

REFINITIV

DELTA REPORT

10-Q

XXII - 22ND CENTURY GROUP, INC.

10-Q - MARCH 31, 2024 COMPARED TO 10-Q - SEPTEMBER 30, 2023

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UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION WASHINGTON, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended **September 30, 2023** **March 31, 2024**

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: 001-36338

22nd Century Group, Inc.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction
of incorporation)

98-0468420

(IRS Employer
Identification No.)

500 Seneca Street 321 Farmington Road Mocksville, Suite 507 North Carolina, Buffalo 27028, New York 14204

(Address of principal executive offices)

(716) 270-1523

(Registrant's telephone number, including area code)

Securities registered under Section 12(b) of the Act:

Title of each class	Ticker symbol	Name of Exchange on Which Registered
Common Stock, \$0.00001 par value	XXII	NASDAQ Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 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 type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of **November 1, 2023** **May 14, 2024**, there were **30,878,168** **8,292,518** shares of common stock issued and outstanding.

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22nd CENTURY GROUP, INC.

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22nd CENTURY GROUP, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)
(amounts in thousands, except share and per-share data)

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
ASSETS				
Current assets:				
Cash and cash equivalents	\$ 2,850	\$ 3,020	\$ 1,517	\$ 2,058
Short-term investment securities	—	18,193		
Restricted cash	7,500	—		
Accounts receivable, net	6,493	5,641	1,747	1,671
Inventories	15,955	10,008	2,889	4,346
Insurance recoveries	3,000	5,000	3,768	3,768
GVB promissory note			2,000	2,000
Prepaid expenses and other current assets	4,818	2,743	699	1,180
Current assets of discontinued operations held for sale			1,093	1,254
Total current assets	40,616	44,605	13,713	16,277
Property, plant and equipment, net	9,309	13,093	3,236	3,393
Operating lease right-of-use assets, net	2,984	2,675	1,832	1,894
Goodwill	—	33,160		
Intangible assets, net	6,900	16,853	5,820	5,924
Investments	682	682		
Other assets	3,705	3,583	15	15
Total assets	\$ 64,196	\$ 114,651	\$ 24,616	\$ 27,503
LIABILITIES AND SHAREHOLDERS' EQUITY				
LIABILITIES AND SHAREHOLDERS' DEFICIT				
Current liabilities:				
Notes and loans payable - current	\$ 1,441	\$ 908	\$ —	\$ 543
Current portion of long-term debt	18,165	—	6,577	5,848

Operating lease obligations	1,097	681	238	231
Accounts payable	7,005	4,168	5,046	4,445
Accrued expenses	6,649	1,428	1,449	1,322
Accrued litigation			3,768	3,768
Accrued payroll	743	3,199	466	883
Accrued excise taxes and fees	2,693	1,423	2,525	2,234
Deferred income	704	831	376	726
Other current liabilities	1,263	380	1,672	1,849
Current liabilities of discontinued operations held for sale			3,147	3,185
Total current liabilities	39,760	13,018	25,264	25,034
Long-term liabilities:				
Notes and loans payable	156	3,001		
Operating lease obligations	6,219	2,141	1,635	1,698
Long-term debt			8,136	8,058
Other long-term liabilities	4,266	516	1,205	1,123
Total liabilities	50,401	18,676	36,240	35,914
Commitments and contingencies (Note 11)				
Shareholders' equity				
Shareholders' equity (deficit)				
Preferred stock, \$0.0001 par value, 10,000,000 shares authorized				
Common stock, \$0.0001 par value, 33,333,334 shares authorized				
Common stock, \$0.0001 par value, 250,000,000 shares authorized				
Capital stock issued and outstanding:				
21,078,656 common shares (14,349,275 at December 31, 2022)				
3,600,935 common shares (2,720,437 at December 31, 2023)				
Common stock, par value	—	—	—	—
Capital in excess of par value	363,198	333,900	372,822	370,297
Accumulated other comprehensive loss	(30)	(111)		
Accumulated deficit	(349,373)	(237,814)	(384,446)	(378,707)
Total shareholders' equity	13,795	95,975		
Total liabilities and shareholders' equity	\$ 64,196	\$ 114,651		
Total shareholders' deficit			(11,624)	(8,410)
Total liabilities and shareholders' deficit			\$ 24,616	\$ 27,503

See accompanying notes to Condensed Consolidated Financial Statements.

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22nd CENTURY GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(U unaudited)
(amounts in thousands, except share and per-share data)

	Three Months Ended September 30,	Nine Months Ended September 30,
--	---	--

	2023	2022	2023	2022
Revenues, net	\$ 17,811	\$ 19,383	\$ 63,200	\$ 42,905
Cost of goods sold	19,777	18,764	68,688	41,086
Gross (loss) profit	(1,966)	619	(5,488)	1,819
Operating expenses:				
Sales, general and administrative	11,199	14,528	39,971	30,475
Research and development	1,613	1,318	4,923	4,355
Other operating expense, net	23,344	41	24,917	880
Goodwill impairment	33,360	—	33,360	—
Total operating expenses	69,516	15,887	103,171	35,710
Operating loss	(71,482)	(15,268)	(108,659)	(33,891)
Other income (expense):				
Unrealized loss on investments	—	(345)	—	(2,046)
Realized loss on short-term investment securities	—	(35)	(41)	(143)
Other income, net	(12)	—	23	—
Interest income, net	79	113	201	211
Interest expense	(1,305)	(148)	(2,919)	(230)
Total other expense	(1,238)	(415)	(2,736)	(2,208)
Loss before income taxes	(72,720)	(15,683)	(111,395)	(36,099)
Provision for income taxes	—	(2,581)	46	(2,581)
Net loss	\$ (72,720)	\$ (13,102)	\$ (111,441)	\$ (33,518)
Deemed dividend from trigger of anti-dilution provision feature	—	—	(367)	—
Deemed dividend related to down-round features	(564)	—	(564)	—
Net loss available to common shareholders	\$ (73,284)	\$ (13,102)	\$ (112,372)	\$ (33,518)
Basic and diluted loss per common share	\$ (3.68)	\$ (0.94)	\$ (6.85)	\$ (2.71)
Weighted average common shares outstanding - basic and diluted	19,887	14,009	16,411	12,351
Net loss	(72,720)	(13,102)	\$ (111,441)	\$ (33,518)
Other comprehensive income (loss):				
Unrealized gain (loss) on short-term investment securities	—	(19)	71	(488)
Foreign currency translation	(69)	—	(31)	—
Reclassification of realized losses to net loss	—	35	41	143
Other comprehensive income (loss)	(69)	16	81	(345)
Comprehensive loss	\$ (72,789)	\$ (13,086)	\$ (111,360)	\$ (33,863)

See accompanying notes to Condensed Consolidated Financial Statements.

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22nd CENTURY GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(Unaudited)
(amounts in thousands, except share data)

	Three Months Ended	
	March 31,	
	2024	2023
Revenues, net	\$ 6,469	\$ 8,926
Cost of goods sold	4,213	4,724
Excise taxes and fees on products	3,385	4,185
Gross (loss) profit	<u>(1,129)</u>	17
Operating expenses:		
Sales, general and administrative	2,906	9,837
Research and development	425	730
Other operating expense (income), net	<u>(26)</u>	<u>(146)</u>
Total operating expenses	<u>3,305</u>	<u>10,421</u>
Operating loss from continuing operations	<u>(4,434)</u>	<u>(10,404)</u>
Other income (expense):		
Other income (expense), net	—	(155)
Interest income, net	—	57
Interest expense	<u>(1,016)</u>	<u>(328)</u>
Total other expense	<u>(1,016)</u>	<u>(426)</u>
Loss from continuing operations before income taxes	<u>(5,450)</u>	<u>(10,830)</u>
Provision (benefit) for income taxes	—	—
Net loss from continuing operations	<u>\$ (5,450)</u>	<u>\$ (10,830)</u>
Discontinued operations:		
Loss from discontinued operations before income taxes	\$ (289)	\$ (7,352)
Provision (benefit) for income taxes	—	—
Net loss from discontinued operations	<u>\$ (289)</u>	<u>\$ (7,352)</u>
Net loss	<u>\$ (5,739)</u>	<u>\$ (18,182)</u>
Deemed dividends	<u>(3,589)</u>	—
Net loss available to common shareholders	<u>\$ (9,328)</u>	<u>\$ (18,182)</u>
Basic and diluted loss per common share from continuing operations	\$ (1.72)	\$ (12.80)
Basic and diluted loss per common share from discontinued operations	<u>\$ (0.09)</u>	<u>\$ (8.69)</u>
Basic and diluted loss per common share from deemed dividends	<u>\$ (1.13)</u>	—
Basic and diluted loss per common share	<u>\$ (2.94)</u>	<u>\$ (21.49)</u>
Weighted average common shares outstanding - basic and diluted	<u>3,165,237</u>	<u>846,005</u>
Net loss	\$ (5,739)	\$ (18,182)
Other comprehensive income:		
Unrealized gain on short-term investment securities	—	61
Foreign currency translation	—	(4)
Reclassification of realized losses to net loss	—	13
Other comprehensive income	—	70
Comprehensive loss	<u>\$ (5,739)</u>	<u>\$ (18,112)</u>

See accompanying notes to Condensed Consolidated Financial Statements.

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22nd CENTURY GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY (DEFICIT)
(Unaudited)
(amounts in thousands, except share data)

	Nine Months Ended September 30, 2023						
				Accumulated			
	Common	Par Value	Capital in	Other	Accumulated		Total
	Shares	of Common	Excess of	Comprehensive	Accumulated	Deficit	Shareholders' Equity
Outstanding*	Shares*	Par Value*	Par Value*	Income (Loss)			
Balance at January 1, 2023	14,349,275	\$ —	\$ 333,900	\$ (111)	\$ (237,814)	\$ 95,975	
Stock issued in connection with RSU vesting, net of 31,607 shares withheld for taxes	90,262	—	(414)	—	—	—	(414)
Stock issued in connection with acquisition	31,056	—	503	—	—	—	503
Equity-based compensation	—	—	1,175	—	—	—	1,175
Adoption of ASU 2016-13	—	—	—	—	—	(118)	(118)
Equity detachable warrants	—	—	1,577	—	—	—	1,577
Other comprehensive income	—	—	—	70	—	—	70
Net loss	—	—	—	—	(18,182)	—	(18,182)
Balance at March 31, 2023	14,470,593	—	336,741	(41)	(256,114)	80,586	
Stock issued in connection with RSU vesting, net of shares withheld for taxes	24,524	—	(5)	—	—	—	(5)
Stock issued in connection with ATM, net of fees of \$178	284,343	—	2,563	—	—	—	2,563
Stock issued in connection with capital raise, net of issuance costs of \$422	747,974	—	4,851	—	—	—	4,851
Stock issued in connection with licensing arrangement	333,334	—	3,570	—	—	—	3,570
Equity-based compensation	—	—	1,486	—	—	—	1,486
Other comprehensive loss	—	—	—	80	—	—	80
Net loss	—	—	—	—	(20,539)	—	(20,539)
Fractional shares issued for reverse stock split	66,035	—	—	—	—	—	—
Balance at June 30, 2023	15,926,803	\$ —	\$ 349,206	\$ 39	\$ (276,653)	\$ 72,592	
Stock issued in connection with capital raises, net of issuance costs of \$1,219	5,151,853	—	13,416	—	—	—	13,416
Equity-based compensation	—	—	576	—	—	—	576
Other comprehensive loss	—	—	—	(69)	—	—	(69)
Net loss	—	—	—	—	(72,720)	—	(72,720)
Balance at September 30, 2023	21,078,656	\$ —	\$ 363,198	\$ (30)	\$ (349,373)	\$ 13,795	
*Giving retroactive effect to the 1-for-15 reverse stock split effectuated on July 5, 2023							
Three Months Ended March 31, 2024							
	Accumulated						
	Common	Par Value	Capital in	Other	Accumulated		Total
	Shares	of Common	Excess of	Comprehensive	Accumulated	Deficit	Shareholders' Equity
	Outstanding*	Shares*	Par Value*	Income (Loss)	Deficit	Deficit	Deficit
Balance at January 1, 2024	2,720,437	\$ —	\$ 370,297	\$ —	\$ (378,707)	\$ (8,410)	
Stock issued in connection with RSU vesting, net of 405 shares withheld for taxes	3,810	—	(1)	—	—	—	(1)
Stock issued in connection with licensing arrangement	11,480	—	100	—	—	—	100

Stock issued in connection with warrant exercises, net of fees of \$176	747,001	—	2,245	—	—	2,245
Equity-based compensation	—	—	181	—	—	181
Fractional shares issued for reverse stock split	118,207	—	—	—	—	—
Net loss	—	—	—	—	(5,739)	(5,739)
Balance at March 31, 2024	3,600,935	\$ —	\$ 372,822	\$ —	\$ (384,446)	\$ (11,624)

*Giving retroactive effect to the 1-for-15 reverse stock split on July 5, 2023 and subsequently 1-for-16 reverse stock split on April 2, 2024.

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	Nine Months Ended September 30, 2022				
	Common Shares	Par Value of Common Shares*	Capital in Excess of Par Value*	Comprehensive Income (Loss)	Accumulated Deficit
Balance at January 1, 2022	10,858,237	\$ —	\$ 244,249	\$ (162)	\$ (178,000)
Stock issued in connection with RSU vesting	110,916	—	—	—	—
Balance at January 1, 2023	10,969,153	\$ —	\$ 245,462	\$ (562)	\$ (186,000)
Stock issued in connection with RSU vesting, net of 1,976 shares withheld for taxes	—	—	—	—	—
Stock issued in connection with acquisition	—	—	—	—	—
Equity-based compensation	—	—	—	1,213	—
Adoption of ASU 2016-13	—	—	—	—	—
Equity detachable warrants	—	—	—	—	—
Other comprehensive income	—	—	—	—	(400)
Net loss	—	—	—	—	(8,900)
Balance at March 31, 2022	10,969,153	\$ —	\$ 245,462	\$ (562)	\$ (186,000)
Stock issued in connection with RSU vesting	5,001	—	—	—	—
Stock issued in connection with option exercises	10,001	—	174	—	—
Stock issued in connection with acquisition	2,193,334	—	51,653	—	—
Equity-based compensation	—	—	1,106	—	—
Other comprehensive income	—	—	—	39	—
Net loss	—	—	—	—	(11,400)
Balance at June 30, 2022	13,177,489	\$ —	\$ 298,395	\$ (523)	\$ (198,400)
Stock issued in connection with RSU vesting	37,792	—	—	—	—
Stock issued in connection with capital raise, net of issuance costs of 2,516	1,138,221	—	32,484	—	—
Equity-based compensation	—	—	2,247	—	—
Other comprehensive income	—	—	—	16	—
Net loss	—	—	—	—	(13,131)
Balance at September 30, 2022	14,353,502	\$ —	\$ 333,126	\$ (507)	\$ (211,531)
Balance at March 31, 2023					

*Giving retroactive effect to the 1-for-15 reverse stock split effectuated on July 5, 2023

*Giving retroactive effect to the 1-for-15 reverse stock split on July 5, 2023 and subsequently 1-for-16 reverse stock split on April 2, 2024.

See accompanying notes to Condensed Consolidated Financial Statements.

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22nd CENTURY GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(amounts in thousands)

	Nine Months Ended		Three Months Ended	
	September 30,		March 31,	
	2023	2022	2024	2023
Cash flows from operating activities:				
Net loss	\$ (111,441)	\$ (33,518)	\$ (5,739)	\$ (18,182)
Adjustments to reconcile net loss to cash used in operating activities:				
Impairment of goodwill and long-lived assets	57,311	—	—	—
Amortization and depreciation	3,427	1,992	266	881
Amortization of right-of-use asset	823	525	62	294
Amortization of inventory step-up	—	978	—	—
Unrealized loss on investment	—	2,046	—	—
Other non-cash gains and losses	(72)	356	—	6
Other non-cash losses				
Provision for credit losses	246	—	2	61
Loss on the sale of machinery and equipment	75	—	65	103
Debt related charges included in interest expense	1,978	—	807	231
Equity-based employee compensation expense	3,237	4,566	181	1,175
Gain on change of contingent consideration	(186)	—	—	22
Gain on change of warrant liabilities	(540)	—	—	—
Deferred income taxes	—	(2,581)	—	—
Change in fair value of warrant liabilities				139
Change in fair value of derivative liability			82	—
Increase in inventory reserves	1,687	—	431	—
Changes in operating assets and liabilities, net of acquisition:				
Accounts receivable	(1,171)	(1,425)	(77)	(3,624)
Inventory	(7,609)	(5,068)	—	—
Inventories			1,026	(495)
Prepaid expenses and other assets	(605)	(934)	486	1,971
Accounts payable	2,669	1,933	632	312
Accrued expenses	2,051	(56)	127	1,544
Accrued payroll	(2,457)	(1,408)	(417)	(1,923)
Accrued excise taxes and fees	1,270	255	291	906
Other liabilities	(877)	(309)	(480)	(921)
Net cash used in operating activities	(50,184)	(32,648)	(2,255)	(17,500)
Cash flows from investing activities:				
Acquisition of patents, trademarks, and licenses	(433)	(394)	—	(116)
Acquisition of property, plant and equipment	(3,951)	(2,501)	(7)	(1,910)
Proceeds from the sale of property, plant and equipment	251	—	22	200
Acquisition, net of cash acquired	(254)	(1,297)	—	90
Investment in Change Agronomy Ltd.	—	(682)	—	—
Property, plant and equipment insurance proceeds	3,500	—	—	3,500

Sales and maturities of short-term investment securities	21,714	67,315	—	15,726
Purchase of short-term investment securities	(3,475)	(62,061)	—	(2,767)
Net cash provided by investing activities	17,352	380	15	14,723
Cash flows from financing activities:				
Payments on note payables	(4,672)	(1,508)		
Payments on notes payable			(545)	(3,512)
Proceeds from issuance of notes payable	2,360	2,162	—	71
Other financing activities	—	(16)		
Proceeds from issuance of long-term debt	16,849	—	—	16,849
Payment of debt issuance costs	(801)	—	—	(801)
Proceeds from issuance of detachable warrants	6,016	—	—	6,016
Net proceeds from option exercise	—	174		
Proceeds from issuance of common stock related to the ATM	2,741	—		
Payment of common stock issuance costs related to the ATM	(178)	—		
Proceeds from issuance of common stock	19,908	35,000		
Payment of common stock issuance costs	(1,641)	(2,516)		
Net proceeds from warrant exercise			2,245	—
Taxes paid related to net share settlement of RSUs	(420)	—	(1)	(414)
Net cash provided by financing activities	40,162	33,296	1,699	18,209
Net increase in cash, cash equivalents and restricted cash	7,330	1,028		
Net (decrease) increase in cash, cash equivalents and restricted cash			(541)	15,432
Cash, cash equivalents and restricted cash - beginning of period	3,020	1,336	2,058	3,020
Cash, cash equivalents and restricted cash - end of period	\$ 10,350	\$ 2,364	\$ 1,517	\$ 18,452
Reconciliation of cash and cash equivalents and restricted cash				
Cash and cash equivalents at beginning of period	\$ 3,020	\$ 1,336	\$ 2,058	\$ 3,020
Restricted cash at beginning of period	—	—	—	—
Cash, cash equivalents and restricted cash at beginning of period	\$ 3,020	\$ 1,336	\$ 2,058	\$ 3,020
Cash and cash equivalents at end of period	\$ 2,850	\$ 2,364	\$ 1,517	\$ 10,952
Restricted cash at end of period	7,500	—	—	7,500
Cash, cash equivalents and restricted cash at end of period	\$ 10,350	\$ 2,364	\$ 1,517	\$ 18,452
Supplemental disclosures of cash flow information:				
Non-cash transactions:				
Capital expenditures incurred but not yet paid	\$ 324	\$ 164	\$ 8	\$ 142
Right-of-use assets and corresponding operating lease obligations	\$ 5,166	\$ —	\$ —	\$ 2,928
Deemed dividends			\$ 3,589	\$ —
Non-cash consideration RXP acquisition	\$ 1,641	\$ —	\$ —	\$ 1,926
Stock issued in connection with acquisition	\$ —	\$ 51,653		
Non-cash licensing arrangement	\$ 3,500	\$ —		
Deemed dividend from trigger of anti-dilution provision feature	\$ 367	\$ —		
Deemed dividend related to down-round features	\$ 564	\$ —		

See accompanying notes to Condensed Consolidated Financial Statements.

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22nd CENTURY GROUP, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2023 March 31, 2024
(Unaudited)

Amounts in thousands, except for share and per-share data

NOTE 1. - NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation – 22nd Century Group, Inc. (together with its consolidated subsidiaries, "22nd Century Group" or the "Company") is a Nevada corporation publicly traded on the NASDAQ Capital Market under the symbol "XXII." 22nd Century Group is a **leading agricultural biotechnology** tobacco products company with sales and **intellectual property** company dedicated to improving health with distribution of the Company's own proprietary new reduced nicotine tobacco **hemp/cannabis** and hops advanced plant technologies. products authorized as Modified Risk Tobacco Products by the FDA. Additionally, the Company provides contract manufacturing services for conventional combustible tobacco products for third-party brands.

The accompanying Condensed Consolidated Financial Statements are presented in accordance with the rules and regulations of the United States ("U.S.") Securities and Exchange Commission ("SEC") and do not include all of the disclosures normally required by U.S. generally accepted accounting principles ("U.S. GAAP") as contained in the Company's Annual Report on Form 10-K. Accordingly, these Condensed Consolidated Financial Statements should be read in conjunction with the Consolidated Financial Statements and notes thereto included in the Company's most recent Annual Report on Form 10-K for the fiscal year ended **December 31, 2022** **December 31, 2023**.

In the opinion of management, the Condensed Consolidated Financial Statements reflect all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the results of the Company for the periods presented. The results for interim periods are not necessarily indicative of results or trends that may be expected for the fiscal year as a whole. The Condensed Consolidated Financial Statements were prepared using U.S. GAAP, which require management to make estimates and assumptions that affect the reported amounts of assets, liabilities, certain components of equity, sales, expenses, and related disclosures at the date of the financial statements and during the reporting period. Actual results could differ materially from these **estimates. estimates.**

Liquidity and Capital Resources — These Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles applicable to a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

The Company has incurred significant losses and negative cash flows from operations since inception and expects to incur additional losses until such time that it can generate significant revenue and profit in its tobacco and **hemp/cannabis** businesses. The Company had negative cash flow from operations of **\$50,184** **\$2,255** and **\$32,648** **\$17,500** for the **nine** **three** months ended **September 30, 2023** **March 31, 2024** and **2022, 2023**, respectively, and an accumulated deficit of **\$349,373** **\$384,446** and **\$237,814** **\$378,707** as of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, respectively. As of **September 30, 2023** **March 31, 2024**, the Company had cash and cash equivalents of **\$2,850** and restricted cash of **\$7,500**. Subsequent to **September 30, 2023**, the **\$1,517**. The Company completed an offering of its securities with gross proceeds to the Company of approximately **\$5,250**, before deducting the placement agent fees of **\$367** and other offering expenses payable by the Company of approximately **\$288** (see **has raised additional capital during April 2024. See Note 17** **12** "Subsequent Events"). Events."

Additionally, for the quarter ended September 30, 2023, the Company was not in compliance with the financial covenant related to consolidated Revenues, net pursuant to the Senior Secured Credit Facility debentures. The lenders have granted a waiver for the covenant violation (see Note 17 "Subsequent Events"). Without a waiver or other relief under the Senior Secured Credit Facility debenture agreements, one of the remedies the lenders have available to it, amongst others, is the ability to accelerate repayment of the debt, which the Company would not be able to immediately repay.

Given the Company's projected operating requirements and its existing cash and cash equivalents, there is substantial doubt about the Company's ability to continue as a going concern through one year following the date that the Condensed Consolidated Financial Statements are issued.

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In response to these conditions, management is currently evaluating different strategies for reducing expenses, as well as pursuing financing strategies which include raising additional funds through the issuance of securities, asset sales, and through arrangements with strategic partners. The Company has engaged a financial advisor to assist it in identifying strategic partners and financing to fund operations and to take actions to maximize the Company's liquidity. If capital is not available to the Company when, and in the amounts needed, it could be required to liquidate inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that the Company will be able to raise the capital it needs to continue operations. Management's plans do not alleviate substantial doubt about the Company's ability to continue as a going concern through one year following the date that the Condensed Consolidated Financial Statements are issued.

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The Condensed Consolidated 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 from the outcome of this uncertainty.

Other Significant Risks and Uncertainties - The Company is subject to a number of risks, including, but not limited to, the lack of available capital; the possible delisting of our common stock from Nasdaq; future covenant non-compliance with respect to the Company's Senior Secured Credit Facility giving rise to an event of default; inability to identify or consummate any strategic initiatives and transactions; unsuccessful commercialization strategy and launch plans for the Company's products or market acceptance of the Company's products; risks inherent in litigation, including purported class actions; and protection of proprietary technology.

Reclassifications - The Company has revised the presentation and classification of **Other operating expenses**, **Excise taxes on products, net** which was previously recorded in **Cost of goods sold** in the Condensed Consolidated Statement of Operations and Comprehensive **Loss**, as follows:**Loss**.

