuance of our common stock. The Company has had a trend of negative cash flow from operations during 2022. Cash flow used in operations totaled \$21,701 for the nine months ended September 30, 2022 and \$7,870 for the three months ended September 30, 2022. During the nine months ended September 30, 2022, pursuant to our ATM Program, we sold 27,041,659 shares of the Company's common stock for net proceeds of \$10,266. The Company's cash position has declined from \$60,111 at December 31, 2021 to \$20,118 as of September 30, 2022 and approximately \$14,700 as of November 3, 2022. During the second quarter of 2022, the Company's cash position was impacted by the utilization of \$20,000 in cash to pay down debt in consideration for an extension of the debt maturity for each credit facility by six months to May 15, 2024. For each of the first three quarters of 2022, the Company had net losses. As reflected in the accompanying unaudited condensed consolidated financial statements, the Company has an accumulated deficit of \$531,484 as of September 30, 2022.

In an effort to alleviate these conditions, management is implementing certain initiatives with the goal to improve revenue and its cash position, including a comprehensive rebranding, consolidation of the Company's technology platforms into a single application and cost reductions. The initiatives include (i) collaborations with convenience stores, (ii) delivery from retailers in a variety of industries, (iii) the entry into new markets, (iv) the development of a proprietary stadium ordering application and (v) the entry into sponsorship agreements to serve as the exclusive mobile ordering platform at certain stadiums and arenas. Additionally, management evaluated its existing cost structure and implemented cost saving initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. Management also expects that the Company will seek to additionally fund its operations through proceeds from equity raises, including any raises under the ATM Program.

The Company's plans are designed to provide the Company with adequate liquidity to meet its obligations for at least the twelve-month period following the date these financial statements are issued; however, the plans are dependent on conditions and factors, many of which are outside of the Company's control. There can be no assurance that we will be able to generate positive cash flow from operations in any future period, nor can there be any assurance that we will be able to raise additional equity capital; the result of such inability, whether individually or in the aggregate, will adversely impact our financial condition. Accordingly, management could not conclude that it was probable that the plans will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. As such, the Company has concluded that substantial doubt exists about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

We are continuously reviewing our liquidity and anticipated working capital needs based on overall market and economic factors. Market conditions, future financial performance or other factors may make it difficult or impractical for us to access sources of capital on favorable terms, if at all. The failure to successfully implement our strategy to improve revenue and order volume, achieve cost savings and/or raise additional capital will adversely impact our financial condition, which impact could be material, could reduce the period of time for which our anticipated working capital needs will be sufficient, and could result in the Company terminating or curtailing operations and/or strategic initiatives.

The accompanying unaudited condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business for the twelve-month period following the date the financial statements are issued. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result should the Company be unable to continue as a going concern.

### ***Sponsorship Agreement***

In July 2022, the Company entered into a multi-year sponsorship agreement pursuant to which the Company will be the exclusive mobile ordering platform used at MetLife Stadium. The term of the MetLife Sponsorship Agreement is five Contract Years and will expire on March 31, 2027. In connection with the MetLife Sponsorship Agreement, the Company has committed to pay an aggregate of \$9,128 in sponsorship fees which will be amortized over the performance period on a straight-line basis. The sponsorship fees are generally payable in quarterly installments and include the following amounts by Contract Year: \$1,650 in year one, \$1,732 in year two, \$1,820 in year three, \$1,920 in year four and \$2,006 in year five.

### ***Debt***

During the second and third quarters of 2022, Luxor Capital converted \$750 and \$6,750, respectively, of the outstanding principal amount of the Notes into 4,411,500 shares and 27,000,000 shares, respectively, of Company common stock. Additionally, the Company used \$20,000 in cash to pay down a portion of the Term Loan in consideration for an extension of the debt maturity of the Term Loan and Notes by six months to May 15, 2024. The aggregate principal amount of outstanding long-term debt totaled \$57,619 as of September 30, 2022, consisting of \$15,280 for the Term Loan and \$42,339 of Notes. As of September 30, 2022, the Company had \$1,224 of outstanding short-term loans for insurance premium financing.

Pursuant to a provision in the May 2022 amended loan agreement, the Company made a \$1,676 prepayment on the Term Loan on October 5, 2022, representing 50% of the net proceeds received by the Company for sales under the August 2022 ATM. As of November 9, 2022, the outstanding principal amount of long-term debt totaled \$55,943.

On November 8, 2022, the Company entered into the November 2022 Amended Credit Agreement and the November 2022 Amended Convertible Notes Agreement. Pursuant to the November 2022 Amended Credit Agreement, commencing with the fiscal quarter ending December 31, 2022, the portion of the proceeds of any ATM public common stock issuances to be applied to the prepayment of the Term Loan under the Credit Agreement increases from 50% to 60%. The November 2022 Amended Convertible Notes Agreement includes (i) a reduction of the interest rate under the Convertible Notes Agreement from 6% to 4.5% per annum and (ii) an adjustment of the portion of an interest payment that can be paid in-kind, if elected by the Company, from 50% to approximately 33%. Additionally, pursuant to the November 2022 Amended Convertible Notes Agreement, subsequent to the payment in full of the Term Loan outstanding under the Credit Agreement, the portion of the proceeds of any future ATM public common stock issuances to be applied to the prepayment of the Notes under the Convertible Notes Agreement increases from 50% to 60%.

### ***Capital Expenditures***

Our main capital expenditures relate to investments in the development of the Platform, 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 "Risk Factors" in our 2021 Form 10-K and subsequent filings with the SEC, including this quarterly report on Form 10-Q for the three months ended September 30, 2022.

### ***Cash Flow***

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

(in thousands)	Nine Months Ended September 30,	
	2022	2021
Net cash used in operating activities	\$ (21,701)	\$ (575)
Net cash used in investing activities	(6,530)	(32,563)
Net cash used in financing activities	(11,762)	(8,066)

#### *Cash Flows Used in Operating Activities*

For the nine months ended September 30, 2022, net cash used in operating activities was \$21,701, compared to net cash used in operating activities of \$575 for the nine months ended September 30, 2021. The decrease in cash flows from operating activities in the nine months ended September 30, 2022 from the comparable 2021 period was primarily driven by a decrease in revenue and an increase in sales and marketing expenses, partially offset by a decrease in operations and support expenses. During the nine months ended September 30, 2022, the net change in operating assets and liabilities decreased net cash provided by operating activities by \$5,874, primarily consisting of a decrease in other current liabilities of \$3,054 and a decrease in accounts payable of \$2,473, partially offset by a decrease in prepaid expenses and other current assets of \$3,526. During the nine months ended September 30, 2021, the net change in operating assets and liabilities decreased net cash provided by operating activities by \$4,706, primarily consisting of a decrease in accrued payroll of \$3,389.