	Three Months Ended			Nine Months Ended		
	September 30, 2022			September 30, 2022		
	As originally	Reclass	Revised	As originally	Reclass	Revised
Revenues, net	\$ 19,383	\$ —	\$ 19,383	\$ 42,905	\$ —	\$ 42,905
Cost of goods sold	18,764	—	18,764	41,086	—	41,086
Gross profit	619	—	619	1,819	—	1,819
Operating expenses:	—	—	—	—	—	—
Sales, general and administrative	14,569	(41)	14,528	31,355	(880)	30,475
Research and development	1,318	—	1,318	4,355	—	4,355
Other operating expense, net	—	41	41	—	880	880
Total operating expenses	15,887	—	15,887	35,710	—	35,710
Operating loss	\$ (15,268)	\$ —	\$ (15,268)	\$ (33,891)	\$ —	\$ (33,891)

Reverse Stock Split - On **July 5, 2023** **April 2, 2024**, the Company effected a **1-for-15** **1-for-16** reverse stock split of its common stock in order to regain compliance with Nasdaq's continued listing requirements. Fractional shares resulting from the reverse stock split were rounded up to the nearest whole share, which resulted in the issuance of a total of **66,035** **118,207** shares of common stock to implement the reverse stock split. All share and per share amounts, and exercise prices of stock options, and warrants in the Condensed Consolidated Financial Statements and notes thereto have been retroactively adjusted for all periods presented to give effect to this reverse stock split.

Restricted Cash Warrants - **Restricted cash** includes minimum escrow funds the Company maintains in a money market account pursuant to the terms of the Senior Secured Credit Facility. See Note 17 "Subsequent Events" for additional information.

Credit Losses - The Company estimates and records a provision for its expected credit losses related to its financial instruments, including its trade receivables and contract assets. The Company considers historical collection rates, current financial status of its customers, macroeconomic factors, and other industry-specific factors when evaluating for current expected credit losses. Forward-looking information is also considered in the evaluation of current expected credit losses. However, because of the short time to the expected receipt of accounts receivable and contract assets, the Company believes that the carrying value, net of expected losses, approximates fair value and therefore, relies more on historical and current analysis of such financial instruments.

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To determine the provision for credit losses for accounts receivable, including consideration of contract assets or unbilled receivables, the Company has disaggregated its accounts receivable by nature and type of product being sold, as the Company determined that risk profile of its customers is consistent based on the type of product and industry in which they operate. These customer classes include tobacco distributors/wholesalers for its CMO cigarette and filtered cigar tobacco product sales, hemp/cannabis bulk ingredient product sales, and hemp/cannabis white label product sales. Each class of customer is analyzed for estimated credit losses individually. In doing so, the Company establishes a historical loss matrix, based on the previous collections of accounts receivable by the age of such receivables, and evaluates the current and forecasted financial position of its customers, as available. Further, the Company considers macroeconomic factors and the status of the related industry, including unemployment rates, industry indices, and other factors, to estimate if there are current expected credit losses within its trade receivables based on the trends and the Company's expectation of the future status of such economic and industry-specific factors. The Company believes that its customers, the majority of which are in industries with sound financial condition, and therefore, the Company's evaluation of macroeconomic and industry-specific factors did not have a material impact on the provision for credit losses. As of September 30, 2023 and December 31, 2022, the Company recorded a provision for credit losses of \$736 and \$372 respectively.

Acquisitions - The Company accounts for acquisitions under the acquisition method of accounting for business combinations. Results of operations of acquired companies are included in the Company's results of operations as of the respective acquisition dates. The purchase price of each acquisition is allocated to the net assets acquired based on estimates of their fair values at the date of the acquisition. Any purchase price in excess of these net assets is recorded as goodwill.

All direct acquisition-related costs are expensed as incurred and are recognized in operating expenses on the Company's Condensed Consolidated Statements of Operations and Comprehensive Loss. The allocation of purchase price in certain cases may be subject to revision based on the final determination of fair values during the measurement period, which may be up to one year from the acquisition date.

Contingent Consideration - Contingent consideration arising from a business acquisition is included as part of the purchase price and is recorded at fair value as of the acquisition date. Subsequent to the acquisition date, the Company remeasures contingent consideration arrangements at fair value at each reporting period until the contingency is resolved. The changes in fair value are recognized within Other Operating Expenses, Net in the Company's Condensed Consolidated Statement of Operations and Comprehensive Loss. Changes in fair values reflect new information about the likelihood of the payment of the contingent consideration and the passage of time. See Note 2 for the contingent consideration arising from the acquisition of RX Pharmatech Ltd.

Warrants - The Company accounts for stock warrants as either equity instruments, derivative liabilities, or liabilities in accordance with ASC 480, *Distinguishing Liabilities from Equity* (ASC 480) and ASC 815, *Derivatives and Hedging* (ASC 815) depending on the specific terms of the warrant agreement. The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's own ordinary shares and whether the warrant holders could potentially require "net cash settlement" in a circumstance outside of the Company's control, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding.

Warrants that the Company may be required to redeem through payment of cash or other assets outside its control are classified as liabilities pursuant to ASC 480 and are initially and subsequently measured at their estimated fair values. For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For additional discussion on warrants, see Note 6 and Note 10.

Deemed dividends associated with anti-dilution or down round provisions (commonly referred to as "ratchets") represent the economic transfer of value to holders of equity-classified freestanding financial instruments when these provisions are triggered. These deemed dividends are presented as a reduction in net income or an increase in net loss available to common stockholders and a corresponding increase to additional paid-in-capital resulting in no change to

stockholders' shareholders' equity/deficit. The incremental value of modifications to warrants as a result of the trigger of down round provisions of \$564 were recorded as deemed dividends for the three-month period ended September 30, 2023. The incremental value of modifications to warrants as a result of the trigger of down round provisions and anti-dilution provisions of \$931 were recorded as deemed dividends for the nine-month period ended September 30, 2023.

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Debt Issued with Detachable Warrants - The Company considers guidance within ASC 470-20, *Debt (ASC (ASC 470)*, ASC 480, and ASC 815 when accounting for the issuance of debt with detachable warrants. As described above under the caption "*Warrants*" "*Warrants*", the Company classifies stock warrants as either equity instruments, derivative liabilities, or liabilities depending on the specific terms of the warrant agreement. In circumstances in which debt is issued with detachable warrants, the proceeds from the issuance of the debt are first allocated to the warrants at their full estimated fair value with a corresponding debt discount. The remaining proceeds, as further reduced by discounts (including those created by the bifurcation of embedded derivatives), is allocated to the debt. The Company accounts for debt as liabilities measured at amortized cost and amortizes the resulting debt discount from the allocation of proceeds, to interest expense using the effective interest method over the expected term of the debt instrument pursuant to ASC 835, *Interest (ASC (ASC 835)*.

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Embedded Derivatives - The Company considers whether there are any embedded features in debt instruments that require bifurcation and separate accounting as derivative financial instruments pursuant to ASC 815. Embedded derivatives are initially and subsequently measured at fair value. *The With the exception of the bifurcated embedded conversion option as described in Note 6 "Debt", the embedded derivatives associated with the Company's Senior Secured Credit Facility and Subordinated Note are not material.*

Debt Issuance Costs and Discounts - Debt issuance costs and discounts associated with the issuance of debt by the Company are deferred and amortized over the term of the related debt. Debt issuance costs and discounts related to the Company's Senior Secured Credit Facility and Subordinated Note are recorded as a reduction of the carrying value of the related debt and are amortized to Interest expense using the effective interest method over the period from the date of issuance to the maturity date, whichever is earlier. The amortization of debt issuance costs and discounts are included in Debt related charges included in interest expense in the Condensed Consolidated Statements of Cash Flows. Note 76 "Debt" contains additional information on the Company's debt issuance costs and discounts.

Inventories - Inventories are stated at the lower of cost, determined using the first-in first-out method, or net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. Write-downs for excess, obsolete or expired inventory are based primarily on how long the inventory has been held, historical sales volume, and estimates of forecasted net sales of that product. A significant change in the timing or level of demand for products may result in recording additional write-downs for excess, obsolete or expired inventory in the future. Note 3, "Inventories," contains additional information on the Company's inventory. In connection with evaluation of strategic alternatives for the Company's assets and cost cut initiatives, during the third quarter of 2023, the Company increased the reserve for excess, obsolete or expired hemp/cannabis inventory by \$1,687.

Goodwill - Goodwill represents the excess of cost over the fair value of identifiable net assets of a business acquired and is assigned to one or more reporting units. The Company's reporting units are the same as its two reportable segments, which is (1) Tobacco, and (2) Hemp/Cannabis. The Company tests its reporting unit's goodwill for impairment at least annually as of the measurement date year and between annual tests if an event occurs or circumstances change that would more-likely-than-not reduce the fair value of a reporting unit below its carrying amount.

The Company concluded an interim impairment trigger event occurred and tested its goodwill for impairment during the quarter ended September 30, 2023 and concluded that goodwill impairment existed. No goodwill remained as of September 30, 2023. See Note 4 "Goodwill and Other Intangible Assets, Net" and Note 6 "Fair Value Measurements", for additional information.

Impairment of Long-Lived Assets - The Company reviews all long-lived assets to be held and used for recoverability, when events or changes in circumstances occur that indicate that the carrying value of the asset may not be recoverable. The assessment of possible impairment is based on the ability to recover the carrying value of the assets from the expected future cash flows (undiscounted and without interest expense) of the related operations. If these cash flows are less than the carrying value of such assets, an impairment loss for the difference between the estimated fair value and carrying value is recorded. The Company determined that **there were no impairment indicators occurred** during the quarter ended **September 30, 2023 and concluded that impairments existed**. See Note 4 "Goodwill and Other Intangible Assets, Net" for additional information related to impairment charges of **Property, plant and equipment, net, Intangible assets, net and Operating lease right-of-use assets, net** and Note 6 "Fair Value Measurements." **March 31, 2024.**

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Gain and Loss Contingencies—The Company establishes an accrued liability for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. In such cases, there may be an exposure to loss in excess of any amounts accrued. When a loss contingency is not both probable and estimable, the Company does not establish an accrued liability. As a litigation or regulatory matter develops, the Company, in conjunction with any outside counsel handling the matter, evaluates on an ongoing basis whether such matter presents a loss contingency that is probable and estimable. If, at the time of evaluation, the loss contingency related to a litigation or regulatory matter is not both probable and estimable, the matter will continue to be monitored for further developments that would make such loss contingency both probable and estimable. When a loss contingency related to a litigation or regulatory matter is deemed to be both probable and estimable, the Company will establish an accrued liability with respect to such loss contingency and record a corresponding amount of related expenses. The Company will then continue to monitor the matter for further developments that could affect the amount of any such accrued liability.

In accordance with ASC 450-30, *Gain Contingencies*, gain contingencies are recognized when earned and realized, which typically will occur at the time of final settlement or when cash is received. Insurance recoveries may be realized earlier than cash receipt if a claim and amount of reimbursement is acknowledged by the insurance company that payment is due and collection is probable.

The Company maintains general liability insurance policies for its facilities. Under the terms of our insurance policies, in the case of loss to a property, the Company follows the guidance in ASC 610-30, *Other Income —Gains and Losses on Involuntary Conversions*, for the conversion of nonmonetary assets (the properties) to monetary assets (insurance recoveries). Under ASC 610-30, once the recovery is deemed probable the Company recognizes an asset for the insurance recovery receivable in the Condensed Consolidated Balance Sheets, with corresponding income that is offsetting to the casualty losses recorded in the Condensed Consolidated Statements of Operations and Comprehensive Loss. If the insurance recovery is less than the amount of the casualty charges recognized, the Company will recognize a loss whereas if the insurance recovery is greater than the amount of casualty loss recognized, the Company will only recognize a recovery up to the amount of the casualty loss and will account for the excess as a gain **contingency**. Business interruption insurance is treated as a gain contingency.

Refer to further discussion of all commitments and contingencies in Note 11.

Severance charges - From time to time, the Company evaluates its resources and optimizes its business plan to align to changing needs of executing on its strategy. These actions may result in voluntary or involuntary employee termination benefits. Voluntary termination benefits are accrued when an employee accepts the related offer. Involuntary termination benefits are accrued upon the commitment to a termination plan and when the benefit arrangement is communicated to affected employees, or when liabilities are determined to be probable and estimable, depending on the existence of a substantive plan for severance or termination. **The following table summarizes the change in accrued liabilities, presented within Other current liabilities and Other long-term liabilities on the Condensed Consolidated Balance Sheets:**

Balance at January 1, 2023	\$ 634
Accruals	727
Reversal from settlement	(168)

Cash payments	(523)
Balance at September 30, 2023	<u>\$ 670</u>

	September 30,	December 31,
	2023	2022
Current	\$ 657	\$ 349
Noncurrent	13	285
Total severance liability	<u>\$ 670</u>	<u>\$ 634</u>

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	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Sales, general, and administrative	\$ (168)	\$ 692	\$ 400	\$ 692
Other operating expense, net	159	—	159	—
Total severance charges	<u>\$ (9)</u>	<u>\$ 692</u>	<u>\$ 559</u>	<u>\$ 692</u>

In addition, the Company recorded \$523 and \$1,237 of accelerated equity compensation expense for the nine-month period ending September 30, 2023 and 2022, respectively, in connection with the vesting of employees' outstanding equity awards as part of their termination severance agreements. Amounts are recorded as Selling, general and administrative in the Consolidated Statements of Operations and Comprehensive Loss.

Income Taxes - For interim income tax reporting, due to a full valuation allowance on net deferred tax assets, no income tax expense or benefit is recorded unless it is related to certain state, local, or franchise taxes, or an unusual or infrequently occurring item. The tax effects of unusual or infrequently occurring items, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, are reported in the interim period in which they occur.

Recent Accounting Pronouncements – Adoption of Accounting Standards Codification Topic 326

The Company adopted ASU 2016-13, or ASC 326 *Financial Instruments-Credit Losses*, effective January 1, 2023 under a modified retrospective approach. Under the current expected credit losses ("CECL") model, the Company immediately recognizes an estimate of credit losses expected to occur over the life of the financial asset at the time the financial asset is originated or acquired. Estimated credit losses are determined by taking into consideration historical loss conditions, current conditions and reasonable and supportable forecasts. Changes to the expected lifetime credit losses are recognized each period. The new guidance applies to the Company's trade receivables and contract asset balances. Due to the nature of business operations and contracts with customers, the Company has historically not experienced significant bad debt expense or write-offs and as a result, the adoption of ASC 326 did not have a material impact to the Company's Condensed Consolidated Financial Statements. In connection with the adoption of ASC 326, the Company recorded a provision for credit losses of \$118 with an offsetting cumulative-effect adjustment to the opening balance of retained earnings as of January 1, 2023.

We consider the applicability and impact of all ASUs. If the ASU is not listed above, it was determined that the ASU was either not applicable or would have an immaterial impact on our financial statements and related disclosures.

NOTE 2. – BUSINESS ACQUISITIONS

RX Pharmatech, Ltd.

On January 19, 2023, the Company acquired RX Pharmatech Ltd ("RXP") a privately held distributor of cannabinoids with 1,276 novel food applications with the U.K. Food Standards Agency ("FSA"). RXP's products include CBD isolate and numerous variations of finished products like gummies, oils, drops, candies, tinctures, sprays, capsules and others. RXP is included in the Company's Hemp/cannabis reportable segment.

The initial consideration paid to acquire RXP included \$200 in cash and \$503 in common stock (consisting of 31,056 unregistered shares of common stock), and an initial estimate of target working capital true-up of \$286. The fair value of the Company's common stock issued as part of the consideration was determined based upon the opening stock price of the Company's shares as of the acquisition date. Additionally, the contingent consideration in the transaction represents the estimated fair value of the Company's obligation, under the share purchase agreement, to make additional equity based payments of up to \$1,550 over the next three years based on specified conditions being met, which has an initial fair value of contingent consideration of \$1,138. The fair value of the aggregate consideration in the transaction is \$2,127.

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Based on the preliminary purchase price allocation, the assets acquired and liabilities assumed principally comprise \$1,744 of intangible assets, and other immaterial working capital items representing a net asset of \$93 (net of cash acquired of \$290). There was no excess purchase price and therefore no goodwill recorded as part of the business combination. The determination of estimated fair value required management to make significant estimates and assumptions based on information that was available at the time the Condensed Consolidated Financial Statements were prepared.

Intangible assets include the intellectual property associated with the 1,276 novel food applications with the FSA, which is determined to be indefinite lived. The preliminary fair value was determined by utilizing the cost approach and considered market data to evaluate the replacement cost per application. The intellectual property is included in the hemp/cannabis reporting unit, see Note 4 "Goodwill and Other Intangible Assets, Net," which includes discussion of subsequent impairment charges recorded in the third quarter of 2023.

The Company utilizes third-party valuation experts to assist in estimating the fair value of the contingent consideration and develops estimates by considering weighted-average probabilities of likely outcomes and discounted cash flow analysis. These estimates require the Company to make various assumptions about forecasted revenues and discount rates, which are unobservable and considered Level 3 inputs in the fair value hierarchy. A change in these inputs to a different amount might result in a significantly higher or lower fair value measurement at the reporting date.

The following table provides quantitative information associated with summarizes the initial fair value measurement of change in accrued severance liabilities, presented within Other current liabilities on the Company's liabilities for contingent consideration as of January 19, 2023: Condensed Consolidated Balance Sheets:

Balance at January 1, 2024	\$ 386
Cash payments	(64)
Balance at March 31, 2024	\$ 322

Contingency Type	Maximum Payout (undiscounted)	Fair Value	Unobservable Inputs	Weighted Average or Range
Revenue-based payments	\$ 1,550	\$ 1,138	Discount rate Projected year(s) of payment	16 % 2024-2026

During the third quarter of 2023, the Company finalized amounts recorded as purchase price allocation and recorded measurement period adjustments of \$53, resulting from an increase of the working capital true-up amount based on final payment made to the sellers.

GVB Biopharma

On May 13, 2022, the Company entered into and closed the transactions contemplated by the Reorganization and Acquisition Agreement (the "Reorganization Agreement") with GVB Biopharma ("GVB"). Under the terms of the Reorganization Agreement, the Company acquired substantially all of the

assets of GVB's business dedicated to hemp-based cannabinoid extraction, refinement, contract manufacturing and product development (the "Transaction"). The acquisition of GVB allows the Company to leverage its expertise in receptor and plant science to develop its hemp/cannabis franchise and add significant scale. GVB is included in the Company's Hemp/cannabis reportable segment.

The aggregate consideration for the Transaction consisted of (i) the assumption of approximately \$4,637 of debt, (ii) the assumption and direct payment of certain third-party transaction costs incurred by GVB in connection with the Transaction totaling approximately \$1,753 and (iii) the issuance to GVB of 2,193,334 unregistered shares of common stock of the Company (the "Shares") with a fair value of \$51,653. The fair value of the Company's common stock issued as part of the consideration was determined based upon the opening stock price of the Company's shares as of the acquisition date. The Shares were subject to a lock-up and restrictions on transfer for at least six months following closing and thereafter, one-third of the Shares will be released from the lock-up after six months, one-third will be released from the lock-up after nine months and the remainder will be released after one year.

The Transaction was structured as a tax-free re-organization pursuant to Internal Revenue Code Section 368(a)(1)(c). Accordingly, the tax basis of net assets acquired retain their carry over tax basis and holding period in purchase accounting.

The Company recorded provisional estimated fair values for the assets purchased, liabilities assumed and purchase consideration as of the date of the acquisition during the second quarter of 2022, resulting in goodwill of \$44,200. The determination of estimated fair value required management to make significant estimates and assumptions based on information that was available at the time the Condensed Consolidated Financial Statements were prepared.

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Following the initial acquisition accounting, the Company recorded final measurement period adjustments, in which the preliminary fair values of the assets acquired and liabilities assumed as of May 13, 2022 were adjusted to reflect the ongoing acquisition valuation analysis procedures of property and equipment, intangible assets, deferred taxes, and working capital adjustments. These adjustments resulted in a combined reduction to goodwill of \$10,840. The impact of depreciation and amortization to Operating loss recorded in the third quarter of 2022 as a result of completing valuation procedures for property and equipment and intangible assets, that would have been recorded in the prior period since the date of acquisition was \$70. See Note 4 "Goodwill and Other Intangible Assets, Net," which includes discussion of subsequent impairment charges recorded in the third quarter of 2023.

The following table presents management's purchase price allocation:

Cash	\$ 456
Accounts receivable	2,944
Inventory	3,551
Other assets	519
Property, plant & equipment	11,189
Operating leases right-of-use assets, net	1,231
Goodwill	33,360
Tradename	4,600
Customer relationships	5,800
Accounts payable and accrued expenses	(2,777)
Other current liabilities	(944)
Lease liabilities	(1,259)
Auto loans	(387)
Deferred tax liability	(627)
Bridge loan	(4,250)
Fair value of net assets acquired	<u>\$53,406</u>

The fair values of the assets acquired were determined using one of three valuation approaches: market, income or cost. The selection of a particular method for a given asset depended on the reliability of available data and the nature of the asset, among other considerations.

The market approach estimates the value for a subject asset based on available market pricing for comparable assets. The income approach estimates the value for a subject asset based on the present value of cash flows projected to be generated by the asset. The projected cash flows were discounted at a required rate of return that reflects the relative risk of the asset and the time value of money. The projected cash flows for each asset considered multiple factors from the perspective of a marketplace participant including revenue projections from existing customers, attrition trends, tradename life-cycle assumptions, marginal tax rates and expected profit margins giving consideration to historical and expected margins. The cost approach estimates the value for a subject asset based on the cost to replace the asset and reflects the estimated reproduction or replacement cost for the asset, less an allowance for loss in value due to depreciation or obsolescence, with specific consideration given to economic obsolescence if indicated. These fair value measurement approaches are based on significant unobservable inputs, including management estimates and assumptions.

Current Assets and Liabilities

The fair value of current assets and liabilities, excluding inventory, was assumed to approximate their carrying value as of the acquisition date due to the short-term nature of these assets and liabilities.

The fair value of in-process and finished goods inventory acquired was estimated by applying a version of the income approach called the comparable sales method. This approach estimates the fair value of the assets by calculating the potential revenue generated from selling the inventory and subtracting from it the costs related to the completion and sale of that inventory and a reasonable profit allowance for these remaining efforts. Based upon this methodology, the Company recorded the inventory acquired at fair value resulting in an increase in inventory of \$978, which was fully amortized in the three month period ended June 30, 2022 in the Consolidated Statement of Operations and Comprehensive Loss.

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Property, Plant and Equipment

The fair value of PP&E acquired was estimated by applying the cost approach for personal property and leasehold improvements. The cost approach was applied by developing a replacement cost and adjusting for economic depreciation and obsolescence.

Leases

The Company recognized operating lease liabilities and operating lease right-of-use assets for office and manufacturing facilities in (i) Las Vegas, Nevada (ii) Grass Valley, Oregon (iii) Prineville, Oregon, and (iv) Tygh Valley, Oregon, accordance with ASC 842, *Leases*.

The following table summarizes the Company's discount rate and remaining lease terms as of the acquisition date:

Weighted average remaining lease term in years	3.8
Weighted average discount rate	8.3 %

The Company concluded there were no off-market lease intangibles on the date of acquisition based on an evaluation of market rents per square foot, geographic location and nature of use of the underlying asset, among other considerations.

Intangible assets

The purchase price was allocated to intangible assets as follows:

Definite-lived Intangible Assets	Fair Value Assigned	Weighted Average	
		Amortization Period (Years)	Discount Rate
Customer relationships	\$ 5,800	10	23.50%
Tradename	\$ 4,600	Indefinite	23.50%

Customer Relationships

Customer relationships represent the estimated fair value of contractual and non-contractual customer relationships GVB had as of the acquisition date. These relationships were valued separately from goodwill at the amount that an independent third party would be willing to pay for these relationships. The fair value of customer relationships was determined using the multi-period excess-earnings method, a form of the income approach. The estimated useful life of the existing customer base was based upon the historical customer annual attrition rate of 20%, as well as management's understanding of the industry and product life cycles.

Tradename

Tradename represents the estimated fair value of GVB's corporate and product names. The acquired tradename was valued separately from goodwill at the amount that an independent third party would be willing to pay for use of these names. The fair value of the tradename was determined by utilizing the relief from royalty method, a form of the income approach, with a royalty rate of 1.0%. The GVB tradename was assumed to have an indefinite useful life based upon long-term management expectations and future operating plans.

Deferred Taxes

The Company determined the deferred tax position to be recorded at the time of the GVB acquisition in accordance with ASC Topic 740, *Income Taxes*, resulting in recognition of deferred - For interim income tax liabilities for future reversing of taxable temporary differences primarily for intangible assets and property, plant and equipment. This resulted in reporting, due to a preliminary full valuation allowance on net deferred tax liability assets, no income tax expense or benefit is recorded unless it is related to certain state, local, or franchise taxes, or an unusual or infrequently occurring item. The tax effects of \$627, unusual or infrequently occurring items, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, are reported in the interim period in which includes they occur.

Recent Accounting Pronouncements – Adoption of Accounting Standards Codification Topic 326

The Company adopted ASU 2016-13, or ASC 326 Financial Instruments-Credit Losses, effective January 1, 2023 under a modified retrospective approach. Under the carryover basis current expected credit losses ("CECL") model, the Company immediately recognizes an estimate of credit losses expected to occur over the life of the financial asset at the time the financial asset is originated or acquired. Estimated credit losses are determined by taking into consideration historical loss conditions, current conditions and reasonable and supportable forecasts. Changes to the expected lifetime credit losses are recognized deferred each period. The new guidance applies to the Company's trade receivables and contract asset balances. Due to the nature of business operations and contracts with customers, the Company has historically not experienced significant bad debt expense or write-offs and as a result, the adoption of ASC 326 did not have a material impact to the Company's Condensed Consolidated Financial Statements. In connection with the adoption of ASC 326, the Company recorded a provision for credit losses of \$118 with an offsetting cumulative-effect adjustment to the opening balance of accumulated deficit as of January 1, 2023.

Accounting Guidance Not Yet Elected or Adopted

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280)-Improvements to Reportable Segment Disclosures. The ASU enhances disclosure of significant segment expenses by requiring disclosure of significant segment expenses regularly provided to the chief operating decision maker, extend certain annual disclosures to interim periods, and permits more than one measure of segment profit or loss to be reported under certain conditions. The amendments are effective for the Company in years beginning after December 15, 2023, and interim periods within years beginning after December 15, 2024. Early adoption of the ASU is permitted, including adoption in any interim period for which financial statements have not been issued. The Company is currently evaluating the impact that the adoption of this ASU will have on its consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740)-Improvements to Income Tax Disclosures. The ASU requires additional quantitative and qualitative income tax assets, liabilities disclosures to allow readers of the consolidated financial statements to assess how the Company's operations, related tax risks and valuation allowance, tax planning affect its tax rate and prospects for future cash flows. For public business entities, the ASU is effective for annual periods beginning after December 15, 2024. The Company is currently evaluating the impact that the adoption of this ASU will have on its consolidated financial statements.

We consider the applicability and impact of all ASUs. If the ASU is not listed above, it was determined that the ASU was either not applicable or would have an immaterial impact on our financial statements and related disclosures.

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NOTE 2. DISCONTINUED OPERATIONS AND DIVESTITURES

The net deferred tax As of March 31, 2024, all assets and liabilities recorded as a result of the acquisition of GVB was determined by the Company to also provide future taxable temporary differences that allow for the Company to utilize certain previously fully reserved deferred tax assets. Accordingly, the Company recognized a reduction to its valuation allowance resulting in a net tax benefit of approximately \$434 for the year ended December 31, 2022.

Goodwill

The excess of the purchase price over the fair value of net tangible and intangible assets acquired and liabilities assumed was allocated to goodwill. A variety of factors contributed to the goodwill recognized, including the value of GVB's assembled work force, the incremental value resulting from GVB's capabilities in hemp/cannabis operational synergies across the plant science platform, and the expected revenue growth over time that is attributable to increased market share from future products and customers. See Note 4 "Goodwill and Other Intangible Assets, Net" for additional information.

Actual and Pro Forma (unaudited) disclosures

For segment reporting purposes, the results of operations and net assets from the RXP and GVB acquisitions have been included in the Company's Hemp/cannabis reportable segment since the respective acquisition dates. For the three and nine months ended September 30, 2023, net revenues related to GVB were \$9,736 and \$37,815, respectively, and net loss was \$56,318 and \$66,212. For the three and nine months ended September 30, 2022, net revenues related to GVB were \$7,848 and \$12,354, respectively, and net loss was \$2,743 and \$4,217, respectively. The operating results of RXP for the three and nine months ended September 30, 2023 were immaterial.

The following unaudited pro forma information presents the consolidated results of operations of the Company and assumes the acquisition occurred on January 1, 2021:

	Nine Months Ended	
	September 30,	
	2022	
	(in thousands, except for per-share data)	
Revenues, net	\$	53,630
Net loss available to common shareholders	\$	(33,438)
Basic and diluted loss per common share	\$	(2.49)
Weighted average common shares outstanding - basic and diluted		13,420

The unaudited pro forma results **disposal group** are presented for illustrative purposes only and do not reflect the realization of potential cost savings, and any related integration costs. Certain costs savings may result from the acquisition; however, there can be no assurance that these cost savings will be achieved. These unaudited pro forma results do not purport to be indicative of the results that would have been obtained, or to be a projection of results that may be obtained in the future. These unaudited pro forma results include certain adjustments, primarily due to amortization expense due to the fair value adjustment of inventory, acquisition related costs and the impact of income taxes on the pro forma adjustments.

Acquisition costs

During the nine-month period ending September 30, 2023, direct costs incurred as a result of the acquisition of RXP were \$130, compared to direct costs incurred as a result of the acquisition of GVB of \$839 during the nine-month period ended September 30, 2022. Acquisition costs are expensed as incurred and included in **Other operating expenses, net** in the Condensed Consolidated **Statements Balance Sheets**. The carrying amounts of **Operations** the **hemp/cannabis disposal group assets** and **Comprehensive Loss** **liabilities** that were classified as assets and liabilities of discontinued operations held for sale were as follows:

	March 31, 2024	December 31, 2023
Prepaid expenses and other current assets	\$ 4	\$ 9
Property, plant and equipment, net	1,051	1,207
Other assets	38	38
Current assets of discontinued operations held for sale	\$ 1,093	\$ 1,254
Notes and loans payable - current	\$ —	\$ 2
Operating lease obligations	1,044	1,083
Accounts payable	1,983	2,013
Accrued expenses	71	79
Deferred income	—	8
Other current liabilities	49	—
Current liabilities of discontinued operations held for sale	\$ 3,147	\$ 3,185
Net liabilities	<u>\$ (2,054)</u>	<u>\$ (1,931)</u>

Net loss from discontinued operations for the three months ended March 31, 2024 and 2023 was as follows:

	Three Months Ended	
	March 31,	
	2024	2023
Revenues, net	\$ —	\$ 13,036
Cost of goods sold	—	14,230
Gross loss	—	(1,194)
Operating expenses:		
Sales, general and administrative	67	4,394
Research and development	48	787
Other operating expense, net	99	905
Total operating expenses	<u>214</u>	<u>6,086</u>
Operating loss from discontinued operations	(214)	(7,280)
Other income (expense):		
Other income, net	—	21
Interest expense	(75)	(93)
Total other expense	<u>(75)</u>	<u>(72)</u>
Loss from discontinued operations before income taxes	(289)	(7,352)
Provision (benefit) for income taxes	—	—
Net loss from discontinued operations	<u>\$ (289)</u>	<u>\$ (7,352)</u>

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Cash flow information from discontinued operations for the three months ended March 31, 2024 and 2023 was as follows:

Three Months Ended

	March 31,	
	2024	2023
Cash used in operating activities	\$ 255	\$ 24,891
Cash provided by investing activities	\$ 22	\$ 1,869
Depreciation and amortization	\$ -	\$ 520
Capital expenditures	\$ -	\$ 1,683

NOTE 3. – INVENTORIES

Inventories at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 consisted of the following:

	September 30,	December 31,	March 31,	December 31,
	2023	2022	2024	2023
Raw materials	\$ 9,849	\$ 8,743	\$ 2,047	\$ 3,580
Work in process	1,750	441	—	—
Finished goods	4,356	824	842	766
	<u>\$ 15,955</u>	<u>\$ 10,008</u>	<u>\$ 2,889</u>	<u>\$ 4,346</u>

NOTE 4. – GOODWILL AND OTHER INTANGIBLE ASSETS, NET

Goodwill Intangible Assets, Net

The change in Our intangible assets, net at March 31, 2024 and December 31, 2023 consisted of the following:

	Gross	Accumulated	Net Carrying
	Carrying Amount	Amortization	Amount
March 31, 2024			
<i>Definite-lived:</i>			
Patent	\$ 2,913	\$ (2,147)	\$ 766
License fees	4,165	(1,795)	2,370
Total amortizing intangible assets	<u>\$ 7,078</u>	<u>\$ (3,942)</u>	<u>\$ 3,136</u>
<i>Indefinite-lived:</i>			
Trademarks		\$ 132	
MSA signatory costs		2,202	
License fee for predicate cigarette brand		350	
Total indefinite-lived intangible assets		<u>\$ 2,684</u>	
Total intangible assets, net		<u>\$ 5,820</u>	

	Gross Carrying Amount	Accumulated		Net Carrying Amount
		Amortization	Impairment	
December 31, 2023				
Definite-lived:				
Patent	\$ 2,913	\$ (1,622)	\$ (487)	\$ 804
License fees	4,165	(1,666)	(65)	2,434
Total amortizing intangible assets	\$ 7,078	\$ (3,288)	\$ (552)	\$ 3,238
Indefinite-lived:				
Trademarks				\$ 134
MSA signatory costs				2,202
License fee for predicate cigarette brand				350
Total indefinite-lived intangible assets				\$ 2,686
Total intangible assets, net				\$ 5,924

Aggregate intangible asset amortization expense comprises of the following:

	Three Months Ended			
	March 31,			
	2024	2023		
Cost of goods sold	\$ 3	\$ 4		
Research and development	101	158		
Total amortization expense	<u>\$ 104</u>	<u>\$ 162</u>		

Estimated future intangible asset amortization expense based on the carrying amount value as of goodwill during the nine months ended September 30, 2023 March 31, 2024 is as follows:

Balance at January 1, 2023	\$ 33,160					
Measurement period adjustments	200					
Impairment	(33,360)					
Balance at September 30, 2023	<u>\$ 0</u>					
Amortization expense		Remainder of 2024	2025	2026	2027	2028 & Thereafter
		\$ 318	\$ 415	\$ 374	\$ 365	\$ 295 \$ 1,369

NOTE 5. – FAIR VALUE MEASUREMENTS AND SHORT-TERM INVESTMENTS

Assets and Liabilities Measured at Fair Value on a Recurring Basis

Fair value measurement standards apply to certain financial assets and liabilities that are measured at fair value on a recurring basis (each reporting period). For the Company, identified certain events and circumstances that could potentially be an impairment triggering event for both the tobacco and hemp/cannabis reporting units in connection with (1) the announcement of initiating a process to evaluate strategic alternatives for the Company's these financial assets and (2) announcement of cost cut initiatives intended to yield significant cash savings on an annual basis. The initiation of these two processes is in response to the sustained decline in the Company's market capitalization, operating losses and negative cash flows from operations, and current liquidity position, and is intended to monetize the value or more effectively expand the market reach of our products.

These processes have included consideration of a range of strategic, operational and financial transactions and alternatives, such as business combinations, asset sales, licensing agreements, alternative financing strategies and other options. Additionally, the Company undertook various restructuring

activities in an effort to better align its internal organizational structure and costs with its strategy, as well as preserve liquidity, as further outlined in Note 9 "Other Operating Expenses, Net."

Accordingly, the Company evaluated the impact on each of its reporting units to assess whether there was an impairment triggering event requiring it to perform a goodwill impairment test. Liabilities include equity investments. The Company had no recorded goodwill in its tobacco reporting unit. For the hemp/cannabis reporting unit, as part of this impairment test, the Company considered certain qualitative factors, such as the Company's performance, business forecasts, and strategic plans. It reviewed key assumptions, including projected cash flows and future revenues. After reviewing the qualitative assessment, the Company determined a quantitative assessment was required to be performed.

Using the income approach, with the discount rate selected considering and capturing the related risk associated with the forecast, the Company compared the does not have any nonfinancial assets or liabilities that are measured at fair value of the reporting unit to carrying value. Based on the results, the carrying value of the hemp/cannabis reporting unit exceeded its fair value and the goodwill was determined to be impaired and \$33,360, representing the full amount of goodwill recorded to the hemp/cannabis reporting unit, was written off as impaired during the quarter ended September 30, 2023.

The impairment charge is the result of the Company's Step-1 goodwill impairment test for the hemp/cannabis reporting unit, which reflected a decrease in the future expected cash flows related to bulk ingredient and CDMO+D product sales, along with increases in discount rates to reflect the uncertainty of future cash flows. Estimating the fair value of goodwill requires the use of estimates and significant judgments that are based on a number of factors, including unobservable level 3 inputs. These estimates and judgments may not be within the control of the Company and accordingly it is reasonably possible that the judgments and estimates could change in future periods, recurring basis.

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Other Intangible Assets, Net

Our other intangible assets, net at September 30, 2023 and December 31, 2022 consisted of the following:

September 30, 2023	Gross		Accumulated		Net Carrying Amount
	Carrying Amount		Amortization	Impairment	
Definite-lived:					
Patent	\$ 5,838	\$ (3,883)	\$ —	\$ 1,955	
License fees	7,446	(2,209)	(3,037)	2,200	
Customer relationships	5,800	(737)	(5,063)	—	
Total amortizing intangible assets	\$ 19,084	\$ (6,829)	\$ (8,100)	\$ 4,155	
Indefinite-lived:					
Tradename and trademarks	\$ 3,340	NA	\$ (3,147)	\$ 193	
U.K. FSA portfolio ¹	1,770	NA	(1,770)	—	
MSA signatory costs	2,202	NA	—	2,202	
License fee for predicate cigarette brand	350	NA	—	350	
Total indefinite-lived intangible assets	\$ 7,662	NA	\$ (4,917)	\$ 2,745	
Total intangible assets, net	\$ 26,746	\$ (6,829)	\$ (13,017)	\$ 6,900	

¹ includes foreign exchange fluctuation, which for the three and nine month period ended September 30, 2023 was not material

December 31, 2022	Gross			Accumulated		Net Carrying Amount
	Carrying Amount		Amortization	Amount		
Definite-lived:						
Patent	\$ 6,513	\$ (3,711)	\$ 2,802			
License fees	3,876	(1,446)	2,430			
Customer relationships	5,800	(20)	5,780			

Total amortizing intangible assets	\$ 16,189	\$ (5,177)	\$ 11,012
Indefinite-lived:			
Tradename and trademarks		\$ 3,289	
MSA signatory costs		2,202	
License fee for predicate cigarette brand		350	
Total indefinite-lived intangible assets		\$ 5,841	
Total intangible assets, net		\$ 16,853	

See Note 2 "Business Acquisitions" for additional details regarding goodwill and intangible assets acquired as a result of the acquisitions of RXP and GVB, including any measurement period adjustments.

When acquiring certain assets, the Company assesses whether the acquired assets are a result of a business combination or a purchase of an asset. During the second quarter of 2023, the Company acquired a set of similar identifiable intangible assets relating to a license to manufacture and distribute Cookies branded hemp-derived hemp/cannabis products to retailers within the United States. The Company purchased the license for 333,334 shares of common stock and capitalized \$75 of costs associated with acquiring the license as an intangible asset. The resulting intangible asset of \$3,645 was being amortized over 3 years. Subsequently, during the third quarter of 2023, the Cookies license was written-off and fully impaired in the amount of \$3,037.

During the three and nine months ended September 30, 2023, the Company abandoned, impaired and recorded a write-off of \$135 related to tobacco patents and equipment and \$834 of hemp/cannabis patents and licenses that were deemed to have no future use relative to the Company's ongoing strategy.

In connection with the events and circumstances that led to an impairment triggering event identified for the hemp/cannabis reporting unit during the third quarter of 2023, the Company evaluated the recoverability of its hemp/cannabis other intangible assets, net and long-lived assets to determine whether any assets or asset groups were impaired. The Company determined that the carrying value of certain tradenames, patents and license intangible assets, net were greater than their fair value, as these intangible assets

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related to hemp/cannabis operations. Therefore, the Company recorded additional provision for impairment in the amount of \$9,980. Additionally, through a similar analysis, the Company recorded provision for impairment of \$5,876 for hemp/cannabis manufacturing equipment property, plant and equipment and \$4,034 for hemp/cannabis operating lease right-of-use assets related to manufacturing facilities. The undiscounted cash flow analysis and fair value determination requires the use of estimates and significant judgments that are based on a number of factors, including unobservable level 3 inputs. These estimates and judgments may not be within the control of the Company and accordingly it is reasonably possible that the judgments or estimates could change in future periods.

During the third quarter of 2023, the Company also reviewed the portfolio of tobacco related patents, licenses, and intellectual property recorded as other intangible assets, net, indefinite lived intangible assets, and long-lived assets and concluded based on the nature and use of the related assets, the events and circumstances identified did not require further recoverability analysis to be performed. The Company record impairment charges of \$55 related to certain corporate property, plant and equipment assets.

Aggregate intangible asset amortization expense comprises of the following:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Cost of goods sold	\$ 3	\$ 3	\$ 9	\$ 8
Sales, general, and administrative	543	12	1,324	12
Research and development	180	163	526	482
Total amortization expense	\$ 726	\$ 178	\$ 1,859	\$ 502

Estimated future intangible asset amortization expense based on the carrying value as of September 30, 2023 is as follows:

	Remainder of 2023	2024	2025	2026	2027	Thereafter
Amortization expense	\$ 164	\$ 655	\$ 655	\$ 547	\$ 520	\$ 1,614

NOTE 5. – INVESTMENTS & OTHER ASSETS

The total carrying value of the Company's investments at September 30, 2023 and December 31, 2022 consisted of the following:

	September 30,	December 31,	
	2023	2022	
	\$ 682	\$ 682	
Change Agronomy Ltd. ordinary shares	\$ 682	\$ 682	
Total investments	\$ 682	\$ 682	

Investment in Change Agronomy Ltd.

On December 10, 2021, the Company entered into a subscription agreement to invest £500 (pounds sterling, in thousands), in exchange for 592,888 ordinary shares of Change Agronomy Ltd. ("CAL"), a private company existing under the laws of England, at a price per share of £0.84333. CAL is a vertically integrated sustainable industrial hemp business that combines world-class genetics with leading agronomic techniques and infrastructure to provide full-service industrial hemp products to multiple global end markets. CAL presently has operations in Manitoba, Canada, and Italy. This equity investment was part of an Offer for Subscription by CAL for a minimum total of £3,000 at the same price per ordinary share. Approximately U.S. \$682 in funds were wired to CAL on January 26, 2022, and our investment of £500 equates to approximately 1.8% of CAL's total equity.

In accordance with ASU 2019-04, a foreign currency-denominated equity investments that are measured using the measurement alternative are nonmonetary items that should be remeasured using their historical exchange rates. Accordingly, for the three and nine months ended September 30, 2023 and 2022 there is no foreign currency exchange gain or loss recorded in the Condensed Consolidated Statement of Operations and Comprehensive Loss related to the investment in Change Agronomy Ltd.

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During the three and nine months ended September 30, 2023 and 2022, respectively, there were no impairment triggering events identified for investments.

Panacea Investment – Promissory Note:

On June 30, 2021, the Company entered into a Promissory Note Exchange Agreement with Panacea and a Securities Exchange Agreement with Panacea, Exactus, Inc. ("Exactus") (OTCQB:EXDI) and certain other Panacea shareholders. The promissory note was issued in the amount of \$4,300 (the "Promissory note receivable") with a maturity date of June 30, 2026 and a 0% interest rate. The Promissory note receivable is with a related party of Panacea and is fully secured by a first priority lien on Panacea's headquarters located in Golden, Colorado.

The Promissory note receivable was originally valued at \$3,684 (\$4,300 face value less \$616 discount) and is included within the Condensed Consolidated Balance Sheets as "Other Assets." Subsequently, on December 31, 2022 the Company and Panacea Life Sciences Holdings, Inc. entered into a settlement agreement in which the Company agreed to a reduction to the face value of the Promissory note receivable of \$500, in exchange for resolution to all contractual requirements from the June 30, 2021 Promissory Note Exchange Agreement and Securities Exchange Agreement surrounding the investment and business relationship. Accordingly, the Company recognized an extinguishment charge of note receivable of \$500 less adjusted discount of \$51 during the year-ended December 31, 2022. As of September 30, 2023, the Company intended to hold the remaining outstanding Promissory note receivable to maturity and the associated discount will be amortized into interest income over the term of the note. As of October 16, 2023, the Promissory note was fully assigned; refer to Note 17 "Subsequent events"

The following table provides the promissory note receivable balance:

	September 30,	December 31,	
	2023	2022	
Promissory note receivable	\$ 3,490	\$ 3,410	

NOTE 6. – FAIR VALUE MEASUREMENTS AND SHORT-TERM INVESTMENTS

Assets and Liabilities Measured at Fair Value on a Recurring Basis

Fair value measurement standards apply to certain financial assets and liabilities that are measured at fair value on a recurring basis (each reporting period). For the Company, these financial assets and liabilities include its short-term investment securities and equity investments. The Company does not have any nonfinancial assets or liabilities that are measured at fair value on a recurring basis.

The following table presents information about our assets and liabilities measured at fair value as of **September 30, 2023** **March 31, 2024** and **December 31, 2022** **December 31, 2023**, and indicates the fair value hierarchy of the valuation techniques the Company utilized to determine such fair value:

	Fair Value				Fair Value			
	September 30, 2023				March 31, 2024			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets								
Restricted cash	7,500	—	—	7,500				
Change Agronomy Ltd. ordinary shares	—	—	682	682				
Total assets	\$ 7,500	\$ —	\$ 682	\$ 8,182				
Liabilities								
Detachable warrants	\$ —	\$ —	\$ 3,675	\$ 3,675	\$ —	\$ —	\$ 1,350	\$ 1,350
Contingent consideration	—	—	952	952				
Derivative liability					—	—	639	639
Total liabilities	\$ —	\$ —	\$ 4,627	\$ 4,627	\$ —	\$ —	\$ 1,989	\$ 1,989

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	Fair Value			
	December 31, 2022			
	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	\$ 10,163	\$ —	\$ —	\$ 10,163
Corporate bonds	—	7,031	—	7,031
U.S. treasury securities	—	999	—	999
Change Agronomy Ltd. ordinary shares	—	—	682	682
Total assets	\$ 10,163	\$ 8,030	\$ 682	\$ 18,875
 Fair Value				
December 31, 2023				

	Level 1	Level 2	Level 3	Total
Liabilities				
Detachable warrants	\$ —	\$ —	\$ 1,350	\$ 1,350
Derivative liability	—	—	557	557
Total liabilities	\$ —	\$ —	\$ 1,907	\$ 1,907

Money market funds

Money market mutual funds are valued at their daily closing price as reported by the fund. Money market mutual funds held by the Company are open-end mutual funds that are registered with the SEC that generally transact at a stable \$1.00 Net Asset Value ("NAV") representing its estimated fair value. On a daily basis the fund's NAV is determined by the fund based on the amortized cost of the funds underlying investments.

Corporate bonds

Corporate bonds are valued using pricing models maximizing the use of observable inputs for similar securities.

The following tables sets forth a summary of the Company's available-for-sale debt securities from amortized cost basis to fair value as of December 31, 2022:

	Available for Sale Debt Securities			
	December 31, 2022			
	Amortized	Gross	Gross	
	Cost	Unrealized	Unrealized	Fair
	Basis	Gains	Losses	Value
Corporate bonds	\$ 7,143	\$ —	\$ (112)	\$ 7,031

The following table sets forth a summary of the Company's available-for-sale securities at amortized cost basis and fair value by contractual maturity as of December 31, 2022:

	December 31, 2022	
	Amortized	
	Cost Basis	Fair Value
Due in one year or less	\$ 7,143	\$ 7,031

Investment in Change Agronomy

The investment in Change Agronomy Ltd. is in a privately held company and its stock does not have a readily determinable fair value; therefore, the investment is carried at cost less impairment, adjusted for observable price changes in orderly transactions for an identical or similar investment of the same issuer.

Contingent Consideration

On January 19, 2023, the Company acquired the assets and liabilities of RXP, a privately-held company based in the U.K. The contingent consideration at September 30, 2023 is the estimated fair value of the Company's obligations, under the sale and purchase agreement for RXP, to make additional equity based payments if certain revenue goals are met.

The following table presents the changes in the estimated fair values of the Company's liabilities for contingent consideration measured using significant unobservable inputs (Level 3) for the nine months ended September 30, 2023:

Fair value measurement at January 1, 2023	\$ —
Initial measurement (see Note 2)	1,138
Fair value measurement adjustment	22
Fair value measurement at March 31, 2023	\$ 1,160
Fair value measurement adjustment	(217)
Fair value measurement at June 30, 2023	\$ 943
Fair value measurement adjustment	9
Fair value measurement at September 30, 2023	\$ 952

As of September 30, 2023, the current portion of contingent consideration liabilities included in Other current liabilities was \$606, and the non-current portion included in Other long-term liabilities on the Condensed Consolidated Balance Sheets was \$346.

The following table provides quantitative information associated with the fair value measurement of the Company's liabilities for contingent consideration as of September 30, 2023:

Contingency Type	Maximum Payout (undiscounted)	Fair Value	Unobservable Inputs	Weighted Average or Range
Revenue-based payments	\$ 1,550	\$ 952	Discount rate Projected year(s) of payment	15 % 2024-2026

Detachable Warrants

The following table sets forth a summary of the changes in fair value of the Company's stock warrants accounted for as liabilities (Level 3 asset) for the period ended September 30, 2023 March 31, 2024:

Fair value measurement at January 1, 2023	\$ —
Initial measurement (see Note 1 and 10)	4,214
Fair value measurement adjustment	139
Fair value measurement at March 31, 2023	\$ 4,353
Fair value measurement adjustment	584
Fair value measurement at June 30, 2023	\$ 4,937
Fair value measurement adjustment	(1,262)
Fair value measurement at September 30, 2023	\$ 3,675
 Fair value measurement at January 1, 2024	\$ 1,350
Fair value measurement adjustment	—
Fair value measurement at March 31, 2024	\$ 1,350

The Omnia detachable warrants were measured at March 31, 2024 and December 31, 2023 using a Monte Carlo valuation model with the following assumptions:

	March 31, 2024	December 31, 2023
Risk-free interest rate per year	4.3 %	4.6 %
Expected volatility per year	104.1 %	90.9 %
Expected dividend yield	— %	— %

Contractual expiration	6.3 years	6.6 years
Exercise price	\$ 205.248	\$ 205.248
Stock price	\$ 1.92	\$ 3.04

The detachable warrants are measured at fair value using certain estimated factors which are classified within Level 3 of the valuation hierarchy. Significant unobservable inputs that are used in the fair value measurement of the Company's detachable warrants include the volatility factor, anti-dilution provisions, and contingent put option. Significant increases or decreases in the volatility factor would have resulted in a significantly higher or lower fair value measurement. Additionally, a change in probability regarding the anti-dilution provision or put option would have resulted in a significantly higher or lower fair value measurement. The detachable warrants were terminated in April 2024. See Note 12 – Subsequent Events for additional information.