#### *Cash Flows Used in Investing Activities*

For the nine months ended September 30, 2022, net cash used in investing activities consisted primarily of \$6,335 for internally developed software. For the nine months ended September 30, 2021, net cash used in investing activities consisted primarily of \$25,435 for the acquisitions of Delivery Dudes and Cape Payment Companies and related intangible assets, and \$6,432 of costs for internally developed software.

#### *Cash Flows Used in Financing Activities*

For the nine months ended September 30, 2022, net cash used in financing activities consisted primarily of a \$20,000 payment on the Term Loan, partially offset by \$10,266 of net proceeds from the sales of common stock under the Company's ATM Program. Additionally, during the nine months ended September 30, 2022, net cash from financing activities included \$2,811 of proceeds from short-term loans for insurance premium financings and \$4,729 of payments on such loans. For the nine months ended September 30, 2021, net cash used in financing activities primarily consisted of a \$14,472 principal payment on the Term Loan and \$5,605 of payments on short-term loans for insurance premium financing. Net cash from financing activities during the nine months ended September 30, 2021, included \$7,900 of proceeds from the sales of common stock under the Company's ATM Program and \$5,209 of proceeds from short-term loans for insurance financing.

#### **Cautionary Statement Regarding Forward-Looking Statements**

This Form 10-Q 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 Exchange Act. All statements, other than statements of historical or current fact, 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," "goal," "strategy," "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-Q and our management's current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties, including the following factors, in addition to the factors discussed elsewhere in this Form 10-Q, and the factors discussed in our 2021 Form 10-K and subsequent filings with the SEC (Part I, Item 1A, *Risk Factors*):

#### *Risks Related to Our Operations*

- failure to retain existing diners or add new diners or continuing to experience a decrease in number of diners and number of orders or decrease in order sizes on the Platform;
- declines in our delivery service levels or lack of increases in business for restaurants;

- loss of restaurants on the Platform, including due to changes in our fee structure;
- inability to successfully expand our operations of facilitating the entry into merchant agreements by and between merchants and third-party payment processing solution providers;
- inability to achieve profitability in the future;
- risks related 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;
- recent inflationary pressures, increased gasoline prices and other macroeconomic factors that are largely beyond our control;
- inability to maintain and enhance our brands, including possible degradation thereto resulting from our comprehensive rebranding initiative to change our corporate name and visual identity, or occurrence of events that damage our reputation and brands, including unfavorable media coverage;
- seasonality and the impact of inclement weather, including 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;
- inability to manage growth and meet demand;
- inability to successfully improve the experience of restaurants and diners in a cost-effective manner;
- changes in our products or to operating systems, hardware, networks or standards that our operations depend on;
- dependence of our business on our ability to maintain and scale our technical infrastructure;
- personal data, internet security breaches or loss of data provided by diners or restaurants on our Platform;
- inability of third-party payment processing services, of which we may facilitate the entry into merchant agreements, to comply with applicable state or federal regulations;
- inability to comply with applicable law or standards if we were to become a payment processor at some point in the future;
- risks related to the credit card and debit card payments we accept;
- reliance on third-party vendors to provide products and services;
- substantial competition in technology innovation and distribution and inability to continue to innovate and provide technology desirable to diners and restaurants;
- failure to pursue and successfully make additional acquisitions;
- failure to comply with covenants in the agreements governing our debt;
- additional impairments of the carrying amounts of goodwill or other indefinite-lived assets;
- dependence on search engines, display advertising, social media, email, content-based online advertising and other online sources to attract diners to the Platform;
- loss of senior management or key operating personnel and dependence on skilled personnel to grow and operate our business;
- inability to successfully integrate and maintain acquired businesses;
- failure to protect our intellectual property;
- patent lawsuits and other intellectual property rights claims;
- potential liability and expenses for existing and future legal claims, including claims that may exceed insurance coverage or are not insured against;
- our use of open source software;
- insufficient capital to pursue business objectives and respond to business opportunities, challenges or unforeseen circumstances;
- unionization of our employees, the magnitude of which increases if our independent contractor drivers were ever reclassified as employees; and
- failure to maintain an effective system of disclosure controls and internal control over financial reporting.

*Risks Related to Our Industry*

- the intensely competitive and fragmented nature of our industry;
- dependence on discretionary spending patterns in the areas in which the restaurants on our Platform operate and in the economy at large;
- general economic and business risks affecting our industry that are largely beyond our control;
- the COVID-19 pandemic, or a similar public health threat that could significantly affect our business, financial condition and results of operations;
- implementation of fee caps by jurisdictions in areas where we operate;
- failure of restaurants in our networks to maintain their service levels;
- slower than anticipated growth in the use of the Internet via websites, mobile devices and other platforms;
- federal and state laws and regulations regarding privacy, data protection, and other matters affecting our business;
- the potential for increased misclassification claims following the change to the U.S. presidential administration;
- risks relating to our relationships with the independent contractor drivers, including shortages of available drivers and possible increases in driver compensation; and
- risks related to the cannabis industry with respect to the business operations of referring merchants to third-party payment processing solution providers.

*Risks Related to Ownership of Our Securities*

- risks related to future sales of a substantial number of shares by existing stockholders which could in turn cause our share price to decline;
- the risk that management's use of the net proceeds from, or the continuation of, our ATM Program does not increase the value of a stockholder's investment;
- the risk that 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 risk that the Debt Warrants and Notes as well as other derivative securities, if exercised or converted into shares of our common stock, would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders; and
- the risk that we fail to continue to meet all applicable Nasdaq listing requirements in future periods and risks relating to the consequent delisting of our common stock from Nasdaq if we fail to meet Nasdaq listing requirements, which could adversely affect the market liquidity of our common stock, the ability for us to raise capital, and could decrease the market price of our common stock significantly.

These risks and uncertainties may be outside of our control. 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.

**Item 3. 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 September 30, 2022, we had outstanding interest-bearing long-term debt totaling \$57,619, consisting of the Term Loan in the amount of \$15,280 and the Notes of \$42,339, both of which bear interest at fixed rates. As a result, we were not exposed to interest rate risk on our outstanding debt at September 30, 2022. 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.

#### **Item 4. 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-Q. 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 level as of September 30, 2022.