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[Derivative Liability](#)

The JGB detachable warrants were following table sets forth a summary of the changes in fair value of the Company's derivative liability accounted for as liabilities (Level 3) for the period ended March 31, 2024:

Fair value measurement at January 1, 2024	\$ 557
Fair value measurement adjustment	82
Fair value measurement at March 31, 2024	\$ 639

The derivative liability related to the debentures and embedded conversion option using was measured at September 30, 2023 March 31, 2024 and December 31, 2023 using a Monte Carlo binomial lattice valuation model with under a "with and without" approach and contained the following assumptions:

Risk-free interest rate per year	4.6 %
Expected volatility per year	97.9 %
Expected dividend yield	— %
Contractual expiration	4.9 years
Exercise price	\$ 12.828
Stock price	\$ 0.98

	March 31, 2024	December 31, 2023
Stock price volatility	109.2 %	104.1 %
Expected term	1.9 years	2.2 years
Stock price	\$ 1.92	\$ 3.04
Risk-free rate	4.3 %	4.3 %
Credit rating	CCC	CCC
Market yield (credit risk)	15.9 %	13.8 %

The Omnia detachable warrants were debentures and derivative liability are measured at September 30, 2023 fair value using certain estimated factors which are classified within Level 3 of the valuation hierarchy. Significant unobservable inputs that are used in the fair value measurement of the Company's derivative liability include a Monte Carlo valuation model with decrease/increase in our stock price, stock price volatility, credit rating, and simulated stock price upon conversion could significantly change the following assumptions:

Risk-free interest rate per year	4.6 %
Expected volatility per year	90.9 %
Expected dividend yield	— %
Contractual expiration	6.9 years
Exercise price	\$ 12.828
Stock price	\$ 0.98

fair value measurement as either an increase or decrease.

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

During the three months ended **September 30, 2023**, the Company's non-recurring fair value measurements consisted of the fair value of impaired long-lived assets, including goodwill, other intangible assets, net, **March 31, 2024** and property, plant and equipment, net that were determined using Level 3 inputs. See Note 4 "Goodwill and Other Intangible Assets, Net". During the three months ended **September 30, 2022, 2023** respectively, the Company did not have any financial assets or liabilities measured at fair value on a nonrecurring basis.

NOTE 7.6. DEBT

The Company has a senior secured credit facility (the "Senior Secured Credit Facility"), which consists of **three-year \$21,053** Debentures (as defined below) and **\$2,865** a subordinated promissory note (the "Subordinated Note"). The Debentures were issued at a 5% original issuance discount and are subject to a 5% exit payment. The Subordinated Note terminated and extinguished in April 2024. See Note 12 – Subsequent Events for additional information.

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Debt related to the Senior Secured Credit Facility and Subordinate Note as of **September 30, 2023, March 31, 2024** and **December 31, 2023** consists of the following:

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Senior Secured Credit Facility	\$ 22,105	\$ —	\$ 11,805	\$ 11,805
Subordinated Note	3,315	—	3,794	3,554
Unamortized discount on loan and deferred debt issuance costs	(7,255)	—	(886)	(1,453)
Total current portion of long-term debt	\$ 18,165	\$ —	\$ 14,713	\$ 13,906
Total debt			(6,577)	(5,848)
Current portion of long-term debt			\$ 8,136	\$ 8,058
Total long-term debt				

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Debentures

On March 3, 2023, the Company entered into a Securities Purchase Agreement with each of the purchasers party thereto (collectively, the "Purchasers") and JGB Collateral, LLC, as collateral agent for the Purchasers (the "Agent") which pursuant to the agreement, the Company sold 5% original issuance discount senior secured debentures with an aggregate principal amount of \$21,053. The Debentures bear interest at a rate of 7% per annum, payable monthly in arrears as of the last trading day of each month and on the maturity date. The Debentures mature on March 3, 2026. At the Company's election, subject to certain conditions, interest can be paid in cash, shares of the Company's common stock, or a combination thereof. The Debentures are subject to an exit payment equal to 5% of the original principal amount, or \$1,053, payable on the maturity date or the date the Debentures are paid in full (the "Exit Payment"). Any time after, March 3, 2024, the Company may irrevocably elect to redeem all of the then outstanding principal amount of the Debentures for cash in an amount equal to the entire outstanding principal balance, including accrued and unpaid interest, the Exit Payment and a prepayment premium in an amount equal to 3% of the outstanding principal balance as of the prepayment date (collectively, the "Prepayment Amount"). Upon the entry into a definitive agreement that would effect a change in control (as defined in the Debentures) of the Company, the Agent may require the Company to prepay the outstanding principal balance in an amount equal to the Prepayment Amount. Commencing on March 3, 2024, at its option, the holder of a Debenture may require the Company to redeem 2% of the original principal amount of the Debentures per calendar month which amount may at the Company's election, subject to certain exceptions, be paid in cash, shares of the Company's common stock, or a combination thereof.

The Company's obligations under the Debentures can be accelerated upon the occurrence of certain customary events of default. In the event of a default and acceleration of the Company's obligations, the Company would be required to pay the Prepayment Amount, liquidated damages and other amounts owing in respect thereof through the date of acceleration.

The Debentures contain customary representations, warranties and covenants including among other things and subject to certain exceptions, covenants that restrict the Company from incurring additional indebtedness, creating or permitting liens on assets, making or holding any investments, repaying outstanding indebtedness, paying dividends or distributions and entering into transactions with affiliates. Substantially all of the company's assets, including intellectual property, are collateralized and at risk if Debenture obligation is not satisfied. In addition, the Company ~~is~~ was required to maintain at least \$7,500 on its balance sheet as restricted cash in a separate account and has financial covenants to maintain certain quarterly revenue targets.

In connection with the sale of the Debentures, the Company issued warrants to purchase up to 333,334 20,835 shares of common stock for an exercise price of \$19.125 \$306.00 per share (the "JGB Warrants"), which had an initial fair value of \$4,475 net of issuance costs of \$139 (see Note 6 and Note 10). On June 22, 2023, as a result of the June 19, 2023 offering, the Company's outstanding JGB warrants to purchase up to 333,334 31,060 shares of the Company's common stock for an exercise price of \$19.125 \$306.00 per share were automatically adjusted to be \$12.828 \$205.248 exercise price for up to 496,960 31,060 shares of common stock. There are no further anti-dilution adjustments on such warrants.

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On October 16, 2023, the Company ~~was not expected~~ entered into a Waiver and Amendment Agreement (the "October Amendment") with each of the subsidiaries of the Company executing the Debentures, the Holders and the Agent, pursuant to ~~be~~ which, among other things, (a) the Holders waived an event of default under Section 7(d) of the Debentures which required the Company to achieve revenue of at least \$18,500 for the quarter ended September 30, 2023 (the "waiver"), (b) the parties agreed to amend Schedule E of the Debentures to reduce the Revenue Target (as such term is defined in ~~compliance with its financial covenant tied to minimum consolidated Revenues, net of \$18,500~~the Debentures), for the ~~three months~~ quarter ended September 30, 2023. ~~The December 31, 2023, to \$15,500, and (c) the Company has obtained~~ agreed to release to the Purchasers the \$7,500 that the Company was required to maintain in a ~~waiver~~ separate account (the "Escrow Funds") which Escrow Funds were applied to, and reduce, the ~~lender executed~~ outstanding principal amount of the Debentures on October 16, 2023; accordingly no event of default has occurred. See Note 17 "Subsequent Events." a dollar-for-dollar basis.

As additional consideration for the waiver, the Company agreed to assign, transfer and convey to the Agent, the Company's entire right, title and interest in and to (i) the Promissory Note made by J&N Real Estate Company, L.L.C. ("J&N") payable to the Company in the principal amount of \$3,800 and (ii) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated June 30, 2021, between J&N, as borrower, for the benefit of the Company, as lender (collectively, the "Pledged Indebtedness"). Upon assignment of the Pledged Indebtedness, the Company recognized the \$2,600 of consideration in exchange to be applied as a \$2,000 reduction of the Put Price (as defined below), \$600 reduction of the outstanding principal amount of Debentures and \$895 loss on sale of financial asset.

In connection with the waiver, the Company and Holders agreed to exercise the outstanding put provision to redeem 10,418 Warrants for an aggregate put price equal to \$2,500 (the "Put Price"), which was concurrently reduced by \$2,000, as described above, with the remaining \$500 payable by the Company on the remaining uncertainty associated with maintaining compliance with Maturity Date recorded as Other long-term liabilities on the financial covenants through the next four quarters, or one year from the date of issuance of these Condensed Consolidated Financial Statements, Balance Sheets. No cash was exchanged as a result of executing the October Amendment.

Subsequently, on December 22, 2023, the Company, the Holders and the Agent entered into an Amendment Agreement (the "December Amendment") pursuant to which the Holders and the Agent consented to the Purchase Agreement, as amended by the GVB Amendment (see Note 2 "Discontinued Operations and Divestitures"). In consideration of the Holders and the Agents' consent, the Company agreed to (i) pay to the Agent, a cash payment of \$2,200 to reduce the outstanding principal of the Debentures (which includes the cash portion of the New Purchase Price paid directly to Agent by Buyer which consists of a cash payment of \$1,100 and an additional \$1,100 paid by the Company), (ii) a 12% secured promissory note issued to the Company's senior lender, on behalf of and at the direction of the Company, in an aggregate principal amount of \$2,000 (the "GVB Promissory Note"), (iii) assign the GVB Insurance Proceeds to the Agent until the outstanding aggregate principal amount of the Debentures, plus accrued and unpaid interest, has been repaid in full; provided that the first \$1,000 of Insurance Proceeds in excess of \$5,000 shall be applied as stated above, and (iv) post-closing enter into a deed in lieu of foreclosure agreement with respect to 224 acres of real property in Delta County, Colorado commonly known as Needle Rock Farms, resulting in a non-monetary exchange yielding additional debt balance under reduction of \$1,000. As of March 31, 2024, the \$2,000 GVB Promissory Note and \$1,000 real estate farm asset are pledged to the senior lender for principal reduction and accordingly \$3,000 of the Senior Secured Credit Facility is presented recorded as Current portion of long term debt on the Condensed Consolidated Balance Sheets.

Additionally, the Company, the Holders and the Agent agreed to amend the Debentures to (i) allow the Holders to voluntarily convert the Debentures, in whole or in part, into shares of the Company's common stock ("Voluntary Conversion Option") on the earlier of (i) June 30, 2024 and (ii) the public announcement of a Fundamental Transaction at a conversion price equal to the lower of (x) \$1.00 per share and (y) the closing sale price of the Company's common stock on June 29, 2024 (the "Conversion Price"), and (ii) include a mandatory prepayment of the outstanding principal of the Debentures in an amount equal to 20% of the net cash proceeds of any issuance by the Company of any of its stock, or other Equity Interests (as defined in the Debentures) or the incurrence or issuance of any indebtedness. The Voluntary Conversion Option remains subject to the approval of the Company's stockholders and the Company is required pursuant to the December Amendment to use its commercially reasonable efforts to obtain such approval.

Additional terms of the December Amendment include a financial covenant holiday through the third quarter of 2024 and revised certain covenants thereafter to reflect the sale of the Purchased Interests, including lowering the Company's quarterly revenue targets.

In accordance with ASC 470-60 Troubled Debt Restructurings by Debtors and ASC 470-50, Debt Modifications and Extinguishment, the Company performed an assessment of whether the transaction was deemed to be a troubled debt restructuring, and if no, whether the transaction was deemed modification of existing debt, or an extinguishment of existing debt and new debt.

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The October Amendment was concluded to be a modification, and not an extinguishment, based on an analysis of the present value of future cash flows. A new effective interest rate was determined, and the debt continued to be amortized. The December Amendment was concluded to be an extinguishment, due to the addition of a substantive conversion option. As a result, the pre-amended debt carrying value was extinguished and the new debt was recorded at fair value, which is subsequently amortized using the effective interest method. Extinguishment charges were \$5,158 and recorded in Interest expense on the Consolidated Statements of Operations and Comprehensive Loss for the quarter ended December 31, 2023.

The Company analyzed the conversion feature of the December Amendment for derivative accounting consideration under ASC 815-15 and determined that the embedded conversion features should be classified as a bifurcated derivative because the exercise price of these convertible notes are subject to a variable conversion rate. The Company has determined that the conversion feature is not considered to be solely indexed to the Company's own stock and is therefore not afforded equity treatment. In accordance with ASC 815, the Company has bifurcated the conversion feature of the note and recorded a derivative liability at fair value in the amount of \$557 as of December 31, 2023 as a component of Other Long-Term Liabilities on the Condensed

Consolidated Balance Sheets. As of March 31, 2024, the fair value of the derivative liability was \$639. See Note 5 "Fair Value Measurement" for additional information related to measurement of the debentures and derivative liability.

Subordinated Note

On March 3, 2023, the Company executed a Subordinated Promissory Note (the "Subordinated Note") with a principal amount of \$2,865 in favor of Omnia Ventures, LP ("Omnia"). The Subordinated Note refinanced the 12% Secured Promissory Note with a principal amount of \$1,000 dated as of October 29, 2021 payable to Omnia (the "October Note") and the 12% Secured Promissory Note with a principal amount of \$1,500 dated as of January 14, 2022 payable to Omnia (the "January Note", and together with the October Note, the "Original Notes"), which were assumed by the Company in connection with the acquisition of GVB Biopharma (see Note 8). The accrued PIK interest refinanced from the Original Notes was \$365. Biopharma.

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Under the terms of the Subordinated Note, the Company is obligated to make interest payments in-kind (the "PIK Interest"). The PIK Interest accrues monthly at a compounding rate of 26.5% per annum. For the three and nine months ended September 30, 2023 the PIK Interest accrual amounts were \$201 and \$450, respectively, annum, payable monthly. The Company is not permitted to prepay all or any portion of the outstanding balance on the Subordinated Note prior to maturity. The maturity date of the Subordinated Note is May 1, 2024. The Subordinated Note includes customary event of default provisions. The Subordinated was terminated and extinguished in April 2024. See Note 12 - Subsequent Events for additional information.

In connection with the Subordinated Note, the Company issued to Omnia, warrants to purchase up to 45,000 2,813 shares of the Company's common stock (the "Omnia Warrants"). The Omnia Warrants are exercisable for seven years from September 3, 2023, at an exercise price of \$12.828 \$205.248 per share, subject, with certain exceptions, to adjustments in the event of stock splits, dividends, subsequent dilutive offerings and certain fundamental transactions, as more fully described in the Omnia Warrants. The Omnia warrants initial fair value was \$1,316 (see Warrants were terminated in April 2024. See Note 6 and 10). 12 - Subsequent Events for additional information.

Contractual As discussed above, the Company has pledged to JGB the \$2,000 GVB promissory note and \$1,000 assignment of Needle Rock Farms to be applied as principal reduction in 2024. As of March 31, 2024, contractual maturities under the Senior Secured Credit Facility and Subordinate Note for the remainder of 2023 2024 and through maturity, excluding any discounts or premiums, as were to be paid in 2024 of September 30, 2023 is as follows: \$6,577 and 2026 of \$8,136. Due to the termination and extinguishment of the Subordinated Note in April 2024 (See Note 12 – Subsequent Events), new contractual maturities under the Senior Secured Credit Facility are to be paid in 2024 of \$3,000, and 2026 of \$8,136.

	Remainder of					
	2023	2024	2025	2026	2027	Thereafter
Future minimum principal payments	\$ —	\$ 2,354	\$ —	\$ 15,811	\$ —	\$ —

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The fair values of the warrants at issuance of \$5,791, together with the Debentures original issuance discount of \$1,053, Debentures exit payment of \$1,053, and third-party debt issuance costs of \$801, are being amortized using the effective interest method over the term of the respective debt instrument, recorded as Interest expense in the Condensed Consolidated Statement of Operations and Comprehensive Loss. The components and activity of unamortized discount and deferred debt issuance costs related to the Senior Secured Credit Facility and Subordinated Note is as follows:

	Total
Issuance	\$ (8,698)
Amortization during the period	171
March 31, 2023	\$ (8,527)
Amortization during the period	594
June 30, 2023	\$ (7,933)
Amortization during the period	678
September 30, 2023	\$ (7,255)
Total	
January 1, 2023	\$ -
Issuance	8,698
Amortization during the year	(2,087)
Debt extinguishment charges	(5,158)
December 31, 2023	1,453
Amortization during the period	(567)
March 31, 2024	\$ 886

NOTE 7. – REVENUErecognition

The Company's revenues are derived primarily from contract manufacturing organization ("CMO") customer contracts that consist of obligations to manufacture the customers' branded filtered cigars and cigarettes. Additional revenues are generated from sale of the Company's proprietary low nicotine content cigarettes, sold under the brand name VLN®, or research cigarettes sold under the brand name SPECTRUM®.

The Company recognizes revenue when it satisfies a performance obligation by transferring control of the product to a customer. For certain CMO contracts, the performance obligation is satisfied over time as the Company determines, due to contract restrictions, it does not have an alternative use of the product and it has an enforceable right to payment as the product is manufactured. The Company recognizes revenue under those contracts at the unit price stated in the contract based on the units manufactured. Revenue from the sale of the Company's products, which include excise taxes and shipping and handling charges billed to customers, is recognized net of cash discounts, sales returns and allowances. There was no allowance for discounts or returns and allowances at March 31, 2024 and December 31, 2023.

Disaggregation of Revenue

The Company's net revenue is derived from customers located primarily in the United States and is disaggregated by the timing of revenue. Revenue recognized from Tobacco products transferred to customers over time represented 60% and 66% for the three months ended March 31, 2024 and 2024, respectively.

The following table presents net revenues by significant customers, which are defined as any customer who individually represents 10% or more of disaggregated product line net revenues:

	Three Months Ended	
	March 31,	
	2024	2023
Customer A	38.55 %	26.12 %

Customer B	22.38 %	27.05 %
Customer C	24.71 %	18.36 %
All other customers	14.36 %	28.47 %

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NOTE 8. – NOTES & LOANS PAYABLE

The table below outlines our notes payable balances as of September 30, 2023 and December 31, 2022:

	September 30,		December 31,	
	2023	2022	2023	2022
Insurance loans payable	\$ 1,314	\$ 780		
Vehicle loans	127	128		
Total current notes and loans payable	<u>\$ 1,441</u>	<u>\$ 908</u>		
Bridge loan	\$ —	\$ 2,814		
Vehicle loans	156	187		
Total long-term notes and loans payable	<u>\$ 156</u>	<u>\$ 3,001</u>		

Insurance loans payable Contract Assets and Liabilities

During Unbilled receivables (contract assets) represent revenues recognized for performance obligations that have been satisfied but have not been billed. These receivables are included as Accounts receivable, net on the second quarter Condensed Consolidated Balance Sheets. Customer payment terms vary depending on the terms of 2023, each customer contract, but payment is generally due prior to product shipment or within credit terms up to 30 days after shipment. Deferred income (contract liabilities) relates to down payments received from customers in advance of satisfying a performance obligation and is included as Deferred income on the Company renewed its Director Condensed Consolidated Balance Sheets.

Total contract assets and Officer ("D&O") insurance for a one-year policy premium totaling \$1,626. The Company paid \$285 as a premium down payment and financed the remaining \$1,341 of policy premiums over ten months at a 7.88% annual percentage rate. Additionally, during the third quarter of 2023, the Company expanded its D&O coverage, resulting in additional financing of \$143, at 9.38% annual percentage rate over six months.

During the second quarter of 2022, the Company renewed its Director and Officer ("D&O") insurance for a one-year policy premium totaling \$2,394. The Company paid \$400 as a premium down payment and financed the remaining \$1,994 of policy premiums over ten months at a 3.25% annual percentage rate. Additionally, during the third quarter of 2022, the Company expanded its D&O coverage as a result of the acquisition of GVB, resulting in an additional premium down payment of \$90 and financing of \$168, under the same terms as the original one-year policy.

The Company also has other insurance loans payables related to pollution, property, and general liability across the Company.

GVB Bridge Note

In connection with the acquisition of GVB in May 2022 (see Note 2), the Company assumed the outstanding principal balance of 12% secured promissory note in the principal amount of \$4,250 ("GVB Bridge Note"). On October 31, 2022, the Company repaid \$1,899 (outstanding principal of \$1,750 and accrued interest of \$149). The remaining outstanding principal of \$2,500 and accrued interest of \$314 was refinanced on March 3, 2023 and has a maturity date of May 1, 2024 (see Note 7).

Vehicle Loans

The Company has various vehicle loans with monthly payments ranging from \$0.8 to \$2.1, interest rates ranging from 0% to 11%, and maturity dates ranging from May 2024 to September 2026.

Estimated future principal payments to be made under the above notes and loans payable as of September 30, 2023 contract liabilities are as follows:

Remainder of 2023	\$ 756
2024	715
2025	68
2026	20
2027	15
Thereafter	23
Total	\$ 1,597

	March 31,		December 31,	
	2024	2023	2024	2023
Unbilled receivables	\$ 732	\$ 1,053		
Deferred income	(376)	(726)		
Net contract assets	\$ 356	\$ 327		

During the three months ended March 31, 2024, the Company recognized \$371 of revenue that was included in the contract liability balance as of December 31, 2023. During the three months ended March 31, 2023, the Company recognized \$688 of revenue that was included in the contract asset balance as of December 31, 2022.

NOTE 8 – EQUITY- BASED COMPENSATION

The Company maintains certain stock-based compensation plans that were approved by the Company's shareholders and are administered by the Compensation Committee of the Company's Board of Directors. The stock-based compensation plans provide for the granting of stock options, time and performance based restricted stock units (RSU's), among other awards to employees, non-employee directors, consultants, and service providers. The 2021 Omnibus Incentive Plan was amended on June 16, 2023, increasing the authorized shares by 233,334. As of March 31, 2024, the Company had available 661,230 shares remaining for future awards under its Omnibus Incentive Plans.

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NOTE 9. – OTHER OPERATING EXPENSES, NET

The components of "Other operating expenses, net" were as follows:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Grass Valley fire:				
Professional services	\$ 53	\$ —	\$ 377	\$ —
Total Grass Valley fire	53	—	377	—
Restructuring costs:				
Impairment of intangible assets (see Note 4)	13,986	—	13,986	—
Impairment of fixed assets	5,931	—	5,931	—

Impairment of right-of-use assets	4,034	—	4,034	—
Professional services	207	—	207	—
Severance (see Note 1)	159	—	159	—
Total Restructuring costs	24,317	—	24,317	—
Acquisition and transaction costs	218	43	357	882
Needlerock Farms settlement (see Note 11)	9	—	765	—
Gain on change in warrant liability (see Note 6)	(1,262)	—	(540)	—
Loss (gain) on change in contingent consideration (see Note 6)	9	—	(186)	—
Gain on sale or disposal of property, plant and equipment	—	(2)	(173)	(2)
Total other operating expenses, net	\$ 23,344	\$ 41	\$ 24,917	\$ 880

Grass Valley fire

In November 2022, there was a fire at our Grass Valley manufacturing facility in Oregon, which manufactures bulk ingredients, primarily CBD isolate and distillate. The Company has incurred continuous expenses throughout 2023 related to consulting, legal and demolition at this facility.

Restructuring costs

During the third quarter of 2023, the Company undertook various restructuring activities in an effort to better align its internal organizational structure and costs with its strategy, as well as preserve liquidity. As a component of the restructuring, the Company has initiated a process to evaluate strategic alternatives with respect to the Company's assets and implemented cost cut initiatives. These processes included consideration of a range of strategic, operational and financial transactions and alternatives, such as business combinations, asset sales, licensing agreements, alternate financing strategies and other options.

As a result, the Company incurred \$24,317 in restructuring costs in the three and nine months ended September 30, 2023, which included costs related to employee termination, professional services and consulting, and long-lived asset impairment.

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NOTE 10. – CAPITAL RAISE AND WARRANT ACTIVITY

The following table summarizes the Company's warrant activity:

Warrants outstanding at January 1, 2023	1,138
Issued	378
Warrants outstanding at March 31, 2023	1,516
Issued	912
Warrants outstanding at June 30, 2023	2,428
Issued	10,304
Warrants outstanding at September 30, 2023	12,732

2022 Registered Direct Offering & Warrant Repricing

On July 21, 2022, the Company and certain institutional investors (the "July 2022 Investors") entered into a securities purchase agreement (the "July 2022 Securities Purchase Agreement") relating to the issuance and sale of shares of common stock pursuant to a registered direct offering (the "July 2022 Registered Offering" and, together with the July 2022 Private Placement (as defined below), the "July 2022 Offerings"). The July 2022 Investors purchased approximately \$35,000 of shares, consisting of an aggregate of 1,138,221 shares of common stock at a purchase price of \$30.75 per share, subject to certain restrictions. The net proceeds to the Company from the July 2022 Offerings, after deducting the fees and the Company's offering expenses, were \$32,484.

Pursuant to the July 2022 Securities Purchase Agreement, in a concurrent private placement, the Company issued and sold to the July 2022 Investors warrants (the "July 2022 Warrants") to purchase up to 1,138,221 shares of common stock (the "July 2022 Private Placement"). The July 2022 Warrants are exercisable immediately upon issuance at an exercise price of \$30.75 per share of common stock, subject to adjustment in certain circumstances, and expire on July 25, 2027.

As a result of the June 19, 2023 offering described below, certain of the July 2022 Investors and the Company entered a warrant reprice letter (the "Warrant Repricing") and agreed to reduce the exercise price on the previously issued 747,974 warrants owned by the investors participating in the June 19, 2023 offering from \$30.75 to \$7.05 and to add a provision in the warrants that upon any subsequent equity sales at a price per share lower than the then effective exercise price of such warrants, such exercise price shall be lowered to such price at which the shares were offered. The Warrant Repricing is accounted for as a modification of a freestanding equity-classified written call option, and therefore resulted in an immediate and incremental increase of approximately \$2,025 in the estimated fair value of the related 747,974 warrants, recorded as a component of Capital in excess of par value, with an offsetting equal amount recorded as equity issuance costs.

As a result of subsequent offerings, the exercise price on 747,974 warrants was automatically adjusted triggering non-cash deemed dividend as a result of the down-round adjustments. In July 2023 the exercise price was adjusted to \$3.80 and \$2.42, respectively, and further in October 2023 was adjusted to \$0.525. See "Subsequent Events."

The remaining 390,247 previously issued July 2022 Warrants were not repriced and remain at an exercise price of \$30.75 on their original terms.

June 19, 2023 Registered Direct Offering

On June 19, 2023, the Company and certain investors entered into a securities purchase agreement relating to the issuance and sale of shares of approximately \$5,300 of shares and warrants, consisting of an aggregate of 747,974 shares of common stock and 747,974 warrants to purchase an equal number of shares, at a purchase price of \$7.05 per unit. The net proceeds to the Company from the offering were approximately \$4,800.

The warrants were exercisable immediately upon issuance at an exercise price of \$7.05 per share of common stock, expire on June 22, 2028 and are subject to adjustment in certain circumstances, including upon any subsequent equity sales at a price per share lower than the then effective exercise price of such warrants, then such exercise price shall be lowered to such price at which the shares were offered.

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As a result of the offerings, the exercise price on the 747,974 warrants was automatically adjusted triggering non-cash deemed dividend as a result of the down-round adjustments. In July 2023 the exercise price was adjusted to \$3.80 and \$2.42, respectively, and further in October 2023 was adjusted to \$0.525. See "Subsequent Events."

July 6, 2023 Registered Direct Offering.

On July 6, 2023, the Company and certain investors entered into a securities purchase agreement relating to the issuance and sale of approximately \$3,000 of shares and warrants, consisting of an aggregate of 778,634 shares of common stock and 1,557,268 warrants to purchase an equal number of shares, at a purchase price of \$3.80 per unit. The warrants are exercisable six months after issuance at an exercise price of \$3.80 per share of common stock and expire on January 10, 2029. The net proceeds to the Company from the offering were approximately \$2,722.

As a result of subsequent offerings, the exercise price on 1,557,268 warrants was automatically adjusted triggering non-cash deemed dividend as a result of the down-round adjustments. In July 2023 the exercise price was adjusted to \$2.42 and further in October 2023 was adjusted to \$0.525. See "Subsequent Events."

July 19, 2023 Registered Direct Offering.

On July 19, 2023, the Company and certain investors entered into a securities purchase agreement relating to the issuance and sale of approximately \$11,700 of shares and warrants, consisting of an aggregate of 4,373,219 shares of common stock and 8,746,438 warrants to purchase an equal number of shares, at a purchase price of \$2.67 per unit. The warrants are exercisable immediately at an exercise price of \$2.42 per share of common stock and expire five years after issuance. The net proceeds to the Company from the offering were approximately \$10,742.

As a result of a subsequent offering, the exercise price on 8,746,438 warrants was automatically adjusted triggering non-cash deemed dividend as a result of the down-round adjustment. In October 2023 the exercise price was adjusted to \$0.525. See "Subsequent Events."

March 2023 JGB Warrants

In connection with the sale of the Debentures, the Company issued the JGB Warrants to purchase up to 333,334 shares of common stock for an exercise price of \$19.125 per share. The JGB Warrants are exercisable for five years from September 3, 2023, at an exercise price of \$19.125 per share, determined as a 50% premium to the VWAP on the closing date, subject, with certain exceptions, to adjustments in the event of stock splits, dividends, subsequent dilutive offerings and certain fundamental transactions. The JGB warrants initial fair value of \$4,475 net of issuance costs of \$139 (see Note 6), of which half of the warrants meet the criteria for liability classification due to a contingent put option which allows the holder to require that the Company redeem the warrants in cash for a purchase price equal to \$15.00 upon certain conditional events such as change in control or event of default. Accordingly, half of the warrants are classified as Other long-term liabilities on the Condensed Consolidated Balance Sheets. The remainder of the JGB warrants are equity classified and recorded as a component of Capital in excess of par value.

As a result of the June 19, 2023 offering, the Company's outstanding JGB warrants to purchase up to 333,334 shares of the Company's common stock for an exercise price of \$19.125 per share were automatically adjusted to be \$12.828 exercise price for up to 496,960 shares of common stock. As a result of the anti-dilution provision being triggered, the Company recognized a non-cash deemed dividend of \$367 in connection with these adjustments, recorded on the Condensed Consolidated Statement of Operations and Comprehensive Loss and within Capital in excess of par value (as the Company has an accumulated deficit and therefore the deemed dividend is treated as paid out of Capital in excess of par value). There are no further anti-dilution adjustments on such warrants.

The Company redeemed 166,667 of such warrants for an aggregate put price equal to \$2,500. See Note 17 "Subsequent Events."

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The JGB detachable warrants were valued at the closing dates of the Senior Secured Credit Facility using a Monte Carlo valuation model with the following assumptions:

Risk-free interest rate per year	4.2 %
Expected volatility per year	88.1 %
Expected dividend yield	— %
Contractual expiration	5.5 years
Exercise price	\$ 19.125
Stock price	\$ 13.65

March 2023 Omnia Warrants

In connection with the Subordinated Note, the Company issued to Omnia, the Omnia Warrants to purchase up to 45,000 shares of the Company's common stock (the "Omnia Warrants"). The Omnia Warrants are exercisable for seven years from September 3, 2023, at an exercise price of \$12.828 per share, subject, with certain exceptions, to adjustments in the event of stock splits, dividends, subsequent dilutive offerings and certain fundamental transactions. The Omnia warrants initial fair value was \$1,316 (see Note 6), and meet the criteria for liability classification due to contingent put option which

allows the holder to require that the Company redeem the warrants in cash for a purchase price equal to \$30.00 upon certain conditional events such as change in control or event of default. The Omnia warrants are classified as Other long-term liabilities on the Condensed Consolidated Balance Sheets.

The Omnia detachable warrants were valued at the closing dates of the Subordinated Note using a Monte Carlo valuation model with the following assumptions:

Risk-free interest rate per year	4.1 %
Expected volatility per year	83.8 %
Expected dividend yield	— %
Contractual expiration	7.5 years
Exercise price	\$ 12.828
Stock price	\$ 13.65

ATM Offering

On March 31, 2023, the Company established an at-the-market common equity offering program ("ATM Program"), through which it may, through which it had the ability to offer and sell shares of common stock having an aggregate gross sales price of up to \$50,000. The Company paid a 3.00% sales commission based on the gross proceeds of the sales price per share of common stock sold. On June 19, 2023, the Company terminated the ATM Program in connection with the June 2023 Capital Raise. The following table shows the number of shares sold under the ATM Program prior to its termination:

	Nine Months Ended	
	September 30,	2023
(in thousands, except for per-share data)		
Number of common shares issued		284
Weighted average sale price per share	\$	9.65
Gross proceeds	\$	2,741
Net proceeds	\$	2,563

NOTE 11. - COMMITMENTS AND CONTINGENCIES

License agreements and sponsored research – The Company has entered into various license, sponsored research, collaboration, and other agreements (the "Agreements") with various counterparties in connection with the Company's plant biotechnology business relating to tobacco, hemp/cannabis and hops. The schedule below summarizes the Company's commitments, both financial and other, associated with each Agreement. Costs incurred under the

Agreements are generally recorded as research and development expenses on the Company's Condensed Consolidated Statements of Operations and Comprehensive Loss.

Commitment	Counter Party	Product Relationship	Commitment Type	Future Commitments						
				2023	2024	2025	2026	2027 & After	Total	
Research Agreement	KeyGene	Hemp / Cannabis / Hops	Contract fee	\$ 1,824	\$ 2,081	\$ 1,589	\$ 1,302	\$ 328	\$ 7,124 (1)	
License Agreement	NCSU	Tobacco	Minimum annual royalty	—	100	100	100	1,000	1,300 (2)	
Research Agreement	NCSU	Tobacco	Contract fee	95	114	—	—	—	209 (3)	
Growing Agreements	Various	Tobacco	Contract fee	119	127	—	—	—	246 (4)	
				\$ 2,038	\$ 2,422	\$ 1,689	\$ 1,402	\$ 1,328	\$ 8,879	

(1) Exclusive agreement with the Company in the field of the Cannabis Sativa L. plant. The initial term of the agreement was five years with an option for an additional two years. On April 30, 2021, the Company and KeyGene entered into a First Amended and Restated Framework Collaborative Research Agreement which extended the agreement term, from first-quarter 2024 to first-quarter 2027, and preserves the Company's option for an additional 2-year extension, now through first quarter of 2029. On March 30, 2022, the Company and KeyGene entered into a new Framework Collaborative Research Agreement for a term of three years at an aggregate cost of \$1,830 in the field related to the hops plant.

The Company will exclusively own all results and all intellectual property relating to the results of the collaboration with KeyGene (the "Results"). The Company will pay royalties in varying amounts to KeyGene relating to the Company's commercialization in the stated fields of each agreement. The Company has also granted KeyGene a license to commercialize the Results outside of each field and KeyGene will pay royalties in varying amounts to the Company relating to KeyGene's commercialization of the Results outside of each field.

(2) The minimum annual royalty fee is credited against running royalties on sales of licensed products. The Company is also responsible for reimbursing NCSU for actual third-party patent costs incurred, including capitalized patent costs and patent maintenance costs. These costs vary from year to year and the Company has certain rights to direct the activities that result in these costs. Additionally, see Note 17 "Subsequent events."

(3) On August 4, 2023, the Company entered into a one-year Sponsored Project Agreement with NCSU for continued research of tobacco alkaloid formation.

(4) Various R&D growing agreements for tobacco.

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Litigation -In accordance with applicable accounting guidance, the Company establishes an accrued liability for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. In such cases, there may be an exposure to loss in excess of any amounts accrued. When a loss contingency is not both probable and estimable, the Company does not establish an accrued liability. As a litigation or regulatory matter develops, the Company, in conjunction with any outside counsel handling the matter, evaluates on an ongoing basis whether such matter presents a loss contingency that is probable and estimable. If, at the time of evaluation, the loss contingency related to a litigation or regulatory matter is not both probable and estimable, the matter will continue to be monitored for further developments that would make such loss contingency both probable and estimable. When a loss contingency related to a litigation or regulatory matter is deemed to be both probable and estimable, the Company will establish an accrued liability with respect to such loss contingency and record a corresponding amount of related expenses. The Company will then continue to monitor the matter for further developments that could affect the amount of any such accrued liability.

Class Action

On January 21, 2019, Matthew Jackson Bull, a resident of Denver, Colorado, filed a Complaint against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, and the Company's then Chief Financial Officer, John T. Brodfuehrer, in the United States District Court for the Eastern District of New York entitled: Matthew Bull, Individually and on behalf of all others similarly situated, v. 22nd Century Group, Inc., Henry Sicignano III, and John T. Brodfuehrer, Case No. 1:19 cv 00409.

On January 29, 2019, Ian M. Fitch, a resident of Essex County Massachusetts, filed a Complaint against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, and the Company's then Chief Financial Officer, John T. Brodfuehrer, in the United States District Court for the Eastern District of New York entitled: Ian Fitch, Individually and on behalf of all others similarly situated, v. 22nd Century Group, Inc., Henry Sicignano III, and John T. Brodfuehrer, Case No. 2:19 cv 00553.

On May 28, 2019, the plaintiff in the Fitch case voluntarily dismissed that action. On August 1, 2019, the Court in the Bull case issued an order designating Joseph Noto, Garden State Tire Corp, and Stephens Johnson as lead plaintiffs.

On September 16, 2019, pursuant to a joint motion by the parties, the Court in the Bull case transferred the class action to federal district court in the Western District of New York, where it remains pending as Case No. 1:19-cv-01285.

Plaintiffs in the Bull case filed an Amended Complaint on November 19, 2019 that alleges three counts: Count I sues the Company and Messrs. Sicignano and Brodfuehrer and alleges that the Company's quarterly and annual reports, SEC filings, press releases and other public statements and documents contained false statements in violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5; Count II sues Messrs. Sicignano and Brodfuehrer pursuant to Section 10(b) of the Securities Exchange Act and Rule 10b5(a) and (c); and Count III sues Messrs. Sicignano and Brodfuehrer for the allegedly false statements pursuant to Section 20(a) of the Securities Exchange Act. The Amended Complaint seeks to certify a class, and unspecified compensatory and punitive damages, and attorney's fees and costs.

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On January 29, 2020, the Company and Messrs. Sicignano and Brodfuehrer filed a Motion to Dismiss the Amended Complaint. On January 14, 2021, the Court granted the motion, dismissing all claims with prejudice. The Plaintiffs filed a notice of appeal on February 12, 2021 to the Second Circuit Court of Appeals. On May 24, 2022, after briefing and oral argument, the Second Circuit issued an order affirming in part, and reversing in part, the District Court's dismissal order. The Second Circuit affirmed the District Court's dismissal of the claims relating to the non-disclosure of stock promotion articles, but reversed the District Court's dismissal order of the claims alleging the non-disclosure of an SEC investigation. The Second Circuit noted in its opinion, however, that the District Court had not addressed certain arguments raised by the Company and Messrs. Sicignano and Brodfuehrer in the Motion to Dismiss the Amended Complaint as to these remaining claims, and remanded the case to the District Court to address these arguments for the dismissal of the remaining claims. On August 8, 2022, the Company and Messrs. Sicignano and Brodfuehrer filed a renewed motion to dismiss the remaining claims in the Amended Complaint to address the arguments not previously addressed by the District Court. On September 22, 2022, Plaintiffs filed a brief in opposition to the motion. On October 12, 2022, the Company and Messrs. Sicignano and Brodfuehrer filed a reply brief in further support of the motion. On January 6, 2023, the District Court denied the motion to dismiss, and the case will proceed forward on the remaining claims.

The parties participated in a mediation on March 21, 2023 and reached an initial memorandum of understanding for settlement in principle to resolve the litigation and release all claims against the Company. On April 25, 2023, the parties filed with the Court the Motion for Preliminary Approval of the Settlement, which includes the final terms of the proposed settlement. The Court preliminarily approved the settlement on June 30, 2023, and scheduled a further settlement hearing for October 3, 2023. The Court entered the Final Judgment and Order of Dismissal with Prejudice of the action on October 23, 2023. The settlement amount that the defendants paid is \$3,000 and is fully covered by the Company's insurance, which has been funded by the Company's insurance carrier in an escrow account and anticipated to be disbursed in the fourth quarter of 2023. Accordingly, the Company has recorded an accrual for litigation settlement and corresponding indemnification receivable on the Condensed Consolidated Balance Sheets as of September 30, 2023.

[Shareholder Derivative Cases](#)

On February 6, 2019, Melvyn Klein, a resident of Nassau County New York, filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and each member of the Company's Board of Directors in the United States District Court for the Eastern District of New York entitled: Melvyn Klein, derivatively on behalf of 22nd Century Group v. Henry Sicignano, III, Richard M. Sanders, Joseph Alexander Dunn, Nora B. Sullivan, James W. Cornell, John T. Brodfuehrer and 22nd Century Group, Inc., Case No. 1:19 cv 00748. Mr. Klein brings this action derivatively alleging that (i) the director defendants supposedly breached their fiduciary duties for allegedly allowing

the Company to make false statements; (ii) the director defendants supposedly wasted corporate assets to defend this lawsuit and the other related lawsuits; (iii) the defendants allegedly violated Section 10(b) of the Securities Exchange Act and Rule 10b 5 promulgated thereunder for allegedly approving or allowing false statements regarding the Company to be made; and (iv) the director defendants allegedly violated Section 14(a) of the Securities Exchange Act and Rule 14a 9 promulgated thereunder for allegedly approving or allowing false statements regarding the Company to be made in the Company's proxy statement.

On February 11, 2019, Stephen Mathew filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and each member of the Company's Board of Directors in the Supreme Court of the State of New York, County of Erie, entitled: Stephen Mathew, derivatively on behalf of 22nd Century Group, Inc. v. Henry Sicignano, III, John T. Brodfuehrer, Richard M. Sanders, Joseph Alexander Dunn, James W. Cornell, Nora B. Sullivan and 22nd Century Group, Inc., Index No. 801786/2019. Mr. Mathew brings this action derivatively generally alleging the same allegations as in the Klein case. The Complaint seeks declaratory relief, unspecified monetary damages, corrective corporate governance actions, and attorney's fees and costs.

On August 15, 2019, the Court consolidated the Mathew and Klein actions pursuant to a stipulation by the parties (Western District of New York, Case No. 1-19-cv-0513). On May 3, 2019, the Court ordered the Mathew case stayed. This stay was applied to the Consolidated Action pursuant to the Court's August 15, 2019 Order Consolidated Related Shareholder Derivative Actions and Establishing a Leadership Structure. As a result of the Court's denial of the renewed Motion to Dismiss the Amended Complaint, the May 3, 2019 stay will be lifted. No trial date has been set. We intend to vigorously defend the Company and the individual defendants against such claims.

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On June 10, 2019, Judy Rowley filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and each member of the Company's Board of Directors in the Supreme Court of the State of New York, County of Erie, entitled: Judy Rowley, derivatively on behalf of 22nd Century Group, Inc. v. Henry Sicignano, III, Richard M. Sanders, Joseph Alexander Dunn, Nora B. Sullivan, James W. Cornell, John T. Brodfuehrer, and 22nd Century Group, Inc., Index No. 807214/2019. Ms. Rowley brought the action derivatively alleging that the director defendants supposedly breached their fiduciary duties by allegedly allowing the Company to make false statements. The Complaint sought declaratory relief, unspecified monetary damages, corrective corporate governance actions, and attorney's fees and costs. We intend to vigorously defend the Company and the individual defendants against such claims. On September 13, 2019, the Court ordered the litigation stayed pursuant to a joint stipulation by the parties. On August 3, 2022, Plaintiff dismissed the case with prejudice by filing a stipulation of discontinuance with the Court. This dismissal was not pursuant to a settlement.

On January 15, 2020, Kevin Broccuto filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and certain members of the Company's prior Board of Directors in the District Court of the State of Nevada, County of Clark, entitled: Kevin Broccuto, derivatively on behalf of 22nd Century Group, Inc. v. James W. Cornell, Richard M. Sanders, Nora B. Sullivan, Henry Sicignano, III, and John T. Brodfuehrer, Case No. A-20-808599. Mr. Broccuto brings this action derivatively alleging three counts: Count I alleges that the defendants breached their fiduciary duties; Count II alleges they committed corporate waste; and Count III that they were unjustly enriched, by allegedly allowing the Company to make false statements.

On February 11, 2020, Jerry Wayne filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and certain members of the Company's prior Board of Directors in the District Court of the State of Nevada, County of Clark, entitled: Jerry Wayne, derivatively on behalf of 22nd Century Group, Inc. v. James W. Cornell, Richard M. Sanders, Nora B. Sullivan, Henry Sicignano, III, and John T. Brodfuehrer, Case No. A-20-808599. Mr. Wayne brings this action derivatively alleging generally the same allegations as the Broccuto case. The Complaint seeks unspecified monetary damages, corrective corporate governance actions, disgorgement of alleged profits and imposition of constructive trusts, and attorney's fees and costs. The Complaint also seeks to declare as unenforceable the Company's Bylaw requiring derivative lawsuits to be filed in Erie County, New York, where the Company is headquartered.

On March 25, 2020, the Court ordered the Broccuto and Wayne cases consolidated and stayed pursuant to a joint stipulation from the parties. On June 27, 2022, the Court ordered that the stay continue until thirty (30) days after the District Court rules on the renewed Motion to Dismiss the Amended Complaint in the Noto Class Action case. As a result of the Court's denial of the Motion to Dismiss the Amended Complaint, the June 27, 2022 stay will be lifted. No trial date has been set. The parties participated in a mediation on March 21, 2023, and a subsequent mediation on October 17, 2023, which process is continuing.

We intend to vigorously defend the Company and the individual defendants against such claims.

[Insurance Litigation](#)

In November 2022, there was a fire at the Company's Grass Valley manufacturing facility in Oregon, which resulted in a total loss of the facility. The Company submitted an insurance claim with Dorchester Insurance Company, Ltd. ("Dorchester") for casualty loss and business interruption coverage which was acknowledged on November 23, 2022. Dorchester funded \$5,000 of casualty loss insurance but has failed to issue any payments in connection with the Company's business interruption claim.

On July 19, 2023, the Company filed a Complaint against Dorchester in the United States District Court for the District of Oregon, Pendleton Division, Case No. 2:23-cv-01057-HL. The Company is alleging breach of contract, breach of duty of good faith and fair dealing and negligence per se. The Company is seeking full recovery of its business interruption claim under the policy plus direct, indirect and consequential damages resulting from Dorchester's continued delay in issuing coverage payments. Discovery is ongoing.

Needle Rock Farms – Settlement Agreement

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During March 2023, the Company negotiated and entered into a settlement agreement related to a water rights dispute with the adjacent property owner for Needle Rock Farms in which the Company agreed to pay \$250 in cash upon execution of the settlement, transferred certain farm equipment with net book value of \$272, and accrued an additional payment of \$225 that is contingent on either the sale of the farm or will be paid within one year. The total charges of \$747 recorded in connection with the settlement agreement is included within Other operating expenses, net on the Condensed Consolidated Statements of Operations and Comprehensive Loss.

NOTE 12 – EQUITY- BASED COMPENSATION

The Company maintains certain stock-based compensation plans that were approved by the Company's stockholders and are administered by the Compensation Committee of the Company's Board of Directors. The stock-based compensation plans provide for the granting of stock options, time and performance based restricted stock units (RSU's), among other awards to employees, non-employee directors, consultants, and service providers. The 2021 Omnibus Incentive Plan was amended on June 16, 2023, increasing the authorized shares by 233,334. As of September 30, 2023, the Company had available 436,775 shares remaining for future awards under its Omnibus Incentive Plans.

Compensation Expense – The Company recognized the following compensation costs, net of actual forfeitures, related to restricted stock units ("RSUs") and stock options:

	Three Months Ended		Nine Months Ended		Three Months Ended	
	September 30,		September 30,		March 31,	
	2023	2022	2023	2022	2024	2023
Sales, general, and administrative	\$ 555	\$ 2,201	\$ 3,099	\$ 4,431	\$ 140	\$ 1,046
Research and development	21	46	138	135	41	51
Total RSUs and stock option compensation	\$ 576	\$ 2,247	\$ 3,237	\$ 4,566		
Total equity based compensation - continuing operations					181	1,097
Total equity based compensation - discontinued operations					—	78
Total equity based compensation					\$ 181	\$ 1,175

Restricted Stock Units Disaggregation of Revenue – We typically grant RSUs

The Company's net revenue is derived from customers located primarily in the United States and is disaggregated by the timing of revenue. Revenue recognized from Tobacco products transferred to employees customers over time represented 60% and non-employee directors, 66% for the three months ended March 31, 2024 and 2024, respectively.

The following table summarizes the changes in unvested RSUs from January 1, 2023 through September 30, 2023. It presents net revenues by significant customers, which are defined as any customer who individually represents 10% or more of disaggregated product line net revenues:

	Unvested RSUs		
	Weighted Average		
	Number of		Grant-date
	Shares		Fair Value
	in thousands		\$ per share
Unvested at January 1, 2023			269 \$ 31.88
Granted	293		12.44
Vested	(122)		31.16
Forfeited	(2)		36.35
Unvested at March 31, 2023	438		19.06
Vested	(25)		22.47
Forfeited	(22)		17.77
Unvested at June 30, 2023	391		18.92
Forfeited	(75)		20.86
Unvested at September 30, 2023	316		\$ 18.45

	Three Months Ended	
	March 31,	
	2024	2023
Customer A	38.55 %	26.12 %
Customer B	22.38 %	27.05 %
Customer C	24.71 %	18.36 %
All other customers	14.36 %	28.47 %

The fair value of RSUs that vested during the nine months ended September 30, 2023 was approximately \$1,838 based on the stock price at the time of vesting. As of September 30, 2023, unrecognized compensation expense for RSUs amounted to \$3,280 which is expected to be recognized over a weighted average period of approximately 1.7 years. In addition, there is approximately \$786 of unrecognized compensation expense that requires the achievement of certain milestones which are not yet probable.

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Stock Options – Contract Assets and Liabilities

Our outstanding stock options were valued using the Black-Scholes option-pricing model.

Unbilled receivables (contract assets) represent revenues recognized for performance obligations that have been satisfied but have not been billed. These receivables are included as Accounts receivable, net on the date Condensed Consolidated Balance Sheets. Customer payment terms vary depending on the terms of each customer contract, but payment is generally due prior to product shipment or within credit terms up to 30 days after shipment. Deferred income (contract liabilities) relates to down payments received from customers in advance of satisfying a performance obligation and is included as Deferred income on the award. There was no stock option grant activity during the nine months ended September 30, 2023. A summary of the status of stock options activity since January 1, 2023 Condensed Consolidated Balance Sheets.