##### ***Changes in Internal Control Over Financial Reporting***

There has not been any change in our internal control over financial reporting that occurred during the quarter ended September 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

*Dollar amounts in the discussion in Part II. Other Information are expressed in thousands, except as otherwise noted.*

### Item 1. 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. The plaintiff sought 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. On June 22, 2021, the Company entered into a License, Release and Settlement Agreement (the "Settlement") to settle all claims related to this lawsuit. Pursuant to the Settlement, the Company paid the plaintiff \$4,700 in cash on July 1, 2021. In connection with the Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, unless extended by eight additional months in exchange for a one-time payment of \$800. During the three months ended March 31, 2022, the Company accrued an \$800 reserve in connection with its option to extend the license period by an additional eight months. The \$800 legal reserve and \$4,700 legal settlement are included in other expense in the unaudited condensed consolidated statement of operations for the nine months ended September 30, 2022 and 2021, respectively.

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', LLC, et al v. Waitr Holdings Inc.*, which is currently pending in the United States District Court for the Western District of Louisiana. The plaintiffs assert claims for breach of contract and violation of the duty of good faith and fair dealing, and they 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 at issue. In February 2022, the parties reached a proposed settlement in principle to resolve the litigation in its entirety and requested a stay of the pending litigation. This proposed settlement in principle was subject to District Court approval and entry into a settlement agreement between the parties, and contemplated a total potential settlement fund of \$2,500 of Company shares of common stock. Ultimately, no settlement agreement was executed by the parties nor was District Court approval obtained. Consequently, the stay of the litigation was briefly lifted until the District Court certified its ruling on a motion for summary judgment for immediate appeal. The litigation is currently stayed while the matter proceeds on appeal. Based on the settlement negotiations, the Company accrued a \$1,250 reserve in connection with this lawsuit during the three months ended December 31, 2021. The accrued legal contingency is included in other current liabilities in the unaudited condensed consolidated balance sheet at September 30, 2022.

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, seeking damages based upon these allegations. 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 consolidated, and an amended complaint was filed in October 2020. The Company filed a motion to dismiss in February 2021. The Court assigned that motion to the Magistrate Judge, who issued her Report and Recommendation to the District Court Judge that the motion be granted in all respects. On August 10, 2022, the Court ruled in favor of the Company and its former officers and directors on all claims and dismissed the case with prejudice. The deadline for appeal has passed with no action from plaintiffs; the judgment dismissing the case with prejudice is now final.

In October, 2017, the Company was named as a defendant in the matter of *Michael Boone and Jennifer Walters, individually and on behalf of their minor child Grace Boone, vs. Waitr Inc.*, pending in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana. The action arises from a pedestrian/vehicle collision that occurred in November 2016, and the alleged substantial damages as a result thereof. This matter was not resolved through mediation. A trial date has not been set and discovery is ongoing. The Company intends to vigorously defend this lawsuit.

In May 2020, the Company was named as a defendant in *Mary Ritchey, Individually and as Conservator for A.M., a minor, vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0722 LWC*, and *Robert P. McPherson vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0764 LWC*, consolidated and which is currently pending in the Circuit Court of the First Circuit, State of Hawaii. This action is a result of an automobile accident that occurred in October 2018 involving an employee of a Company subsidiary and the alleged substantial injuries and damages as a result thereof. Discovery is ongoing, as well as the motion practice. Trial is currently set for 2023. The Company 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, vehicle accidents involving employees and independent contractor drivers resulting in claims alleging personal injuries and medical expenses, labor and employment claims, allegations of intellectual property infringement, and workers' compensation benefit claims as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr believes that it maintains insurance with standard deductibles that generally covers liability for potential damages in many of these matters where coverage is available on acceptable terms (it is not maintained for claims involving intellectual property), insurance coverage is not guaranteed, there are limits to insurance coverage and in certain instances claims are met with denial of coverage positions by the carriers; accordingly, we could suffer material losses as a result of these claims, the denial of coverage for such claims, or damages awarded for any such claim that exceeds coverage. Litigation is unpredictable and we may determine in the future that certain existing claims have greater exposure or liability than previously understood.

#### **Item 1A. Risk Factors**

Except as set forth below, there have been no material changes with respect to Waitr's risk factors previously reported in Part I, Item 1A, of the 2021 Form 10-K.

**As required by ASC 205-40, Going Concern, our management has performed an analysis of our ability to continue as a going concern and has identified substantial doubt about our ability to continue as a going concern and management's plans to alleviate this condition may be unsuccessful.**

Pursuant to the requirements of ASC 205-40, *Going Concern*, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. Based on their assessment, our management has raised concerns about our ability to continue as a going concern within one year after the date that the unaudited consolidated financial statements contained in this report are issued. This evaluation of our ability to continue as a going concern initially does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented as of the date the financial statements are issued. Management has focused its efforts on certain initiatives to improve revenue and its cash position, including a comprehensive rebranding, consolidation of its technology platforms into a single application and cost reductions. For a discussion of these initiatives, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—*Liquidity and Capital Resources*." Additionally, management evaluated its existing cost structure and implemented cost savings initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. While the Company believes that the initiatives described above will result in improved liquidity and cash flow, there can be no assurance that the Company will be able to generate positive cash flow from operations in the future, affecting the Company's ability to continue as a going concern.

The Company's results of operations and cash positions have been adversely impacted primarily by declines in order volumes. Our primary source of liquidity during the nine months ended September 30, 2022 has been proceeds from the issuance of our common stock. The Company has had a trend of negative cash flow from operations during 2022. Cash flow used in operations totaled \$21,701 for the nine months ended September 30, 2022 and \$7,870 for the three months ended September 30, 2022. During the nine months ended September 30, 2022, pursuant to our ATM Program, we sold 27,041,659 shares of the Company's common stock for net proceeds of \$10,266. The Company's cash position has declined from \$60,111 at December 31, 2021 to \$20,118 as of September 30, 2022 and approximately \$14,700 as of November 3, 2022. For each of the first three quarters of 2022, the Company had net losses. As reflected in the

accompanying unaudited condensed consolidated financial statements, the Company has an accumulated deficit of \$531,484 as of September 30, 2022.