Total contract assets and at September 30, 2023 is contract liabilities are as follows:

	Weighted				March 31,	December 31,
	Weighted		Average	Remaining	2024	2023
	Number of	Exercise	Contractual	Intrinsic		
	Options	Price	Term	Value		
in thousands		\$ per share				
Outstanding at January 1, 2023	327	\$ 24.82				
Expired	(7)	\$ 41.40				
Outstanding at March 31, 2023	320	\$ 24.74	2.1 years	\$ —		
Outstanding at June 30, 2023	320	\$ 24.74	1.8 years	\$ —		
Expired	(92)	\$ 21.34				
Outstanding at September 30, 2023	228	\$ 26.12	2.0 years	\$ —		
Exercisable at September 30, 2023	221	\$ 25.74	1.9 years	\$ —		
Unbilled receivables					\$ 732	\$ 1,053
Deferred income					(376)	(726)
Net contract assets					\$ 356	\$ 327

The intrinsic value of a stock option is the amount by which the current market value or the market value upon exercise of the underlying stock exceeds the exercise price of the option.

As of September 30, 2023, there is approximately \$190 of unrecognized compensation expense for stock options that requires the achievement of certain milestones which are not yet probable.

NOTE 13. – EARNINGS PER SHARE

The following table sets forth the computation of basic and diluted loss per common share for During the three and nine months ended September 30, 2023 and 2022, respectively. Outstanding warrants, options and RSUs were excluded from March 31, 2024, the calculation Company recognized \$371 of diluted EPS revenue that was included in the contract liability balance as of December 31, 2023. During the effect three months ended March 31, 2023, the Company recognized \$688 of revenue that was antidilutive.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
(in thousands, except for per-share data)				
Net loss	\$ (72,720)	\$ (13,102)	\$ (111,441)	\$ (33,518)
Deemed dividend from trigger of anti-dilution provision feature	—	—	(367)	—
Deemed dividend related to down-round features	(564)	—	(564)	—
Net loss available to common shareholders	\$ (73,284)	\$ (13,102)	\$ (112,372)	\$ (33,518)
Weighted average common shares outstanding - basic and diluted	19,887	14,009	16,411	12,351
Basic and diluted loss per common share	\$ (3.68)	\$ (0.94)	\$ (6.85)	\$ (2.71)
Anti-dilutive shares are as follows as of September 30:				
Warrants	12,732	1,138	12,732	1,138
Options	228	327	228	327
Restricted stock units	316	212	316	212
	13,276	1,677	13,276	1,677

included in the contract asset balance as of December 31, 2022.

NOTE 8 – EQUITY- BASED COMPENSATION

The Company maintains certain stock-based compensation plans that were approved by the Company's shareholders and are administered by the Compensation Committee of the Company's Board of Directors. The stock-based compensation plans provide for the granting of stock options, time and performance based restricted stock units (RSU's), among other awards to employees, non-employee directors, consultants, and service providers. The 2021 Omnibus Incentive Plan was amended on June 16, 2023, increasing the authorized shares by 233,334. As of March 31, 2024, the Company had available 661,230 shares remaining for future awards under its Omnibus Incentive Plans.

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NOTE 14. Compensation Expense – ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS) The Company recognized the following compensation costs, net of actual forfeitures, related to restricted stock units ("RSUs") and stock options:

The following table is a summary of the components and activity of Accumulated Other Comprehensive Income (Loss) ("AOCL") for the nine months ended September 30, 2023 and 2022, respectively:

	Three Months Ended	
	March 31,	
	2024	2023
Sales, general, and administrative	\$ 140	\$ 1,046
Research and development	41	51
Total equity based compensation - continuing operations	181	1,097
Total equity based compensation - discontinued operations	—	78
Total equity based compensation	\$ 181	\$ 1,175

	Nine Months Ended September 30, 2023				
	Corporate		Foreign		
	securities/	Translation	Pre-tax	Net of	
	investments	Adjustment	Amount	Tax	Tax Amount
Balance at January 1, 2023	\$ (112)	\$ 1	\$ (111)	\$ —	\$ (111)
Unrealized gain on short-term investment securities	61	—	61	—	61
Foreign currency translation	—	(4)	(4)	—	(4)
Reclassification of realized losses to net loss	13	—	13	—	13
Balance at March 31, 2023	\$ (38)	\$ (3)	\$ (41)	\$ —	\$ (41)
Unrealized loss on short-term investment securities	10	—	10	—	10
Foreign currency translation	—	42	42	—	42
Reclassification of realized losses to net loss	28	—	28	—	28
Balance at June 30, 2023	\$ (0)	\$ 39	\$ 39	\$ —	\$ 39
Foreign currency translation	—	(69)	(69)	—	(69)
Balance at September 30, 2023	\$ (0)	\$ (30)	\$ (30)	\$ —	\$ (30)

	Nine Months Ended September 30, 2022				
	Corporate		Foreign		
	securities/	Translation	Pre-tax	Tax	Tax Amount
Balance at January 1, 2022	\$ (112)	\$ 1	\$ (111)	\$ —	\$ (111)
Unrealized gain on short-term investment securities	61	—	61	—	61
Foreign currency translation	—	(4)	(4)	—	(4)
Reclassification of realized losses to net loss	13	—	13	—	13
Balance at March 31, 2022	\$ (38)	\$ (3)	\$ (41)	\$ —	\$ (41)
Unrealized loss on short-term investment securities	10	—	10	—	10
Foreign currency translation	—	42	42	—	42
Reclassification of realized losses to net loss	28	—	28	—	28
Balance at June 30, 2022	\$ (0)	\$ 39	\$ 39	\$ —	\$ 39
Foreign currency translation	—	(69)	(69)	—	(69)
Balance at September 30, 2022	\$ (0)	\$ (30)	\$ (30)	\$ —	\$ (30)

	securities/	Translation	Pre-tax	Net of	
	investments	Adjustment	Amount	Tax	Tax Amount
Balance at January 1, 2022	\$ (162)	\$ —	\$ (162)	\$ —	\$ (162)
Unrealized loss on short-term investment securities	(400)	—	(400)	—	(400)
Balance at March 31, 2022	\$ (562)	\$ —	\$ (562)	\$ —	\$ (562)
Unrealized loss on short-term investment securities	(69)	—	(69)	—	(69)
Reclassification of realized losses to net loss	108	—	108	—	108
Balance at June 30, 2022	\$ (523)	\$ —	\$ (523)	\$ —	\$ (523)
Unrealized loss on short-term investment securities	(19)	—	(19)	—	(19)
Reclassification of realized losses to net loss	35	—	35	—	35
Balance at September 30, 2022	\$ (507)	\$ —	\$ (507)	\$ —	\$ (507)

NOTE 15. – REVENUE RECOGNITION

Tobacco

The Company's tobacco reportable segment revenues are derived primarily from contract manufacturing organization ("CMO") customer contracts that consist of obligations to manufacture the customers' branded filtered cigars and cigarettes. Additional revenues are generated from sale of the Company's proprietary low nicotine content cigarettes, sold under the brand name VLN®, or research cigarettes sold under the brand name SPECTRUM®.

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The Company recognizes revenue when it satisfies a performance obligation by transferring control of the product to a customer. For certain CMO contracts, the performance obligation is satisfied over time as the Company determines, due to contract restrictions, it does not have an alternative use of the product and it has an enforceable right to payment as the product is manufactured. The Company recognizes revenue under those contracts at the unit price stated in the contract based on the units manufactured. Tobacco revenue from the sale of the Company's products, which include excise taxes and shipping and handling charges billed to customers, is recognized net of cash discounts, sales returns and allowances. There was no allowance for discounts or returns and allowances at September 30, 2023 and December 31, 2022. Excise taxes recorded in Cost of Goods Sold on the Condensed Consolidated Statement of Operations and Comprehensive Loss for the three months ended September 30, 2023 and 2022 were \$2,554 and \$3,747, respectively. Excise taxes for the nine months ended September 30, 2023 and 2022 were \$7,990 and \$9,299, respectively.

Hemp/Cannabis

The Company's hemp/cannabis reportable segment revenues are derived primarily from a CBD wholesale extracts and bulk ingredient distillate or isolate. Additional revenues are generated from private/white label contract manufacturing.

The Company recognizes revenue when it satisfies a performance obligation by transferring control of the product to a customer. Revenue is recorded at the estimated amount of consideration to which the Company expects to be entitled. For certain sales where the company licenses its formulations for hemp-based products, it recognizes revenue once the products have been sold to customers by the licensee.

When applicable, the Company pays imports duties in the various countries to which it sends products to and bills the customer for such import costs. The Company recognizes the import duties as part of revenue in accordance with ASC 606.

There are no material sales provisions or volume discounts that provide variability in recording revenue amounts.

Disaggregation of Revenue

The Company's net revenue is derived from customers located primarily in the United States and is disaggregated by major product line because the Company believes it best depicts the nature, amount, and timing of revenue and cash flows. Revenue recognized from Tobacco products transferred

to customers over time represented 57% 60% and 63%, respectively, of total Tobacco revenue 66% for the three and nine months ended September 30, 2023, compared to 74% March 31, 2024 and 73%, respectively, for the three and nine months ended September 30, 2022. Revenue recognized from Hemp/cannabis products is all recognized point-in-time, 2024, respectively.

	Three Months Ended				Nine Months Ended			
	September 30,		September 30,		2023		2022	
	2023	2022	2023	2022	\$ 7,871	\$ 11,535	\$ 24,848	\$ 30,551
Tobacco					9,940	7,848	38,352	12,354
Hemp/cannabis								
Total revenues, net					\$ 17,811	\$ 19,383	\$ 63,200	\$ 42,905

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The following table presents net revenues by significant customers, which are defined as any customer who individually represents 10% or more of disaggregated product line net revenues:

	Three Months Ended			
	September 30,			
	2023	2022	2023	2022
Tobacco			Tobacco	Hemp/cannabis
Customer A	37.80 %		42.14 %	*
Customer B	18.00 %		*	*
Customer C	21.97 %		7.06 %	*
Customer D	*		14.33 %	*
Customer E	*	12.82 %	*	11.25 %
Customer F	*	25.39 %	*	11.22 %
Customer G	*	*	*	17.52 %
All other customers	22.23 %	61.79 %	36.47 %	60.01 %

*Less than 10% of product line's total revenues for the period.

	Nine Months Ended				Three Months Ended	
	September 30,				March 31,	
	2023	2022	2023	2022	2024	2023
Tobacco			Tobacco	Hemp/cannabis		
Customer A	34.92 %		*	23.05 %	*	38.55 %
Customer B	24.44 %		*	23.11 %	*	22.38 %
Customer C	13.72 %		*	14.48 %	*	24.71 %
Customer D	*		*	17.17 %	*	
Customer E	*		*	*	*	
Customer F	*	18.33 %	*	*	16.48 %	
Customer G	*	*	*	*	13.41 %	
All other customers	26.92 %	81.67 %	22.19 %	70.11 %	14.36 %	28.47 %

*Less than 10% of product line's total revenues for the period.

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Contract Assets and Liabilities

Unbilled receivables (contract assets) represent revenues recognized for performance obligations that have been satisfied but have not been billed. These receivables are included as Accounts receivable, net on the Condensed Consolidated Balance Sheets. Customer payment terms vary depending on the terms of each customer contract, but payment is generally due prior to product shipment or within credit terms up to 30 days after shipment. Deferred income (contract liabilities) relates to down payments received from customers in advance of satisfying a performance obligation and is included as Deferred income on the Condensed Consolidated Balance Sheets.

Total contract assets and contract liabilities are as follows:

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
Unbilled receivables	\$ 1,745	\$ 354	\$ 732	\$ 1,053
Deferred income	(704)	(831)	(376)	(726)
Net contract assets (liabilities)	\$ 1,041	\$ (477)		
Net contract assets			\$ 356	\$ 327

During the **nine** three months ended **September 30, 2023** **March 31, 2024**, the Company recognized **\$802** **\$371** of revenue that was included in the contract liability balance as of **December 31, 2022** **December 31, 2023**. During the **nine** three months ended **September 30, 2022** **March 31, 2023**, the Company recognized **\$119** **\$688** of revenue that was included in the contract asset balance as of **December 31, 2021** **December 31, 2022**.

NOTE 8 – EQUITY- BASED COMPENSATION

The Company maintains certain stock-based compensation plans that were approved by the Company's shareholders and are administered by the Compensation Committee of the Company's Board of Directors. The stock-based compensation plans provide for the granting of stock options, time and performance based restricted stock units (RSU's), among other awards to employees, non-employee directors, consultants, and service providers. The 2021 Omnibus Incentive Plan was amended on June 16, 2023, increasing the authorized shares by 233,334. As of March 31, 2024, the Company had available 661,230 shares remaining for future awards under its Omnibus Incentive Plans.

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Compensation Expense – The Company recognized the following compensation costs, net of actual forfeitures, related to restricted stock units ("RSUs") and stock options:

Three Months Ended

March 31,

	2024	2023
Sales, general, and administrative	\$ 140	\$ 1,046
Research and development	41	51
Total equity based compensation - continuing operations	<u>181</u>	<u>1,097</u>
Total equity based compensation - discontinued operations	—	78
Total equity based compensation	<u><u>181</u></u>	<u><u>\$ 1,175</u></u>

Restricted Stock Units – We typically grant RSUs to employees and non-employee directors. The following table summarizes the changes in unvested RSUs from January 1, 2024 through March 31, 2024.

	Unvested RSUs			
	Weighted			
	Average			
	Number of	Grant-date		
	Shares	Fair Value		
		\$ per share		
Unvested at January 1, 2024	9,681	\$ 251.12		
Vested	(4,234)	233.09		
Forfeited	(354)	274.16		
Unvested at March 31, 2024	5,093	\$ 264.45		

The fair value of RSUs that vested during the three months ended March 31, 2024 was approximately \$9 based on the stock price at the time of vesting. As of March 31, 2024, unrecognized compensation expense for RSUs amounted to \$546 which is expected to be recognized over a weighted average period of approximately 1.8 years. In addition, there is approximately \$786 of unrecognized compensation expense that requires the achievement of certain milestones which are not yet probable.

Stock Options – Our outstanding stock options were valued using the Black-Scholes option-pricing model on the date of the award. There was no stock option grant activity during the three months ended March 31, 2024. A summary of the status of stock options activity since January 1, 2024 and at March 31, 2024 is as follows:

	Weighted					
	Weighted		Average			
	Average		Remaining	Aggregate		
	Number of	Exercise	Contractual	Intrinsic		
	Options	Price	Term	Value		
		\$ per share				
Outstanding at January 1, 2024	13,729	\$ 421.51				
Expired	(2,778)	330.74				
Forfeited	(417)	621.60				
Outstanding at March 31, 2024	10,534	\$ 437.52	1.4 years	\$ —		
Exercisable at March 31, 2024	<u>10,534</u>	<u>\$ 437.52</u>	<u>1.4 years</u>	<u>\$ —</u>		

The intrinsic value of a stock option is the amount by which the current market value or the market value upon exercise of the underlying stock exceeds the exercise price of the option.

[Table of Contents](#)**NOTE 9. – CAPITAL RAISES AND WARRANTS FOR COMMON STOCK**

The following tables summarize the Company's warrant activity:

Warrants outstanding at January 1, 2024		2,984,847
Issued		1,641,535
Exercised		(820,769)
Warrants outstanding at March 31, 2024		3,805,613

	# of warrants outstanding	Exercise price	Expiration date
July 2022 RDO warrants	4,067	\$ 492.00	July 25, 2027
Senior Secured Credit Facility - JGB	20,645	\$ 205.248	September 3, 2028
Subordinated Note - Omnia*	2,813	\$ 205.248	September 3, 2030
July 19, 2023 RDO warrants**	28,125	\$ 2.8237	July 20, 2028
October 2023 CMPO warrants**	168,750	\$ 2.8237	October 19, 2028
Inducement warrants**	3,581,213	\$ 2.8237	February 15, 2029
	3,805,613		

*Omnia warrants were terminated in April 2024. See Note 12 "Subsequent Events."

**The exercise price on the outstanding warrants was subsequently adjusted to \$1.69 in May 2024. See Note 12 "Subsequent Events."

Warrant Inducement Offering

On November 28, 2023, the Company commenced a warrant inducement offering with the holders of the Company's outstanding 1,986,229 warrants consisting of: (i) the common stock purchase warrants of the Company issued on or about June 22, 2023; (ii) the common stock purchase warrants of the Company issued on or about July 10, 2023; (iii) the common stock purchase warrants of the Company issued on or about July 21, 2023; and/or (iv) the common stock purchase warrants of the Company issued on or about October 19, 2023 (collectively, the "Existing Warrants"), which Existing Warrants were exercisable for an equal number of shares of common stock at an exercise price of \$8.40. The Company agreed to issue new warrants (the "Inducement Warrants") to purchase up to a number of shares of common stock equal to 200% of the number of shares of common stock issued pursuant to the exercise by the holders of the Existing Warrants during the inducement period, for cash, at a reduced exercise price equal to the Nasdaq Minimum Price (as defined in the as defined in Nasdaq Listing Rule 5635(d)).

For the period from January 1, 2024 to February 15, 2024, the date of shareholder approval, the Company entered into warrant inducement agreements with certain holders of the Existing Warrants to purchase an aggregate of 820,769 shares of common stock at a reduced weighted average exercise price of approximately \$2.9504. Pursuant to the warrant inducement agreements, the exercising holders of the Existing Warrants received 1,641,535 Inducement Warrants and the Company received aggregate gross proceeds of approximately \$2,421 from the exercise of the Existing Warrants. Additionally, on the date of Shareholder Approval, the exercise price of the 3,581,213 outstanding Inducement Warrants, was reduced to \$2.8237 based on the lowest Nasdaq Minimum Price (as defined in the as defined in Nasdaq Listing Rule 5635(d)) during the inducement period. The exercise price was further reduced to \$1.69 in May 2024. See Note 12 – "Subsequent Events." As a result of the inducement and subsequent exercise, the Company determined the incremental fair value provided to the holders using Black Scholes and Monte Carlo models as (i) \$148 increase in fair value due to the adjustment in exercise price of Existing Warrants attributable to down round pricing protection (ii) \$3,441 fair value of Inducement Warrants issued to the holders that exercised Existing Warrants. The incremental fair value is recorded as non-cash deemed dividend. The proceeds of the warrant inducement and issuance of common stock are recorded as Capital in excess of par value.

[Table of Contents](#)**NOTE 10. – LOSS PER COMMON SHARE**

The following table sets forth the computation of basic and diluted loss per common share for the three months ended March 31, 2024 and 2023, respectively. Outstanding warrants, options and RSUs were excluded from the calculation of diluted EPS as the effect was antidilutive.

	Three Months Ended	
	March 31,	
	2024	2023
Net loss from continuing operations	\$ (5,450)	\$ (10,830)
Net loss from discontinued operations	(289)	(7,352)
Net loss	<u>\$ (5,739)</u>	<u>\$ (18,182)</u>
Deemed dividends	(3,589)	—
Net loss available to common shareholders	<u>\$ (9,328)</u>	<u>\$ (18,182)</u>
Weighted average common shares outstanding - basic and diluted	3,165,237	846,005
Basic and diluted loss per common share from continuing operations	\$ (1.72)	\$ (12.80)
Basic and diluted loss per common share from discontinued operations	(0.09)	(8.69)
Basic and diluted loss per common share from deemed dividends	(1.13)	—
Basic and diluted loss per common share	<u>\$ (2.94)</u>	<u>\$ (21.49)</u>
Anti-dilutive shares are as follows as of March 31:		
Warrants	3,805,613	94,794
Options	10,534	20,052
Restricted stock units	<u>5,093</u>	<u>27,441</u>
	<u>3,821,240</u>	<u>142,287</u>

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NOTE 16. SEGMENT 11. - COMMITMENTS AND GEOGRAPHIC INFORMATION CONTINGENCIES

License agreements and sponsored research – The Company organizes its business has entered into two reportable segments: (1) Tobacco various consulting, license and (2) Hemp/Cannabis. This segment structure reflects the financial information and reports used by tobacco growing agreements (the "Agreements") with various counter parties in connection with the Company's management, specifically its Chief Operating Decision Maker, plant biotechnology business relating to make decisions regarding tobacco. The schedule below summarizes the Company's business, including resource allocations and performance assessments. This segment structure reflects the Company's current operating focus in compliance with ASC 280, *Segment Reporting*.

The Company defines segment income from operations as revenues, net less cost of goods sold and expenses attributable to segment-specific selling, general, administrative, research, development, commitments, both financial and other, operating activities. The remaining unallocated operating and other income and expenses associated with each Agreement. Costs incurred under the Agreements are primarily administrative corporate overhead expenses such generally recorded as corporate personnel costs, equity compensation, investor relations, strategic consulting, research and development costs that apply broadly to expenses on the overall plant science platform, Company's Condensed Consolidated Statements of Operations and that are not allocated to reportable segments. Unallocated corporate assets consist of cash and cash equivalents, short-term investment securities, prepaid and other assets, property and equipment, and intangible assets. Transactions between the two segments are not significant. Comprehensive Loss.

The following table presents revenues, net by segment for the three and nine months ended September 30, 2023 and 2022:

Commitment	Three Months Ended		Nine Months Ended		Future Commitments						
	Counter Party	Commitment Type	2024	2025	2026	2027	2028 & After	Total			
License Agreement	NCSU	Minimum	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 3,575	\$ 3,975	(1)	
		royalty									
License Agreement	NCSU	Contract fee	150	250	250	—	—	650	(2)		
Consulting Agreements	Various	Contract fee	1,068	373	146	—	—	1,587	(3)		
Growing Agreements	Various	Contract fee	225	—	—	—	—	225	(4)		
			\$ 1,543	\$ 723	\$ 496	\$ 100	\$ 100	\$ 3,575	\$ 6,437		
	September 30,		September 30,								
	2023	2022	2023	2022							
Tobacco	\$ 7,871	\$ 11,535	\$ 24,848	\$ 30,551							
Hemp/cannabis	9,940	7,848	38,352	12,354							
Total revenues, net	\$ 17,811	\$ 19,383	\$ 63,200	\$ 42,905							

(1) The minimum annual royalty fee is credited against running royalties on sales of licensed products. The Company is also responsible for reimbursing NCSU for actual third-party patent costs incurred, including capitalized patent costs and patent maintenance costs. These costs vary from year to year and the Company has certain rights to direct the activities that result in these costs.

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(2) On November 1, 2023, the Company entered into a license agreement with NCSU for an exclusive sublicensable right and license under specific patent rights and plant variety rights for the field of use in specific licensed territories. Additional milestone fees could be required pending achievement of events pursuant to the agreement.

(3) As a requirement for a modified risk tobacco product and condition of the marketing authorization by the FDA, the Company engaged various consulting firms to conduct post-market studies and research.

(4) Various R&D growing agreements for tobacco.

Litigation - The following table Company is subject to litigation arising from time to time in the ordinary course of its business. The Company does not expect that the ultimate resolution of any pending legal actions will have a material effect on its consolidated results of operations, financial position, or cash flows. However, litigation is subject to inherent uncertainties. As such, there can be no assurance that any pending legal action, which the Company currently believes to be immaterial, will not become material in the future. In accordance with applicable accounting guidance, the Company establishes an accrued liability for litigation and regulatory matters when those matters present loss contingencies that are both probable and estimable. In such cases, there may be an exposure to loss in excess of any amounts accrued. When a loss contingency is not both probable and estimable, the Company does not establish an accrued liability. As a litigation or regulatory matter develops, the Company, in conjunction with any outside counsel handling the matter, evaluates on an ongoing basis whether such matter presents a loss from continuing contingency that is probable and estimable. If, at the time of evaluation, the loss contingency related to a litigation or regulatory matter is not both probable and estimable, the matter will continue to be monitored for further developments that would make such loss contingency both probable and estimable. When a loss contingency related to a litigation or regulatory matter is deemed to be both probable and estimable, the Company will establish an accrued liability with respect to such loss contingency and record a corresponding amount of related expenses. The Company will then continue to monitor the matter for further developments that could affect the amount of any such accrued liability.

In connection with ongoing restructuring efforts and the hemp/cannabis disposal group (see Note 2 "Divestitures and discontinued operations," the Company has received unasserted claims related to disputed contracts, which could result in accrual of an additional amount up to \$1,314 on the Condensed Consolidated Balance Sheets. The Company is vigorously defending its position against these claims.

Class Action

On January 21, 2019, Matthew Jackson Bull, a resident of Denver, Colorado, filed a Complaint against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, and the Company's then Chief Financial Officer, John T. Brodfuehrer, in the United States District Court for the Eastern District of New York entitled: Matthew Bull, Individually and on behalf of all others similarly situated, v. 22nd Century Group, Inc., Henry Sicignano III, and John T. Brodfuehrer, Case No. 1:19 cv 00409.

On January 29, 2019, Ian M. Fitch, a resident of Essex County Massachusetts, filed a Complaint against the Company, the Company's reportable segments then Chief Executive Officer, Henry Sicignano III, and the Company's then Chief Financial Officer, John T. Brodfuehrer, in the United States District Court for the Eastern District of New York entitled: Ian Fitch, Individually and on behalf of all others similarly situated, v. 22nd Century Group, Inc., Henry Sicignano III, and John T. Brodfuehrer, Case No. 2:19 cv 00553.

On May 28, 2019, the plaintiff in the Fitch case voluntarily dismissed that action. On August 1, 2019, the Court in the Bull case issued an order designating Joseph Noto, Garden State Tire Corp, and Stephens Johnson as lead plaintiffs.

On September 16, 2019, pursuant to a joint motion by the parties, the Court in the Bull case transferred the class action to federal district court in the Western District of New York, where it remains pending as Case No. 1:19-cv-01285.

Plaintiffs in the Bull case filed an Amended Complaint on November 19, 2019 that alleges three counts: Count I sues the Company and nine months ended September 30, 2023 Messrs. Sicignano and Brodfuehrer and alleges that the Company's quarterly and annual reports, SEC filings, press releases and other public statements and documents contained false statements in violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5; Count II sues Messrs. Sicignano and Brodfuehrer pursuant to Section 10(b) of the Securities Exchange Act and Rule 10b5(a) and (c); and Count III sues Messrs. Sicignano and Brodfuehrer for the allegedly false statements pursuant to Section 20(a) of the Securities Exchange Act. The Amended Complaint seeks to certify a class, and unspecified compensatory and punitive damages, and attorney's fees and costs.

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On January 29, 2020, the Company and Messrs. Sicignano and Brodfuehrer filed a Motion to Dismiss the Amended Complaint. On January 14, 2021, the Court granted the motion, dismissing all claims with prejudice. The Plaintiffs filed a notice of appeal on February 12, 2021 to the Second Circuit Court of Appeals. On May 24, 2022, after briefing and oral argument, the Second Circuit issued an order affirming in part, and reversing in part, the District Court's dismissal order. The Second Circuit affirmed the District Court's dismissal of the claims relating to the non-disclosure of stock promotion articles, but reversed the District Court's dismissal order of the claims alleging the non-disclosure of an SEC investigation. The Second Circuit noted in its opinion, however, that the District Court had not addressed certain arguments raised by the Company and Messrs. Sicignano and Brodfuehrer in the Motion to Dismiss the Amended Complaint as to these remaining claims, and remanded the case to the District Court to address these arguments for the dismissal of the remaining claims. On August 8, 2022, the Company and Messrs. Sicignano and Brodfuehrer filed a renewed motion to dismiss the remaining claims in the Amended Complaint to address the arguments not previously addressed by the District Court. On September 22, 2022, Plaintiffs filed a brief in opposition to the motion. On October 12, 2022, the Company and Messrs. Sicignano and Brodfuehrer filed a reply brief in further support of the motion. On January 6, 2023, the District Court denied the motion to dismiss.

The parties participated in a mediation on March 21, 2023 and reached an initial memorandum of understanding for settlement in principle to resolve the litigation and release all claims against the Company. On April 25, 2023, the parties filed with the Court the Motion for Preliminary Approval of the Settlement, which includes the final terms of the proposed settlement. The Court preliminarily approved the settlement on June 30, 2023, and scheduled a further settlement hearing for October 3, 2023. The Court entered the Final Judgment and Order of Dismissal with Prejudice of the action on October 23, 2023. The settlement amount that the defendants paid is \$3,000 and is fully covered by the Company's insurance, which has been funded by the Company's insurance carrier in an escrow account and anticipated to be disbursed in the second quarter of 2024. Accordingly, the Company has recorded an accrual for litigation settlement and corresponding indemnification receivable on the Condensed Consolidated Balance Sheets as of March 31, 2024.

Shareholder Derivative Cases

On February 6, 2019, Melvyn Klein, a resident of Nassau County New York, filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and each member of the Company's Board of Directors in the United States District Court for the Eastern District of New York entitled: Melvyn Klein, derivatively on behalf of 22nd Century Group v. Henry Sicignano, III, Richard M. Sanders, Joseph Alexander Dunn, Nora B. Sullivan, James W. Cornell, John T. Brodfuehrer and 22nd Century Group, Inc., Case No. 1:19 cv 00748. Mr. Klein brings this action derivatively alleging that (i) the director defendants supposedly breached their fiduciary duties for allegedly allowing the Company to make false statements; (ii) the director defendants supposedly wasted corporate assets to defend this lawsuit and the other related lawsuits; (iii) the defendants allegedly violated Section 10(b) of the Securities Exchange Act and Rule 10b 5 promulgated thereunder for allegedly approving or allowing false statements regarding the Company to be made; and (iv) the director defendants allegedly violated Section 14(a) of the Securities Exchange Act and Rule 14a 9 promulgated thereunder for allegedly approving or allowing false statements regarding the Company to be made in the Company's proxy statement.

On February 11, 2019, Stephen Mathew filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and each member of the Company's Board of Directors in the Supreme Court of the State of New York, County of Erie, entitled: Stephen Mathew, derivatively on behalf of 22nd Century Group, Inc. v. Henry Sicignano, III, John T. Brodfuehrer, Richard M. Sanders, Joseph Alexander Dunn, James W. Cornell, Nora B. Sullivan and 22nd Century Group, Inc., Index No. 801786/2019. Mr. Mathew brings this action derivatively generally alleging the same allegations as in the Klein case. The Complaint seeks declaratory relief, unspecified monetary damages, corrective corporate governance actions, and attorney's fees and costs.

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On August 15, 2019, the Court consolidated the Mathew and Klein actions pursuant to a stipulation by the parties (Western District of New York, Case No. 1-19-cv-0513). On May 3, 2019, the Court ordered the Mathew case stayed. This stay was applied to the Consolidated Action pursuant to the Court's August 15, 2019 Order Consolidated Related Shareholder Derivative Actions and Establishing a Leadership Structure. As a result of the Court's denial of the renewed Motion to Dismiss the Amended Complaint, the May 3, 2019 stay will be lifted. No trial date has been set. We believe that the claims are frivolous, meritless and that the Company and the individual defendants have substantial legal and factual defenses to the claims. We intend to vigorously defend the Company and the individual defendants against such claims.

On June 10, 2019, Judy Rowley filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and each member of the Company's Board of Directors in the Supreme Court of the State of New York, County of Erie, entitled: Judy Rowley, derivatively on behalf of 22nd Century Group, Inc. v. Henry Sicignano, III, Richard M. Sanders, Joseph Alexander Dunn, Nora B. Sullivan, James W. Cornell, John T. Brodfuehrer, and 22nd Century Group, Inc., Index No. 807214/2019. Ms. Rowley brought the action derivatively alleging that the director defendants supposedly breached their fiduciary duties by allegedly allowing the Company to make false statements. The Complaint sought declaratory relief, unspecified monetary damages, corrective corporate governance actions, and attorney's fees and costs. We believe that the claims are frivolous, meritless and that the Company and the individual defendants have substantial legal and factual defenses to the claims. We intend to vigorously defend the Company and the individual defendants against such claims. On September 13, 2019, the Court ordered the litigation stayed pursuant to a joint stipulation by the parties. On August 3, 2022, Plaintiff dismissed the case with prejudice by filing a stipulation of discontinuance with the Court. This dismissal was not pursuant to a settlement.

On January 15, 2020, Kevin Broccuto filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and certain members of the Company's prior Board of Directors in the District Court of the State of Nevada, County of Clark, entitled: Kevin Broccuto, derivatively on behalf of 22nd Century Group, Inc. v. James W. Cornell, Richard M. Sanders, Nora B. Sullivan, Henry Sicignano, III, and John T. Brodfuehrer, Case No. A-20-808599. Mr. Broccuto brings this action derivatively alleging three counts: Count I alleges that the defendants breached their fiduciary duties; Count II alleges they committed corporate waste; and Count III that they were unjustly enriched, by allegedly allowing the Company to make false statements.

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Tobacco	\$ 2,798	\$ 1,674	\$ 10,072	\$ 3,337
Hemp/cannabis	62,655	4,326	74,604	7,316
Total segment operating loss	65,453	6,000	84,676	10,653
Unallocated operating expenses	6,029	9,268	23,983	23,238

Operating loss	71,482	15,268	108,659	33,891
Tobacco other (income) expense, net	—	—	10	—
Hemp/cannabis other (income) expense, net	25	136	50	203
Unallocated other expense, net	1,213	279	2,676	2,005
Loss before income taxes	\$ 72,720	\$ 15,683	\$ 111,395	\$ 36,099

On February 11, 2020, Jerry Wayne filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and certain members of the Company's prior Board of Directors in the District Court of the State of Nevada, County of Clark, entitled: Jerry Wayne, derivatively on behalf of 22nd Century Group, Inc. v. James W. Cornell, Richard M. Sanders, Nora B. Sullivan, Henry Sicignano, III, and John T. Brodfuehrer, Case No. A-20-808599. Mr. Wayne brings this action derivatively alleging generally the same allegations as the Broccutto case. The Complaint seeks unspecified monetary damages, corrective corporate governance actions, disgorgement of alleged profits and imposition of constructive trusts, and attorney's fees and costs. The Complaint also seeks to declare as unenforceable the Company's Bylaw requiring derivative lawsuits to be filed in Erie County, New York, where the Company is headquartered.

On March 25, 2020, the Court ordered the Broccutto and Wayne cases consolidated and stayed pursuant to a joint stipulation from the parties. On June 27, 2022, the Court ordered that the stay continue until thirty (30) days after the District Court rules on the renewed Motion to Dismiss the Amended Complaint in the Noto Class Action case. As a result of the Court's denial of the Motion to Dismiss the Amended Complaint, the June 27, 2022 stay will be lifted if the case is not resolved. No trial date has been set.

The parties participated in a mediation on March 21, 2023, and a subsequent mediation on October 17, 2023. On December 5, 2023, the parties entered into a Memorandum of Settlement to fully resolve all claims pending the Court's approval of a motion for preliminary approval of settlement. The settlement amount is \$768 related to plaintiffs attorney and legal fees and is fully covered by the Company's insurance. Accordingly, the Company has recorded an accrual for litigation settlement and corresponding indemnification receivable on the Consolidated Balance Sheets as of December 31, 2023.

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The hemp/cannabis segment included impairment chargesOn September 1, 2023, Kenneth Troup filed a shareholder derivative claim against the Company, the Company's then Chief Executive Officer, Henry Sicignano III, the Company's Chief Financial Officer, John T. Brodfuehrer, and write-downs certain members of the Company's Board of Directors in total of \$58,808 recorded during the third quarter of 2023. Refer to Note 1, Note 4, and Note 9 for additional information on the nature of such charges.

The following table presents total assets United States District Court for the Company's reportable segments Western District of New York entitled: Kenneth Troup, derivatively on behalf of 22nd Century Group v. Nora Sullivan, James Mish, Michael Koganov, Anthony Johnson, Richard Sanders, Lucille Salhany, Andy Arno, James W. Cornell, Henry Sicignano, III, and John T. Brodfuehrer, and 22nd Century Group, Inc., Case No. 1:23-cv-00916. Mr. Troup brings this action derivatively generally alleging the same allegations as of September 30, 2023 in the Klein case. The Complaint seeks declaratory relief, unspecified monetary damages, corrective corporate governance actions, and December 31, 2022:

	September 30,		December 31,	
	2023		2022	
	Tobacco	\$ 21,271	Hemp/cannabis	\$ 15,748
Hemp/cannabis		18,747		65,965
Total reportable segments		40,018		81,713
Unallocated assets		24,178		32,938
Total assets		\$ 64,196		\$ 114,651

We believe that the claims are frivolous, meritless and that the Company and the individual defendants have substantial legal and factual defenses to the claims. We intend to vigorously defend the Company and the individual defendants against such claims.

[Insurance Litigation](#)

In November 2022, there was a fire at the Company's Grass Valley manufacturing facility in Oregon, which resulted in a total loss of the facility. The following table presents capital expenditures Company submitted an insurance claim with Dorchester Insurance Company, Ltd. ("Dorchester") for casualty loss and business interruption coverage which was acknowledged on November 23, 2022. Dorchester funded \$5,000 of casualty loss insurance but has failed to issue any payments in connection with the Company's business interruption claim.

On July 19, 2023, the Company filed a Complaint against Dorchester in the United States District Court for the Company's reportable segments for District of Oregon, Pendleton Division, Case No. 2:23-cv-01057-HL. The Company is alleging breach of contract and breach of duty of good faith and fair dealing. The Company is seeking full recovery of its business interruption claim of approximately \$9,000 under the nine months ended September 30, 2023 policy plus direct and 2022:

	Nine Months Ended	
	September 30,	
	2023	2022
Tobacco	\$ 717	\$ 589
Hemp/cannabis	2,864	1,495
Total reportable segments	3,581	2,084
Unallocated expenditures for long-lived tangible assets	370	417
Total expenditures	\$ 3,951	\$ 2,501

Needle Rock Farms – Settlement Agreement

During March 2023, the Company negotiated and entered into a settlement agreement related to water rights dispute with the adjacent property owner for Needle Rock Farms in which the Company agreed to pay \$250 in cash upon execution of the settlement, transferred certain farm equipment with net book value of \$272, and accrued an additional payment of \$225 that is contingent on either the sale of the farm or will be paid within one year. The total charges of \$747 was recorded in the three months period ended March 31, 2023 in connection with the settlement agreement and is included in discontinued operations within Other operating expenses, net on the Condensed Consolidated Statements of Operations and Comprehensive Loss. The Company fully settled the outstanding monetary obligations pursuant to the settlement agreement on April 29, 2024 through equity issuances as described in Note 12 "Subsequent Events."

KeyGene Dispute

On April 11, 2024 the Company received a Request for Arbitration from Keygene N.V. ("Keygene") in connection with the Company's termination of various framework collaborative research agreements described below. On April 3, 2019, the Company entered into the Framework Collaborative Research Agreement with KeyGene in the field of hemp/cannabis. On April 30, 2021, the Company and KeyGene entered into a First Amended and Restated Framework Collaborative Research Agreement which extended the agreement term, from first quarter 2024 to first quarter 2027. On March 30, 2022, the Company and KeyGene entered into a new Framework Collaborative Research Agreement for a term of three years in the field related to the hops plant. On January 8, 2024, the Company formally terminated both Framework Collaborative Research Agreements, as amended, related to hemp/cannabis and hops. KeyGene is seeking payment in the amount of \$1,885 for current and future services under the Framework Collaborative Research Agreements and has invoiced the Company \$881 for services performed. The Company believes it has substantial defenses to Keygene's claims and intends to defend itself vigorously.

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Maison Dispute

On January 23, 2024, the Company received a Notice of Intent to Arbitrate from Maison Placements Canada Inc. ("Maison") in connection with the Company's March 2023 Senior Secured Credit Facility transaction. Maison claims it is owed fees for closure of the Senior Secured Credit Facility transaction as a result of discussions with former Company personnel and a purported letter of engagement dating from 2021. The Company believes it has substantial defenses to Maison's claims and intends to defend itself vigorously.

NOTE 17.12. – SUBSEQUENT EVENTS

Senior Secured Credit Facility Amendment

On **October 16, 2023** December 28, 2023, the Company entered into a Waiver and that certain Amendment Agreement (the "Credit Facility Amendment" "Amendment Agreement") to that certain Securities Purchase Agreement dated March 3, 2023 (the "JGB SPA") and debentures (the "Debentures") with each of JGB Partners, LP ("JGB Partners"), JGB Capital, LP ("JGB Capital") and JGB Capital Offshore Ltd. ("JGB Offshore" and collectively with JGB Partners and JGB Capital, the subsidiaries of "Holders") and JGB Collateral, LLC, as collateral agent for the Holders (the "Agent").

On April 8, 2024, the Company, executing the Debentures, the Purchasers Holders and the Agent pursuant entered into that certain Letter Agreement to which, among other things, (a) modify the Purchasers waived an event of default under Section 7(d) terms of the Amendment Agreement, the JGB SPA and the Debentures, which required as amended.

Under the Company to achieve revenue of at least \$18,500 for the quarter ended September 30, 2023 (the "waiver"), (b) the parties agreed to amend Schedule E terms of the Debentures Letter Agreement, the Holders are permitted to reduce convert their debt to common stock at anytime and the Revenue Target Conversion Price (as such term is defined in the Debentures), for at which the quarter ended December 31, 2023, to \$15,500, and (c) Holders may convert the Company agreed to release principal amount of their Debentures to the Purchasers the \$7,500 that the Company was required Company's common stock is reduced to maintain \$2.14 per share in a separate account (the "Escrow Funds") which Escrow Funds were be applied to, and reduce, the outstanding accordance with applicable Nasdaq rules. The principal amount of the Debentures on a dollar-for-dollar basis.

Additionally, as additional consideration converted shall be applied to the Monthly Allowance (as defined in the Debentures) for that month, and any excess shall be applied to the Monthly Allowances for the waiver, the Company agreed to assign, transfer and convey to the Agent, the Company's entire right, title and interest in and to (i) the Promissory Note made by J&N Real Estate Company, L.L.C. ("J&N") payable to the Company in the principal amount of \$3,800 and (ii) the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated June 30, 2021, between J&N, as borrower, succeeding months. The conversions will be a dollar for the benefit of the Company, as lender (collectively, the "Pledged Indebtedness"). Upon assignment of the Pledged Indebtedness, the Company will recognize as a non-monetary transaction, \$2,600 of consideration in exchange to be applied as a \$2,000 dollar reduction of the Put Price (as defined below) remaining outstanding obligation owed to the Holders. The Agent and \$600 reduction of the outstanding principal amount of Debentures.

In connection with the waiver, the Company and Purchasers Holders have also agreed to exercise the outstanding put provision to redeem 166,667 Warrants daily limits on trading volume and minimum conversion amounts. The Holders have converted \$428 of debt in exchange for an aggregate put price equal to \$2,500 (the "Put Price"), which is concurrently reduced by \$2,000, as described above, with the remaining \$500 payable by the Company on the Maturity Date. No cash was exchanged as a result of executing the Credit Facility Amendment.

The Credit Facility Amendment contains customary reaffirmations, reconfirmations of security interests and subsidiary guarantees, and representations and warranties typical for a waiver and amendment of this type.

Increase in Authorized Shares

On October 16, 2023, our stockholders approved an amendment (the "Articles Amendment") to our Articles of Incorporation, as amended, to increase the number of authorized shares of common stock from thirty-three million three hundred thirty-three thousand and three hundred thirty-four (33,333,334) shares to sixty-six million, six hundred sixty-six thousand sixty-seven (66,666,667), which Articles Amendment was filed and effective with the Secretary of the State of Nevada on October 16, 2023.

October 2023- Public Equity Offering

On October 17, 2023, the Company entered into a securities purchase agreement with certain investors, pursuant to which the Company agreed to sell and issue, in a registered public offering, (i) an aggregate of 7,600,000 shares of the Company's common stock, par value \$0.00001 per share, (ii) warrants to purchase 20,000,000 shares of common stock (the "Common Warrants") and (iii) pre-funded warrants to purchase 2,400,000 shares of common stock (the "Pre-Funded Warrants"). The Common Warrants have an exercise price of \$0.525, are immediately exercisable and have a term of exercise equal to five years following the original issuance date. The Pre-Funded Warrants have an exercise price of \$0.0001, are immediately exercisable and will be able to be exercised at any time after their original issuance until such Pre-Funded Warrants are exercised in full. The shares were offered at a combined public offering price of

\$0.525 per share and two accompanying Common Warrants. The Pre-Funded Warrants were offered at a combined public offering price of \$0.5249 per Pre-Funded Warrant and two accompanying Common Warrants.

In addition, the Company issued the placement agent warrants to purchase up to 1,000,000 shares of common stock (equal to 10% of the aggregate number of shares and Pre-Funded Warrants sold in the offering) at an exercise price of \$0.65625, which represents 125% of the public offering price per share and accompanying Common Warrant. The placement agent agreed not to exercise the such warrants until the Company subsequently increases its authorized 200,000 shares of common stock.

The provisions in Section 3(c)(i) of the Debentures requiring 20% of any equity issuances to be paid to the Holders was suspended for 20 days.

On May 10, 2024, the Company, the Holders and the Agent entered into that certain May 2024 Exchange Agreement and May 2024 Letter Agreement to modify the terms of the Amendment Agreement, the Securities Purchase Agreement and the Debentures, as amended.

Under the terms of the May 2024 Letter Agreement, the Company and Holders have agreed the Company shall incur an aggregate amendment charge to the undersigned holders equal to \$275, which shall be added to the principal balance of the Debentures.

Under the terms of the May 2024 Exchange Agreement, the Company and Holders exchanged an aggregate of \$2,328 in principal, fees and expenses owed under the Debentures for 395,000 shares of common stock and 895,000 immediately exercisable pre-funded warrants to purchase shares of common stock at an exercise price of \$0.00001 (at an effective per share price of \$1.69). The remaining principal balance of the Debentures is \$9,825 of which \$3,000 remains current with corresponding pledged assets.

As a result of the transaction, the exercise price on 5,876,887 of the Company's outstanding warrants is reduced to \$1.69 per share in accordance with the adjustment provisions therein.

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Securities Purchase Agreement

On April 8, 2024, the Company and certain investors (the "Investors") entered into a securities purchase agreement (the "Securities Purchase Agreement") relating to the issuance and sale of shares of common stock (or pre-funded warrants in lieu of common stock) pursuant to a registered direct offering and a private placement of warrants to purchase shares of common stock (collectively, the "Offering"). The offering Investors purchased approximately \$4,237 of shares and warrants, consisting of an aggregate of 1,855,000 shares of common stock, pre-funded warrants to purchase 125,000 shares of common stock and warrants to purchase 1,980,000 shares of common stock, at a purchase price of \$2.14 per share and accompanying warrant. The warrants are exercisable after the Shareholder Approval Date (as defined in the Securities Purchase Agreement) at an exercise price of \$2.14 per share of common stock, expire on the date that is five (5) years after the Shareholder Approval Date and are subject to adjustment in certain circumstances, including upon any subsequent equity sales at a price per share lower than the then effective exercise price of such warrants, then such exercise price shall be lowered to such price at which the shares were offered. The pre-funded warrants are exercisable immediately upon issuance at an exercise price of \$0.00001. The Offering closed on October 19, 2023 April 9, 2024.

The Company agreed to pay the Placement Agent a cash fee of 6.0% of the gross proceeds from the Offering, an additional 6.0% cash fee of any cash exercise of the warrants and to reimburse the Placement Agent for its expenses, including the reimbursement of legal fees up to an aggregate of \$50,000. In addition, the Company issued an aggregate of 118,800 placement agent warrants to the Placement Agent and its designees with gross substantially the same terms as the warrants to the Investors, except that the placement agent warrants will terminate five years following the commencement of sales of the Offering and have an exercise price of \$2.675.

The net proceeds to the Company of approximately \$5,250, before from the Offering, after deducting the placement agent fees of \$367 and other the Company's estimated offering expenses, payable by the Company of were approximately \$288. As a result of the offering, the exercise price on 11,799,654 previously outstanding warrants were automatically adjusted from \$2.42 per share to \$0.525 per share.

The Pre-Funded Warrants were subsequently exercised on a cashless basis in October 2023, resulting in issuance of 2,399,512 shares of common stock. \$3,913.

Tobacco Subordinated Note - NCSU Technology License Omnia Settlement and General Release

On April 29, 2024, the Company entered into a General Release and Settlement Agreement (the "Omnia Agreement") with Omnia Capital LP ("Omnia"). The Omnia Agreement settles and extinguishes all outstanding debt and interest owed to Omnia under the outstanding Subordinated Promissory

Note dated March 3, 2023 (the "Old Note") and the put provision contained the outstanding common stock purchase warrant dated March 3, 2023 (the "Old Warrant"), amounting to a total of approximately \$5,228, for (i) a cash payment of \$249; (ii) 1,150,000 shares of common stock and 1,150,000 immediately exercisable pre-funded warrants to purchase shares of common stock at an exercise price of \$0.0001 that are exercisable until May 1, 2029 (at an effective per share price of \$2.14) and (iii) 460,000 immediately exercisable warrants to purchase an equal number of shares of common stock at an exercise price of \$2.14 until May 1, 2029 (the "New Warrant"). The New Warrant contains a put provision that permits the holder to require the Company to redeem the New Warrants, no earlier than May 1, 2025, for a purchase price equal to \$2.675 per New Warrant. Subject to limited exceptions, a holder of pre-funded warrants and New Warrants will not have the right to exercise any portion of its warrants if the holder, together with its affiliates, would beneficially own in excess of 19.99% of the number of shares of our common stock outstanding immediately after giving effect to such exercise. As part of the Omnia Agreement, the parties agreed to terminate and cancel the Old Note and the Old Warrant and released all debts, claims or other obligations against each other occurring prior to the date of the Omnia Agreement.

The Company signed on November 1, 2023, an additional reduced nicotine content technology license with North Carolina State University. *Other Agreements*

On the date of signing, April 29, 2024, the Company paid to NCSU a non-refundable license fee settled an aggregate of \$250 and as partial consideration the Company will grant NCSU \$1,500 of outstanding indebtedness under various commercial agreements for an award aggregate of 700,958 shares of common stock equal to \$100 within fifteen business days. Additional consideration will be paid at successive intervals an effective price per share of the license following a schedule over two years for a total of up to \$650, unless earlier terminated by the Company.

The latest license provides additional modes of efficiently producing reduced nicotine content tobacco plants, extending the Company's already extensive IP portfolio. The license will provide the Company exclusive rights to the technology, which the term shall continue on a country by-country basis until the date of expiration of the last to expire of the patent rights and/or plant variety rights, including any renewals or extensions thereof, or nineteen (19) years from the effective date of this license agreement if no patents in the patent rights and/or plant variety rights are issued in the applicable country. \$2.14.