As substantial doubt about our ability to continue as a going concern exists, our ability to finance our operations through the sale and issuance of debt or equity securities or through bank or other financing could be impaired. Management continues to explore raising additional capital to supplement the Company's capitalization and liquidity and expects that the Company will seek to additionally fund its operations through proceeds from equity raises, including any raises under the ATM Program, but there can be no assurance that such financing will be available on terms commercially acceptable to the Company, or at all. Our ability to continue as a going concern may depend on our ability to obtain additional capital, as there can be no assurance that we will be able to generate positive cash flow from operations in the future as a result of our initiatives or otherwise. If we raise funds by issuing debt securities or preferred stock, or by incurring loans, these forms of financing would have rights, preferences, and privileges senior to those of holders of our Common Stock. If adequate capital is not available to us when needed, or in the amounts required, we may be forced to terminate, or significantly curtail our operations and strategic initiatives. Our consolidated results of operations could be materially adversely affected by these decisions and your investment in the Company could be materially impaired.

**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 in October, 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. As a result of the significant decline in the Company's stock price in mid-March 2022 and other macroeconomic and industry factors, thereby contributing to a decline in the Company's market capitalization, we conducted an impairment test as of March 15, 2022. Additionally, as a result of continued declines in the Company's stock price and market capitalization during the second and third quarters of 2022, we conducted an additional impairment test as of September 30, 2022. The impairment tests were conducted in accordance with ASC 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 350, *Intangibles – Goodwill and Other* for the reporting units' goodwill. As a result of the ASC 360 and ASC 350 analyses, we recognized non-cash pre-tax impairment losses of \$67,190 during the three months ended March 31, 2022 and \$53,898 during the three months ended September 30, 2022 to write down the carrying value of goodwill to its implied fair value. See Part I, Item 1, *Note 7 – Intangible Assets and Goodwill* 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.

**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 classified as independent contractors under applicable law and regulation, certain state and local governmental authorities have initiated efforts to classify independent contractors performing driver jobs as employees. In January 2020, California State Assembly Bill 5 ("AB5") came 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. Gig economy companies initially argued that Proposition 22 effectively exempts this class of workers from the reach of AB5. However, in late 2021, a California appellate court ruled that Proposition 22 was unconstitutional and unenforceable. This decision is pending appeal.

While the Company does not operate in California, multiple other states including Illinois, Massachusetts, New Jersey, and New York have attempted to codify employee-friendly language similar to AB5 while other public gig economy companies have attempted to lobby for protective measures similar to Proposition 22 putting the future of classification in the gig economy in limbo. Further, since 2020, numerous lawsuits have been filed against various gig economy companies based on the misclassification of their drivers. Most recently, Uber settled a misclassification suit in New Jersey for over \$100 million. These regulatory actions and/or increased scrutiny could result in increased costs and burdens for the Company. The Company has already experienced an increase in misclassification claims since the beginning of the pandemic, particularly from various state unemployment agencies. It is possible that these claims may increase pending the Department of Labor’s proposed rule making around employment classification.

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 would adversely affect our financial condition.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None

**Item 3. Defaults Upon Senior Securities**

Not applicable

**Item 4. Mine Safety Disclosures**

Not applicable

**Item 5. Other Information**

On November 8, 2022, ASAP Inc. (f/k/a Waitr Inc.), Waitr Intermediate Holdings, LLC, the lenders party thereto and Luxor Capital entered into an amendment to the Credit Agreement (the “November 2022 Amended Credit Agreement”) and the Company, the lenders party thereto and Luxor Capital entered into an amendment to the Convertible Notes Agreement (the “November 2022 Amended Convertible Notes Agreement”).

Pursuant to the November 2022 Amended Credit Agreement, commencing with the fiscal quarter ending December 31, 2022, the portion of the proceeds of any ATM public common stock issuances to be applied to the prepayment of the Term Loan under the Credit Agreement increases from 50% to 60%. The November 2022 Amended Convertible Notes Agreement includes (i) a reduction of the interest rate under the Convertible Notes Agreement from 6% to 4.5% per annum and (ii) an adjustment of the portion of an interest payment that can be paid in-kind, if elected by the Company, from 50% to approximately 33%. Additionally, pursuant to the November 2022 Amended Convertible Notes Agreement, subsequent to the payment in full of the Term Loan outstanding under the Credit Agreement, the portion of the proceeds of any future ATM public common stock issuances to be applied to the prepayment of the Notes under the Convertible Notes Agreement increases from 50% to 60%.

**Item 6. Exhibits**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#">Fourth Amended and Restated Open Market Sale Agreement dated August 17, 2022, 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 August 17, 2022).</a>
10.2	<a href="#">Conversion Agreement dated as of July 22, 2022 by and among Waitr Holdings Inc., 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 July 25, 2022)</a>
10.3	<a href="#">Amendment No. 6 to Credit and Guaranty Agreement by and among ASAP Inc. (f/k/a Waitr Inc.), Waitr Intermediate Holdings, LLC, other guarantors party hereto, Luxor Capital, LLC and Luxor Capital Group, LP</a>
10.4	<a href="#">Amendment No. 7 to Credit Agreement by and among Waitr Holdings Inc., various lenders thereto, and Luxor Capital Group, LP</a> <sup>(1)</sup>
10.5	<a href="#">Amendment to the Mark D’Ambrosio employment agreement dated effective October 24, 2022</a> <sup>(1)</sup>
31.1	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(a)</a> <sup>(1)</sup>
31.2	<a href="#">Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(a)</a> <sup>(1)</sup>
32.1	<a href="#">Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350</a> <sup>(1)</sup>
32.2	<a href="#">Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350</a> <sup>(1)</sup>
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
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

<sup>(1)</sup> Filed herewith



**AMENDMENT NO. 6**  
**to**  
**CREDIT AND GUARANTY AGREEMENT**

This AMENDMENT NO. 6 TO CREDIT AND GUARANTY AGREEMENT (this "Amendment") is made as of November 8, 2022, by and among ASAP INC. (f/k/a Waitr Inc.), a Delaware corporation ("Borrower"), WAITR INTERMEDIATE HOLDINGS, LLC, a Delaware limited liability company ("Holdings"), the other Guarantors party hereto, LUXOR CAPITAL, LLC, as a Lender (as hereinafter defined) and LUXOR CAPITAL GROUP, LP, as administrative agent (in such capacity, "Administrative Agent") and collateral agent (in such capacity, the "Collateral Agent") for the Lenders.

**WHEREAS**, Borrower, Holdings, Administrative Agent, and the lenders from time to time party thereto (the "Lenders") are parties to that certain Credit and Guaranty Agreement dated as of November 15, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof (including as amended pursuant to (i) that certain Amendment No. 1 to Credit and Guaranty Agreement dated as of January 17, 2019, (ii) that certain Amendment No. 2 to Credit and Guaranty Agreement dated as of May 21, 2019, (iii) that certain Amendment No. 3 to Credit and Guaranty Agreement dated as of July 15, 2020, (iv) that certain Amendment No. 4 to Credit and Guaranty Agreement dated as of March 9, 2021 and (v) that certain Amendment No. 5 to Credit and Guaranty Agreement dated as of May 9, 2022), the "Existing Credit Agreement"; and the Existing Credit Agreement, as amended by this Amendment being referred to herein as the "Amended Credit Agreement");

**WHEREAS**, Borrower has requested that Lenders amend the Existing Credit Agreement so as to effectuate the amendments contemplated by Section 2 hereof; and

**WHEREAS**, Borrower, Holdings, the other Guarantors, Administrative Agent, and Lenders have agreed to such amendments upon and subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Holdings, the other Guarantors, Administrative Agent, and Lenders hereby agree as follows:

SECTION 1. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Amended Credit Agreement.

SECTION 2. Amendments to Existing Credit Agreement. The Existing Credit Agreement is hereby amended, effective as of the Amendment No. 6 Effective Date (as defined below), as follows:

(a) Section 1.1 of the Existing Credit Agreement is hereby amended by adding the following defined terms in appropriate alphabetical order:

**"Amendment No. 6 Effective Date"** means November 8, 2022.

“**ATM Offering Proceeds**” means any net cash proceeds received by Parent in connection with any ATM Offering.

(b) Section 2.9(i) of the Existing Credit Agreement is hereby amended and restated in its entirety as follows:

“(i) Commencing as of the Amendment No. 6 Effective Date, no later than the following Wednesday (or such later date as may be agreed to by the Administrative Agent in its sole discretion) after the end of any calendar week in which Parent has received ATM Offering Proceeds, the Borrower shall prepay the outstanding principal amount of the Term Loans in an aggregate principal amount equal to 60% of such ATM Offering Proceeds received during such calendar week; provided that any ATM Offering Proceeds received after the Amendment No. 6 Effective Date in excess of the amount required to be prepaid pursuant to this Section 2.9(i) (such proceeds, “**Excess ATM Offering Proceeds**”) may be utilized for working capital or general corporate purposes of Holdings and its Subsidiaries, including for Investments and Permitted Acquisitions.

SECTION 3. Limited Waiver. Subject to the satisfaction of all of the conditions set forth in Section 5 below, effective as of the Amendment No. 6 Effective Date, the Administrative Agent and the Lenders party hereto constituting Required Lenders hereby waive any requirements to prepay the Term Loan pursuant to Section 2.9(c) of the Amended Credit Agreement solely with respect to (i) a capital contribution to Holdings made on or about the Amendment No. 6 Effective Date in an aggregate amount equal to \$3,000,000 and (ii) a capital contribution to Holdings made on or about December 1, 2022 in an aggregate amount equal to \$2,000,000, in each case which shall be used for working capital or general corporate purposes of Holdings and its Subsidiaries, including for Investments and Permitted Acquisitions. The waiver set forth in this Section 3 is a limited waiver, shall be limited precisely as written, and, except as expressly provided herein, shall not be deemed or otherwise construed to (i) constitute a waiver of any other term or provision of the Amended Credit Agreement or any of the other Credit Documents or (ii) operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Credit Documents.

SECTION 4. Representations and Warranties of the Credit Parties. By its execution and delivery of this Amendment, each Credit Party hereby represents and warrants that (i) each of the representations and warranties contained in Section 4 of the Amended Credit Agreement (which are incorporated herein by this reference, *mutatis mutandis*) are true and correct in all material respects on and as of the Amendment No. 6 Effective Date (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which were true and correct in all respects) on and as of such earlier date and (ii) as of the date hereof, since October 4, 2022 there have been no ATM Offerings and no ATM Offering Proceeds have been received by Parent.

SECTION 5. Conditions of Effectiveness. This Amendment shall become effective on and as of the date (such date, the “Amendment No. 6 Effective Date”) upon which all of the following conditions set forth in this Section 5 shall have been satisfied:

(a) Receipt by Administrative Agent of counterparts of this Amendment duly executed by each Credit Party, Lenders and Administrative Agent.

(b) On the Amendment No. 6 Effective Date after giving effect to this Amendment, (i) each of the representations and warranties contained in Section 4 of the Existing Credit Agreement are true and correct in all material respects on and as of the Amendment No. 6 Effective Date (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which were true and correct in all respects) on and as of such earlier date and (ii) no event shall have occurred and be continuing or would result from the consummation of this Amendment that would constitute an Event of Default under the Existing Credit Agreement.

(c) Parent, Administrative Agent and Lenders (as defined therein) party to the Parent Convertible Notes Credit Agreement will have executed and delivered an amendment to the Parent Convertible Notes Credit Agreement in form and substance reasonably satisfactory to Administrative Agent.

SECTION 6. Reference to and Effect on the Credit Agreement.

(a) Upon the Amendment No. 6 Effective Date, each reference in the Existing Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import shall mean and be a reference to the Amended Credit Agreement and each reference in any other Credit Document to “the Credit Agreement” shall mean and be a reference to the Amended Credit Agreement.

(b) Except as specifically amended hereby, the Credit Documents shall remain in full force and effect and are hereby ratified and confirmed. Other than as expressly set forth herein, nothing in this Amendment shall be deemed to constitute a waiver by Administrative Agent or any Lender of any Default or Event of Default, nor constitute a waiver of any provision of the Existing Credit Agreement, this Amendment, the Amended Credit Agreement, any Credit Document or any other documents, instruments or agreements executed and/or delivered in connection herewith or therewith, whether now existing or hereafter arising, or of any right, power or remedy that Administrative Agent or Lenders may have under any of the Credit Documents or applicable law. Upon the Amendment No. 6 Effective Date, this Amendment, the Amended Credit Agreement and the other Credit Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties hereto with respect to the subject matter hereof.

(c) Borrower and the other parties hereto acknowledge and agree that, on and after the Amendment No. 6 Effective Date, this Amendment shall constitute a Credit Document for all purposes of the Amended Credit Agreement.

SECTION 7. Governing Law. This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

SECTION 8. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

SECTION 9. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature

page of this Amendment by facsimile, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 10. Reaffirmation. Each of the Credit Parties as debtor, grantor, pledgor, guarantor, assignor, or in any other similar capacity in which such Credit Party grants liens or security interests in its property or otherwise acts as an accommodation party or guarantor, as the case may be, (a) hereby ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Credit Documents to which it is a party (after giving effect hereto) and (b) to the extent such Credit Party granted liens on or security interests in any of its property pursuant to any Credit Document as security for or otherwise guaranteed the Obligations under or with respect to the Credit Documents, hereby ratifies and reaffirms such guarantee and grant of security interests and liens and confirms and agrees that such security interests and liens hereafter secure all of the Obligations as amended hereby. Each of the Credit Parties hereby consents to this Amendment and each of the transactions contemplated hereby and acknowledges that each of the Credit Documents (as amended through and including the date hereof) remains in full force and effect and is hereby ratified and reaffirmed.

SECTION 11. No Novation. Neither this Amendment nor the Amended Credit Agreement shall extinguish the obligations for the payment of money outstanding under the Existing Credit Agreement or discharge or release any Lien or priority of any Collateral Document or any Loan Guaranty or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Existing Credit Agreement or any Collateral Document or instruments securing the same, which shall remain in full force and effect, except to any extent modified hereby or by instruments executed concurrently herewith. Nothing implied by this Amendment, the Amended Credit Agreement or in any other document contemplated hereby or thereby shall be construed as a release or other discharge of the Credit Parties under the Existing Credit Agreement, the Amended Credit Agreement or any other Credit Document. Each of the Existing Credit Agreement and the other Credit Documents shall remain in full force and effect, except to the extent specifically modified hereby or in connection herewith. It is the intention of the parties hereto that neither this Amendment nor the Amended Credit Agreement constitute a novation of the Obligations outstanding under the Existing Credit Agreement or any collateral securing the same, all of which shall remain in full force and effect after the date hereof, as amended by this Amendment.

SECTION 12. Release. Borrower and each Credit Party hereby waive, release, remise and forever discharge Administrative Agent, Collateral Agent, Lead Arranger and Lenders whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law of any kind or character, known or unknown, which Borrower and any other Credit Party ever had, now has or might hereafter have against Administrative Agent, Collateral Agent, Lead Arranger or Lenders and each other Indemnitee arising from any event occurring on or prior to the date hereof which relates, directly or indirectly, to the Term Loan or the Credit Documents or any acts or omissions of Administrative Agent, Collateral Agent, Lead Arranger, Lenders or any other Indemnitee in respect of the Term Loan or the Credit Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

ASAP INC.

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

WAITR INTERMEDIATE HOLDINGS, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

BITESQUAD.COM, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

KASA DELIVERY CORPORATION

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

CDMX HOLDINGS, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

CATERING ON DEMAND LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

Signature Page to  
Amendment No. 6 to Credit and Guaranty Agreement

KASA DELIVERY, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

DELIVERY LOGISTICS, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

DUDE DELIVERY, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

DUDE CANNABIS, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

DDIT LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

HAVE FUN, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

Signature Page to  
Amendment No. 6 to Credit and Guaranty Agreement

CAPE PAYMENTS, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

LEAF ADVISORS, LLC

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

Signature Page to  
Amendment No. 6 to Credit and Guaranty Agreement

LUXOR CAPITAL GROUP, LP  
as Administrative Agent, Lead Arranger and Collateral Agent

By: /s/ Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

LUXOR CAPITAL, LLC, as Lender  
By: Luxor Capital Group, LP,  
its Manager

By: /s/ Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

Signature Page to  
Amendment No. 6 to Credit and Guaranty Agreement

**AMENDMENT NO. 7**  
**to**  
**CREDIT AGREEMENT**

This AMENDMENT NO. 7 TO CREDIT AGREEMENT (this "Amendment") is made as of November 8, 2022, by and among WAITR HOLDINGS INC., a Delaware corporation ("Borrower"), LUXOR CAPITAL, LLC, as a Lender (as hereinafter defined), the other Lenders party hereto and LUXOR CAPITAL GROUP, LP, as administrative agent for Lenders (in such capacity, the "Administrative Agent").

**WHEREAS**, Borrower, Administrative Agent, and the lenders from time to time party thereto (the "Lenders") are parties to that certain Credit Agreement dated as of November 15, 2018 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof (including as amended pursuant to (i) that certain Amendment No. 1 to Credit Agreement dated as of January 17, 2019, (ii) that certain Amendment No. 2 to Credit Agreement dated as of May 21, 2019, (iii) that certain Amendment No. 3 to Credit Agreement dated as of July 15, 2020, (iv) that certain Amendment No. 4 to Credit Agreement dated as of March 9, 2021, (v) that certain Amendment No. 5 to Credit Agreement dated as of May 9, 2022 and (vi) that certain Amendment No. 6 to Credit Agreement dated as of May 12, 2022), the "Existing Credit Agreement"; and the Existing Credit Agreement, as amended by this Amendment being referred to herein as the "Amended Credit Agreement");

**WHEREAS**, Borrower has requested that Lenders amend the Existing Credit Agreement so as to effectuate the amendments contemplated by Section 2 hereof; and

**WHEREAS**, Borrower, Administrative Agent, and Lenders have agreed to such amendments upon and subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Administrative Agent, and Lenders hereby agree as follows:

SECTION 1. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to such terms in the Amended Credit Agreement.

SECTION 2. Amendments to Existing Credit Agreement. The Existing Credit Agreement is hereby amended, effective as of the Amendment No. 7 Effective Date (as defined below), as follows:

(a) Section 1.1 of the Existing Credit Agreement is hereby amended by adding the following defined terms in appropriate alphabetical order:

**"Amendment No. 7 Effective Date"** means November 8, 2022.

**"ATM Offering Proceeds"** means any net cash proceeds received by Borrower in connection with any ATM Offering.

(b) Section 1.1 of the Existing Credit Agreement is hereby amended by amending and restating the definition of "OpCo" in its entirety as follows:

“OpCo” means ASAP Inc., a Delaware corporation.

(c) Section 2.5(a) of the Existing Credit Agreement is hereby amended by amending and restating Section 2.5(a) in its entirety as follows:

(a) Except as otherwise set forth herein, the Term Loan shall bear interest on the unpaid principal amount thereof (x) from the date made to (but not including) the Amendment No. 2 Effective Date at the rate of 1.0% per annum and, thereafter, (y) from (and including) the Amendment No. 2 Effective Date to (but not including) the Amendment No. 7 Effective Date at the rate of 6.0% per annum (except that from (and including) the Amendment No. 3 Effective Date to (but not including) the first anniversary of the Amendment No. 3 Effective Date at the rate of 4.0% per annum) and, thereafter, (z) from (and including) the Amendment No. 7 Effective Date through the earlier to occur of the repayment (whether by acceleration or otherwise) thereof or conversion thereof into Capital Stock of the Borrower at the rate of 4.5% per annum. Any portion of the Term Loan that is converted into Capital Stock of the Borrower shall cease to accrue interest on the date such Capital Stock of the Borrower is issued to a Lender. In connection with the conversion of the Term Loan into Capital Stock of the Borrower, no interest shall be payable in respect of the Term Loan to the extent that the amount of the accrued and unpaid interest was so converted.

(d) Section 2.5(d) of the Existing Credit Agreement is hereby amended by amending and restating Section 2.5(d) in its entirety as follows:

(d) For each Interest Payment Date (other than an Interest Payment Date due to final maturity of the Term Loan), the Borrower may elect, by written notice delivered to the Administrative Agent at least five (5) Business Days prior to any such Interest Payment Date, to pay the interest due on the Term Loan on such Interest Payment Date as follows: (i) a portion of the interest accrued from the immediately preceding Interest Payment Date (or, if no interest has been paid, the Closing Date) at the interest rate set forth in Section 2.5(a) above, in an amount not to exceed 1.5% per annum (the “**PIK Portion**”), which shall be added to the outstanding principal amount of the Term Loan (and thereafter bear interest at the interest rate set forth in Section 2.5(a) above and, if applicable, the Default Rate and otherwise be treated as Term Loan for purposes of this Agreement) and (ii) the remaining portion of interest accrued from the immediately preceding Interest Payment Date on which interest was paid (or, if no interest has been paid, the Closing Date) in Cash. Any such written notice from the Borrower shall be accompanied by a certificate of a responsible officer of the Borrower specifying the percentage of interest that will constitute the PIK Portion, which shall not exceed 1.5% per annum; provided, that if no such notice is provided, 3.0% per annum of such interest shall be paid in Cash and 1.5% per annum shall constitute the PIK Portion.

(e) Section 2.11 of the Existing Credit Agreement is hereby amended by amending and restating Section 2.11 in its entirety as follows:

**2.11. Mandatory Prepayment.** No later than the following Wednesday (or such later date as may be agreed to by the Administrative Agent in its sole discretion) after the end of any calendar week in which Borrower has received ATM Offering Proceeds, commencing with the first such date to occur on or after the Facility Termination Date (as

defined in the Credit and Guaranty Agreement), Borrower shall prepay the outstanding principal amount of the Term Loans in an aggregate principal amount equal to 60% of such ATM Offering Proceeds received during such calendar week; provided that the initial prepayment required to be made pursuant to this Section 2.11 shall be an amount equal to the difference between (x) 60% of such ATM Offering Proceeds received during such calendar week *minus* (y) the aggregate amount of such ATM Offering Proceeds applied to prepay the Term Loans (as defined in the Credit and Guaranty Agreement) pursuant to Section 2.9(i) of the Credit and Guaranty Agreement for such calendar week; provided further that any Excess ATM Offering Proceeds may be utilized for working capital or general corporate purposes of Borrower and its Subsidiaries, including for Investments and Permitted Acquisitions.

(f) Section 5.14 of the Existing Credit Agreement is hereby amended by amending and restating Section 5.14 in its entirety as follows:

**5.14 Proceeds from ATM Offerings.** Commencing as of the Amendment No. 7 Effective Date and continuing until the Facility Termination Date (as defined in the Credit and Guaranty Agreement), no later than the following Wednesday (or such later date as may be agreed to by the Administrative Agent in its sole discretion) after the end of any calendar week in which Borrower has received ATM Offering Proceeds, Borrower shall contribute to Holdings (and Holdings shall in turn contribute to OpCo) an aggregate principal amount equal to 60% of such ATM Offering Proceeds received during such calendar week, which shall be used for the prepayment of the Term Loans (as defined in the Credit and Guaranty Agreement) pursuant to the terms of the Credit and Guaranty Agreement; provided that any ATM Offering Proceeds received after the Amendment No. 7 Effective Date in excess of the amount required to be prepaid pursuant to Section 2.9(i) of the Credit and Guaranty Agreement and/or Section 2.11 hereof (such proceeds, “**Excess ATM Offering Proceeds**”) may be utilized for working capital or general corporate purposes of Borrower and, prior to the Facility Termination Date (as defined in the Credit and Guaranty Agreement), to the extent contributed in accordance with Section 2.9(c)(ii) of the Credit and Guaranty Agreement, its Subsidiaries, including for Investments and Permitted Acquisitions.

SECTION 3. Representations and Warranties of Borrower. By its execution and delivery of this Amendment, Borrower hereby represents and warrants that (i) each of the representations and warranties contained in Section 4 of the Amended Credit Agreement (which are incorporated herein by this reference, *mutatis mutandis*) are true and correct in all material respects on and as of the Amendment No. 7 Effective Date (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which were true and correct in all respects) on and as of such earlier date and (ii) as of the date hereof, since October 4, 2022 there have been no ATM Offerings and no ATM Offering Proceeds have been received by Borrower.

SECTION 4. Conditions of Effectiveness. This Amendment shall become effective on and as of the date (such date, the “Amendment No. 7 Effective Date”) upon which all of the following conditions set forth in this Section 4 shall have been satisfied:

(a) Receipt by Administrative Agent of counterparts of this Amendment duly executed by Borrower, Lenders and Administrative Agent.

(b) On the Amendment No. 7 Effective Date after giving effect to this Amendment, (i) each of the representations and warranties contained in Section 4 of the Existing Credit Agreement are true and correct in all material respects on and as of the Amendment No. 7 Effective Date (except for those representations and warranties that are conditioned by materiality, which are true and correct in all respects) to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects (except for those representations and warranties that are conditioned by materiality, which were true and correct in all respects) on and as of such earlier date and (ii) no event shall have occurred and be continuing or would result from the consummation of this Amendment that would constitute an Event of Default under the Existing Credit Agreement.

(c) Holdings, OpCo, Administrative Agent and Lenders party to the Credit and Guaranty Agreement will have executed and delivered an amendment to the Credit and Guaranty Agreement in form and substance reasonably satisfactory to Administrative Agent.

**SECTION 5. Reference to and Effect on the Credit Agreement.**

(a) Upon the Amendment No. 7 Effective Date, each reference in the Existing Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import shall mean and be a reference to the Amended Credit Agreement and each reference in any other Credit Document to “the Credit Agreement” shall mean and be a reference to the Amended Credit Agreement.

(b) Except as specifically amended hereby, the Credit Documents shall remain in full force and effect and are hereby ratified and confirmed. Other than as expressly set forth herein, nothing in this Amendment shall be deemed to constitute a waiver by Administrative Agent or any Lender of any Default or Event of Default, nor constitute a waiver of any provision of the Existing Credit Agreement, this Amendment, the Amended Credit Agreement, any Credit Document or any other documents, instruments or agreements executed and/or delivered in connection herewith or therewith, whether now existing or hereafter arising, or of any right, power or remedy that Administrative Agent or Lenders may have under any of the Credit Documents or applicable law. Upon the Amendment No. 7 Effective Date, this Amendment, the Amended Credit Agreement and the other Credit Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties hereto with respect to the subject matter hereof.

(c) Borrower and the other parties hereto acknowledge and agree that, on and after the Amendment No. 7 Effective Date, this Amendment shall constitute a Credit Document for all purposes of the Amended Credit Agreement.

**SECTION 6. Governing Law.** This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

**SECTION 7. Headings.** Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

SECTION 8. Counterparts. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, e-mailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 9. Reaffirmation. Borrower hereby ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Credit Documents to which it is a party (after giving effect hereto). Borrower hereby consents to this Amendment and each of the transactions contemplated hereby and acknowledges that each of the Credit Documents (as amended through and including the date hereof) remains in full force and effect and is hereby ratified and reaffirmed.

SECTION 10. No Novation. Neither this Amendment nor the Amended Credit Agreement shall extinguish the obligations for the payment of money outstanding under the Existing Credit Agreement. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Existing Credit Agreement, which shall remain in full force and effect, except to any extent modified hereby or by instruments executed concurrently herewith. Nothing implied by this Amendment, the Amended Credit Agreement or in any other document contemplated hereby or thereby shall be construed as a release or other discharge of Borrower under the Existing Credit Agreement, the Amended Credit Agreement or any other Credit Document. Each of the Existing Credit Agreement and the other Credit Documents shall remain in full force and effect, except to the extent specifically modified hereby or in connection herewith. It is the intention of the parties hereto that neither this Amendment nor the Amended Credit Agreement constitute a novation of the Obligations outstanding under the Existing Credit Agreement, all of which shall remain in full force and effect after the date hereof, as amended by this Amendment.

SECTION 11. Release. Borrower hereby waives, releases, remises and forever discharges Administrative Agent, Lead Arranger and Lenders whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law of any kind or character, known or unknown, which Borrower ever had, now has or might hereafter have against Administrative Agent, Lead Arranger or Lenders and each other Indemnitee arising from any event occurring on or prior to the date hereof which relates, directly or indirectly, to the Term Loan or the Credit Documents or any acts or omissions of Administrative Agent, Lead Arranger, Lenders or any other Indemnitee in respect of the Term Loan or the Credit Documents.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

WAITR HOLDINGS INC.

By: /s/ Carl Grimstad  
Name: Carl Grimstad  
Title: Chief Executive Officer

Signature Page to  
Amendment No. 7 to Credit Agreement

LUXOR CAPITAL GROUP, LP,  
as Administrative Agent and Lead Arranger

By: /s/ Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

Signature Page to  
Amendment No. 7 to Credit Agreement

LUXOR CAPITAL PARTNERS, LP,  
as Lender

By: Luxor Capital Group, LP,  
its Investment Manager

By: /s/ Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP,  
as Lender

By: Luxor Capital Group, LP,  
its Investment Manager

By: /s/ Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

Signature Page to  
Amendment No. 7 to Credit Agreement

LUXOR WAVEFRONT, LP,  
as Lender

By: Luxor Capital Group, LP,  
its Investment Manager

By: /s/Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

LUGARD ROAD CAPITAL MASTER FUND, LP  
as Lender

By: Luxor Capital Group, LP,  
its Investment Manager

By: /s/Norris Nissim  
Name: Norris Nissim  
Title: General Counsel

Signature Page to  
Amendment No. 7 to Credit Agreement

**AMENDMENT NO. 1 TO  
EMPLOYMENT AGREEMENT**

This amendment dated October 24, 2022 (the “Amendment”) amends the executive employment agreement dated May 28, 2020 (“Employment Agreement”), by and between Waitr Holdings Inc., a Delaware corporation (the “Company”) and Mark D’Ambrosio (“Executive”), and is effective the 24<sup>th</sup> day of October, 2022 (“Effective Date”).

**WHEREAS**, the Company and Executive desire to amend and restate Section 4.2(b), (c) and (d) of the Employment Agreement;

**NOW, THEREFORE**, in consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment and Restatement of Section 4.2. Section 4.2(b), (c) and (d) of the Employment Agreement is hereby amended and restated as follows:

“(b) Executive shall be eligible to receive an annual bonus, in the sole discretion of the Board. As of the date hereof, Executive is not owed any bonus by the Company pursuant to the terms of his Employment Agreement, nor has he been promised by the Company any bonus as of the date hereof.”

“(c) Reserved.”

“(d) Reserved.”

2. No Other Amendments or Supplements. Except as set forth in Section 1, the Employment Agreement shall remain in full force and effect as currently in effect.
3. Severability. Should any one or more of the provisions of this Amendment be determined to be illegal or unenforceable, all other provisions of this Amendment shall be given effect separately from the provision or provisions determined to be illegal or unenforceable and shall not be effected thereby.
4. Counterparts. This Amendment may be executed in multiple counterparts with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.
5. Entire Agreement. This Amendment and the Employment Agreement constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.
6. Defined Terms. Defined terms used in this Amendment shall have the meaning ascribed to them herein or in the Employment Agreement.

**IN WITNESS WHEREOF**, each of the parties hereto has executed this Amendment or has caused this Amendment to be executed on its behalf by a representative duly authorized, all as of the Effective Date.

Waitr Holdings, Inc.

By: /s/ Carl Grimstad  
Carl Grimstad  
Chief Executive Officer

Executive

/s/ Mark D'Ambrosio  
Mark D'Ambrosio

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO RULES 13a-14(b) and 15d-14(a)  
UNDER THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Carl A. Grimstad, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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: November 9, 2022

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

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO RULES 13a-14(b) and 15d-14(a)  
UNDER THE SECURITIES EXCHANGE ACT OF 1934  
AS ADOPTED PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Armen Yeghyazarians, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q 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: November 9, 2022

By: \_\_\_\_\_  
/s/ Armen Yeghyazarians  
Armen Yeghyazarians  
Chief Financial Officer and Chief Accounting Officer  
(Principal Financial Officer)