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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 ("MD&A") should be read in conjunction with, our audited consolidated financial statements, the accompanying notes and the MD&A included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, 2023, as well as our Condensed Consolidated Financial Statements and the accompanying notes included in Item 1 of this Form 10-Q. Note references are to the notes to consolidated financial statements included in Item 1 of this Form 10-Q.

For purposes of this MD&A, references to the "Company," "we," "us" or "our" refer to the operations of 22nd Century Group, Inc. and its direct and indirect subsidiaries for the periods described herein. In addition, dollars are in thousands, except per share data or unless otherwise specified.

Forward Looking Statements

Except for historical information, all of the statements, expectations, and assumptions contained in this section are forward-looking statements. Forward-looking statements typically contain terms such as "anticipate," "believe," "consider," "continue," "could," "estimate," "expect," "explore," "foresee," "goal," "guidance," "intend," "likely," "may," "plan," "potential," "predict," "preliminary," "probable," "project," "promising," "seek," "should," "will," "would," and similar expressions. Forward looking statements include, but are not limited to, statements regarding (i) our ability to continue as a going concern, (ii) our expectations regarding our debt obligations, (iii) our financial and operating performance, (iv) our strategic alternatives, including our cost savings initiatives, (v) our expectations regarding regulatory enforcement (vi) our products, and (vii) the volatility of our common stock and warrants. Actual results might differ materially from those explicit or implicit in forward-looking statements. Important factors that could cause actual results to differ materially are set forth in "Risk Factors" herein and in our Annual Report on Form 10-K filed on March 9, 2023 March 28, 2024. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events, or otherwise, except as otherwise required by law. All information provided in this quarterly report is as of the date hereof, and we assume no obligation to and do not intend to update these forward-looking statements, except as required by law.

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Our Business

22nd Century Group, Inc. is a leading agricultural biotechnology company focused on utilizing advanced plant technologies to improve tobacco harm reduction, reduced nicotine tobacco and improving health and wellness through plant science. With dozens of patents allowing it to control nicotine biosynthesis in the tobacco plant, the Company has developed proprietary reduced nicotine content (RNC) tobacco hemp/cannabis plants and hops.

On September 5, 2023, cigarettes, which have become the cornerstone of the FDA's Comprehensive Plan to address the widespread death and disease caused by smoking. The Company announced its intent to explore strategic alternatives, including engaging financial advisors, received the first and only FDA Modified Risk Tobacco Product (MRTP) authorization for a combustible cigarette in an effort to maximize shareholder value. While the initial focus was primarily on December 2021, 22nd Century Inc.'s uses modern plant breeding technologies, including genetic engineering, gene-editing, and molecular breeding to deliver solutions for the life science and consumer products industries by creating new, proprietary plants with optimized alkaloid and flavonoid profiles as well as improved yields and valuable agronomic traits.

To support the launch and expansion of VLN®, we are vertically integrated and utilize our tobacco portfolio, the Company subsequently received indications assets for contract manufacturing operations ("CMO") that consists primarily of interest regarding its other assets, in addition branded filtered cigars and conventional cigarettes. With high-speed manufacturing capabilities we continue to tobacco attract additional CMO business to absorb our manufacturing overhead and help keep our unit cost profile low. The Company continues to be committed to is a subsequent participating manufacturer under the process Master Settlement Agreement ("MSA"), of exploring a wide range of strategic, operational, and financial transactions and alternatives. We have also engaged a financial advisor to assist us in this strategic process with respect to identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to the Company when, and in the amounts needed, it could be required to liquidate inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that the Company will be able to raise the capital it needs to continue operations, which all cigarette products are compliant.

Recent Highlights and Other Events

- *Capital Markets Transactions*
 - The On April 2, 2024, the Company completed registered direct offerings in July 2023, a reverse stock split of its outstanding shares of common stock, par value \$0.00001 per share at a ratio of 1-for-16 effective. Subsequently, Nasdaq Stock Market LLC ("Nasdaq") notified the Company on April 16, 2024 that it has regained compliance with the minimum bid price requirement under Nasdaq Listing Rule 5550(a)(2) for total gross proceeds of approximately \$14,635, before expenses and a public offering in October 2023 for total gross proceeds of approximately \$5,250, before expenses, continued listing.
 - In October 2023, the Company reduced the outstanding principle of its Senior Secured Credit Facility by \$8,100.
- *Cost Savings & Reduction of Operating Expenses*
 - During July 2023, the Company implemented a cost savings initiative intended to simplify operations as it continues to tighten its focus on key end markets and operating strategies resulting in an estimated \$15,000 in annualized cost reductions across its operations once fully in place.

Financial Overview

- Net revenues for the third quarter of 2023 were \$17,811, a decrease of 8.1% from \$19,383 in 2022.
 - Revenue from tobacco-related products for the third quarter was \$7,871 compared to \$11,535 in the prior year period reflecting a decrease in unit sales of filtered cigars, partially offset by increases in unit sales of cigarettes and export cigarettes.
 - Revenue from hemp/cannabis-related products was \$9,940, compared to \$7,848 in the prior year third quarter, due to continued strong volume for bulk ingredient sales.
- Gross profit for the third quarter of 2023 was a loss of \$1,966 compared to profit of \$619 in the prior year period.
 - Gross profit from tobacco-related products was a profit of \$77, a decrease of \$559 compared to the prior year period, reflecting lower unit sales in contract manufacturing products and increases in tobacco excise taxes.
 - Gross profit from hemp/cannabis-related products was a loss of \$2,043 compared to a loss of \$17 in the prior year. In connection with evaluation of strategic alternatives for the Company's assets and cost cut initiatives, during the third quarter of 2023, the Company increased the reserve for excess, obsolete or expired hemp/cannabis inventory by \$1,687.
- Total operating expenses for the third quarter of 2023 increased to \$69,516 compared to \$15,887 in the prior year quarter driven by:

- o Sales, general and administrative expenses decreased to \$11,199 compared to \$14,528 in the prior year period, primarily driven by lower compensation and benefits and strategic consulting, partially offset by higher sales and marketing expenses and royalty, license and contract costs.

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- o Nasdaq notified the Company on April 4, 2024 that it has received a deficiency letter with the minimum shareholders' equity requirement of \$2,500 under Nasdaq Listing Rule 5550(b)(1) for continued listing.
- o In April 2024, the Company completed a registered direct offering for total net proceeds of \$3,913.
- o In April 2024, the Company reduced the outstanding principle of its Senior Secured Credit Facility by \$428 through conversion of 200,000 shares of common stock.
- o In April 2024, the Company eliminated \$5,228 of indebtedness related to the Subordinate Note in a primarily equity transaction.
- o In April 2024, the Company settled an approximate aggregate of \$1,500 of outstanding indebtedness under various commercial agreements in equity issuances.
- o In May 2024, the Company further reduced debt by exchanging \$2,328 of amounts owed under the Senior Secured Credit Facility for 1,375,000 shares of common stock and pre-funded warrants.

- **Corporate Updates**

- o On February 13, 2024, the Company announced a reduction in board compensation expenses expected to save more than \$1 million in annual cost for 2024. Additionally, the board waived cash compensation for the fourth quarter 2023 and first quarter 2024.
- o On April 8, 2024, The Company announced the appointment of Daniel Otto as Chief Financial Officer and Jonathan Staffeldt as General Counsel.
- o On April 18, 2024, the Company announced the resignation of Nora Sullivan and James Mish as Directors. The Company reduced the board to 4 seats as part of its focus on corporate cost efficiency.

Financial Overview

- Net revenues for the first quarter of 2024 were \$6,469, a decrease of 27.5% from \$8,926 in 2023, primarily driven by a decrease in volume.
 - o First quarter 2024 cartons sold of 629 compared to 1,002 in the comparable prior year period.
- Gross profit for the first quarter of 2024 was a loss of \$1,129 compared to profit of \$17 in the prior year period.
- Total operating expenses for the first quarter of 2024 decreased to \$3,305 compared to \$10,421 in the prior year quarter driven by:
 - o Sales, general and administrative expenses decreased to \$2,906 compared to \$9,837 in the prior year period, primarily driven by lower headcount (compensation and benefits), strategic consulting, and sales and marketing costs due to our cost savings initiatives implemented in the second half of 2023.
 - o Research development expenses increased decreased to \$1,613, \$425, compared to \$1,318 \$730 in the prior year period, driven by higher contract costs. lower headcount (compensation and benefits costs) and continued focus on cost savings with our tobacco research.
 - o Other operating expenses, net was \$23,344, (\$26), compared to (\$146) in the prior year period, primarily reflecting restructuring costs gains on sale of \$24,317, including impairment charges, partially offset by the change in fair value of warrant liabilities.
 - o In connection with initiating a process to review strategic alternatives for the Company's assets property, plant and implementing cost cut initiatives, during the third quarter of 2023, the Company recorded a goodwill impairment charge of \$33,360. equipment.
- Operating loss from continuing operations for the **third** first quarter **2023** **2024** was \$71,482, \$4,434, compared to a loss of \$15,268 \$10,404 in the prior year period for the reasons described above.
- Net loss from continuing operations in the **third** first quarter of **2023** **2024** was \$72,720 \$5,450 and basic and diluted loss from continuing operations per common share was \$3.68 \$1.72 compared with net loss from continuing operations in the **third** first quarter of **2022** **2023** of \$13,102, \$10,830, and basic and diluted net loss from continuing operations per common share of \$0.94, \$12.80.
- As of **September 30, 2023**, **March 31, 2024**, we had \$2,850 \$1,517 in cash and cash equivalents and \$7,500 in restricted cash pursuant to the Senior Secured Credit Facility. In October 2023, the restricted cash was subsequently used to pay down a portion of the outstanding principle balance under the Senior Secured Credit Facility. equivalents.

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Our Financial Results

	Three Months Ended			Three Months Ended		
	September 30		Change	March 31		Change
	2023	2022	%	2024	2023	\$ %
Tobacco revenues, net	\$ 7,871	\$ 11,535	(3,664) (31.8)			
Hemp/cannabis revenues, net	9,940	7,848	2,092 26.7			
Total revenues, net	17,811	19,383	(1,572) (8.1)			
Revenues, net				\$ 6,469	\$ 8,926	(2,457) (27.5)
Cost of goods sold	19,777	18,764	1,013 5.4	4,213	4,724	(511) (10.8)
Excise taxes and fees on products				3,385	4,185	(800) (19.1)
Gross (loss) profit	(1,966)	619	(2,585)(417.6)	(1,129)	17	(1,146) NM
Gross (loss) profit as a % of revenues, net	(11.0)%	3.2 %		(17.4)%	0.2 %	
Operating expenses:						
Sales, general and administrative ("SG&A")	11,199	14,528	(3,329) (22.9)	2,906	9,837	(6,931) (70.5)
SG&A as a % of revenues, net	62.9 %	74.9 %		44.9 %	110.2 %	
Research and development ("R&D")	1,613	1,318	295 22.4	425	730	(305) (41.8)
R&D as a % of revenues, net	9.1 %	6.8 %		6.6 %	8.2 %	
Other operating expenses, net ("OOE")	23,344	41	23,303 NM	(26)	(146)	120 (82.2)
Goodwill impairment	33,360	-	33,360 NM			
Total operating expenses	69,516	15,887	53,629 337.6	3,305	10,421	(7,116) (68.3)
Operating loss	(71,482)	(15,268)	(56,214) 368.2			
Operating loss from continuing operations				(4,434)	(10,404)	5,970 (57.4)
Operating loss as a % of revenues, net	(401.3)%	(78.8)%		(68.5)%	(116.6)%	
Other income (expense):						
Unrealized loss on investment	-	(345)	345 (100.0)			
Realized loss on short-term investment securities	-	(35)	35 (100.0)			
Other income, net	(12)	-	(12) NM			
Other income (expense), net				-	(155)	155 NM
Interest income, net	79	113	(34) (30.1)	-	57	(57)(100.0)
Interest expense	(1,305)	(148)	(1,157) 781.8	(1,016)	(328)	(688) 209.8
Total other expense	(1,238)	(415)	(823) 198.3	(1,016)	(426)	(590) 138.5
Loss before income taxes	(72,720)	(15,683)	(57,037) 363.7	(5,450)	(10,830)	5,380 (49.7)
Provision for income taxes	-	(2,581)	2,581 NM	-	-	-
Net loss	(72,720)	(13,102)	(59,618) 455.0			
Net loss from continuing operations				\$ (5,450)	\$ (10,830)	5,380 (49.7)
Net loss as a % of revenues, net	(408.3)%	(67.6)%		(84.3)%	(121.3)%	
Deemed dividend from trigger of anti-dilution provision feature	-	-	- NM			
Deemed dividend related to down-round features	(564)	-	(564) NM			
Net loss available to common shareholders	\$ (73,284)	\$ (13,102)	(59,618) 455.0			
Net loss per common share (basic and diluted)*	\$ (3.68)	\$ (0.94)	(2.74) 291.5			
Net loss per common share from continuing operations (basic and diluted)*				\$ (1.72)	\$ (12.80)	11.08 (86.56)
NM - calculated change not meaningful						

*Giving retroactive effect to the 1-for-15 1-for-16 reverse stock split effectuated on July 5, 2023

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	Nine Months Ended			Change %	
	September 30		September 30 2022		
	2023	2022			
Tobacco revenues, net	\$ 24,848	\$ 30,551	(5,703)	(18.7)	
Hemp/cannabis revenues, net	38,352	12,354	25,998	210.4	
Total revenues, net	63,200	42,905	20,295	47.3	
Cost of goods sold	68,688	41,086	27,602	67.2	
Gross (loss) profit	(5,488)	1,819	(7,307)	(401.7)	
<i>Gross (loss) profit as a % of revenues, net</i>	(8.7)%	4.2 %			
Operating expenses:					
Sales, general and administrative ("SG&A")	39,971	30,475	9,496	31.2	
<i>SG&A as a % of revenues, net</i>	63.2 %	71.0 %			
Research and development ("R&D")	4,923	4,355	568	13.0	
<i>R&D as a % of revenues, net</i>	7.8 %	10.2 %			
Other operating expenses, net ("OOE")	24,917	880	24,037	NM	
Goodwill impairment	33,360	-	33,360	NM	
Total operating expenses	103,171	35,710	67,461	188.9	
Operating loss	(108,659)	(33,891)	(74,768)	220.6	
<i>Operating loss as a % of revenues, net</i>	(171.9)%	(79.0)%			
Other income (expense):					
Unrealized loss on investment	-	(2,046)	2,046	(100.0)	
Realized loss on short-term investment securities	(41)	(143)	102	(71.3)	
Other income, net	23	-	23	NM	
Interest income, net	201	211	(10)	(4.7)	
Interest expense	(2,919)	(230)	(2,689)	1,169.1	
Total other expense	(2,736)	(2,208)	(528)	23.9	
Loss before income taxes	(111,395)	(36,099)	(75,296)	208.6	
Provision for income taxes	46	(2,581)	2,627	NM	
Net loss	(111,441)	(33,518)	(77,923)	232.5	
<i>Net loss as a % of revenues, net</i>	(176.3)%	(78.1)%			
Deemed dividend from trigger of anti-dilution provision feature	(367)	-	(367)	NM	
Deemed dividend related to down-round features	(564)	-	(564)	NM	
Net loss available to common shareholders	\$ (112,372)	\$ (33,518)	(78,290)	233.6	
Net loss per common share (basic and diluted)*	\$ (6.85)	\$ (2.71)	(4.14)	152.8	

NM - calculated change not meaningful

*Giving retroactive effect to April 2, 2024 and the 1-for-15 reverse stock split effectuated on July 5, 2023

Refer to Note 16, "Segment and Geographic Information," of the Notes to the Condensed Consolidated Financial Statements contained in Item 1 of this report for additional information regarding operating results for our two operating and reportable segments: (1) Tobacco, and (2) Hemp/cannabis..

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Three and Nine Months Ended September 30, 2023 March 31, 2024 Compared to Three and Nine Months Ended September 30, 2022 March 31, 2023

Revenue, net

	Three Months Ended		Nine Months Ended		Three Months Ended	
	September 30	September 30	September 30	September 30	March 31	March 31
	2023	2022	2023	2022	2024	2023
Tobacco	\$ 7,871	\$ 11,535	\$ 24,848	\$ 30,551		
Hemp/cannabis	9,940	7,848	38,352	12,354		
Total revenues, net	\$ 17,811	\$ 19,383	\$ 63,200	\$ 42,905		
Revenues, net					\$ 6,469	\$ 8,926
Cartons sold					629	1,002

The decrease in Tobacco revenue for the three months ended September 30, 2023, compared to the three months ended September 30, 2022, was primarily due to the decrease in tobacco revenue of \$3,664, offset by an increase in hemp/cannabis revenue of \$2,092.

- o Tobacco revenue was \$7,871, a decrease of 31.8% from \$11,535 in the prior year period, reflecting lower unit sales as a result of a planned reallocation in production resources at the Company's NASCO facilities away from lower margin filtered cigars to higher margin VLN® and conventional cigarette products. Third quarter 2023 cartons sold of 827 compared to 1,573 in the comparable prior year period.
- o Hemp/cannabis revenue was \$9,940, compared to \$7,848 in the prior year period. Third quarter 2023 bulk ingredient sales volume in kilograms was 49,142 compared to 27,912 in the comparable prior year period.

The increase in revenue for the nine months ended September 30, 2023, compared to the nine months ended September 30, 2022, was primarily due to the increase in hemp/cannabis revenue of \$25,998, offset by \$6,469, a decrease of 27.5% from \$8,926 in tobacco the prior year period, reflecting lower unit sales as a result of a planned reallocation in production resources during 2023 at the Company's NASCO facilities away from negative margin filtered cigars to higher margin VLN® and conventional cigarette products. Price increases and new cigarette export contract volume commence in the second quarter of 2024, among other additional new CMO revenue of \$5,703. opportunities, while the Company concurrently exits certain filtered cigar production with negative profitability.

- o Tobacco revenue was \$24,848, a decrease of 18.7% from \$30,551 in the prior year period, reflecting lower unit sales as a result of a planned reallocation in production resources at the Company's NASCO facilities away from lower margin filtered cigars to higher margin VLN® and conventional cigarette products. Third quarter 2023 year-to-date cartons sold of 2,591 compared to 4,427 in the comparable prior year period.
- o Hemp/cannabis revenue was \$38,352, compared to \$12,354 in the prior year third quarter, reflecting a full period of sales following the acquisition of GVB and continued growth in bulk ingredient sales. Third quarter 2023 year-to-date bulk ingredient sales volume in kilograms was 195,876 compared to 70,977 in the comparable prior year period (the GVB acquisition occurred on May 13, 2022).

Gross (loss) profit

	Three Months Ended		Nine Months Ended		Three Months Ended	
	September 30	September 30	September 30	September 30	March 31	March 31
	2023	2022	2023	2022	2024	2023
Gross (loss) profit	\$ (1,966)	\$ 619	\$ (5,488)	\$ 1,819	\$ (1,129)	\$ 17
Percent of Revenues, net	(11.0)%	3.2 %	(8.7)%	4.2 %	(17.4)%	0.2 %

The decrease in gross profit and gross profit as a percent of revenues, net for the three and nine month periods-ended September 30, 2023 as quarter ended March 31, 2024, compared to September 30, 2022 is the quarter ended March 31, 2023, was primarily driven by declines in tobacco gross profit of (\$559) and (\$2,757), respectively due to lower volume due to an carryover from 2023 of our intentional shift in product mix, production staffing, and decreases capacity as we stabilize operations in hemp/cannabis gross profit of (\$2,026) and (\$4,622), respectively resulting from incremental costs associated connection with buying and selling ingredients while ongoing restructuring efforts. During the quarter ended March 31, 2024, the Company rebuilds its distillate and isolate manufacturing capacity following the November 2022 Grass Valley fire. In connection with evaluation of strategic alternatives for the Company's assets and cost cut initiatives, during the third quarter of 2023, the Company increased the recorded an additional reserve for excess, obsolete or expired hemp/cannabis leaf inventory by \$1,687.

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\$431 related to the 2023 crop year received in the first quarter 2024 and an additional \$233 for excise taxes on products based on an assessment received related to prior periods.

Sales, general and administrative ("SG&A") expense

	Changes From Prior Year	
	Three Months Ended	Nine Months Ended
Compensation and benefits (a)	\$ (2,236)	\$ 4,165
Strategic consulting (b)	(2,693)	435
Sales and marketing (c)	621	1,492
Administrative, public company and other expenses (d)	(75)	1,526
Depreciation and amortization (e)	576	1,406
Royalty, license and contract costs (f)	478	472
Net increase in SG&A expenses	\$ (3,329)	\$ 9,496

	Changes From Prior Year	
	Three Months Ended	
Compensation and benefits (a)	\$ (2,492)	
Strategic consulting (b)	(3,062)	
Sales and marketing (b)	(401)	
Travel and entertainment (b)	(226)	
Administrative, public company and other expenses (c)	(750)	
Net decrease in SG&A expenses	\$ (6,931)	

(a) Compensation and benefits and equity compensation expense decreased for the three-month period ending September 30, 2023 March 31, 2024 compared to the prior year period due to a reduction of headcount as part of our cost cut initiatives and increased severance and equity comp expense in the prior year period due to the termination of our COO. Increases in compensation and benefits for the nine-month period ending September 30, 2023, is mainly attributable to inflationary increases, as well as increases in headcount for a portion of the year prior to our cost cut initiatives as compared to the prior year period. initiatives.

(b) Decrease Decreases of strategic consulting, sales and marketing and travel and entertainment for the three-month period ending September 30, 2023 was March 31, 2024, were due to reduced spending as part of our cost cut initiatives.

(c) Increases due to the ongoing expansion of store count and launch of VLN® compared to the prior year period.

(d) Other expenses decreased for the three-month ended September 30, 2023 March 31, 2024, due to decreases of \$115 \$412 of insurance expenses, \$104 of travel and entertainment, \$32 of legal and other expenses offset by increases of \$96 for public company expenses, and \$79 for facilities expenses. For the nine months period ended September 30, 2023, other \$310 of insurance expenses, increased due to \$704 of IT and technology, \$303 of travel and entertainment, \$332 \$150 of facilities expense, \$171 of public company expenses and \$134 \$122 of bad debt expenses, offset by a decrease of \$308 of insurance expenses.

(e) Depreciation and amortization increased due to the buildout of our GVB Prineville facilities and newly acquired intangible assets in the current year period.

(f) Royalty, license and contract costs are mainly related to our contract development, manufacturing and distribution service offering licenses. other.

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Research and development ("R&D") expense

	Changes From Prior Year		
	Three Months Ended	Nine Months Ended	
Compensation and benefits (a)	\$ (10)	\$ 530	
Royalty, license and contract costs (b)	186	82	
Other	119	(44)	
Net increase in R&D expenses	\$ 295	\$ 568	
Changes From Prior Year			
Three Months Ended			
Compensation and benefits (a)	\$ (152)		
Other (b)	(153)		
Net decrease in R&D expenses	\$ (305)		

(a) **Increased** compensation and benefits for the **nine-month** **three-month** period ended **September 30, 2023** **March 31, 2024** are mainly related to the **additional R&D personnel** **a decrease in headcount** in the current year period compared to the prior year period.

(b) **Increased** **contract costs were** **Other expenses decreased** for the three months ended **March 31, 2024**, due to **costs related** **decreases of \$57 of patent and license amortization, \$48 of consulting and professional services, and \$48 of patent maintenance**. These decreases are mainly attributable to our **Keygene** research offset by a **decrease in royalty fees owed**. **continued cost cutting initiatives** implanted during the third quarter of 2023.

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Other operating expenses, net ("OOE") income (expense)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2023	2022	2023	2022
Grass Valley fire:				
Professional services	\$ 53	\$ -	\$ 377	\$ -
Total Grass Valley fire (a)	53	-	377	-
Restructuring costs:				
Impairment of intangible assets	13,986	-	13,986	-
Impairment of fixed assets	5,931	-	5,931	-
Impairment of right-of-use assets	4,034	-	4,034	-
Professional services	207	-	207	-
Severance	159	-	159	-
Total Restructuring costs (b)	24,317	-	24,317	-
Acquisition and transaction costs	218	43	357	882
Needlerock Farms settlement (c)	9	—	765	—
Gain on change in warrant liability (d)	(1,262)	—	(540)	—
Loss (gain) on change in contingent consideration (e)	9	—	(186)	—
Gain on sale or disposal of property, plant and equipment (f)	—	(2)	(173)	(2)
Total other operating expenses, net	\$ 23,344	\$ 41	\$ 24,917	\$ 880

	Changes From Prior Year	
	Three Months Ended	
Other income (expense):		
Other income (expense), net (a)	(155)	

Interest income, net	57
Interest expense (b)	688
Net increase in other expense	\$ 590

- (a) In November 2022, there was Other income (expense), net decreased from the prior year period due to a fire at our Grass Valley manufacturing facility in Oregon, which manufactures bulk ingredients, primarily CBD isolate decrease of \$16 of realized losses on short term investments and distillate. The Company has continuous expenses related to consulting, legal and demolition at this facility.
- (b) During the third quarter of 2023, the Company undertook various restructuring activities in an effort to better align its internal organizational structure and costs with its strategy, as well as preserve liquidity. As a component of the restructuring, the Company has initiated a process to evaluate strategic alternatives with respect to the Company's tobacco assets. The process will include consideration of a range of strategic, operational and financial transactions and alternatives, such as business combinations, asset sales, licensing agreements, alternate financing strategies and other options.
- (c) Expenses associated with non-ordinary course legal matters and corresponding settlement related to water rights dispute for Needle Rock Farms.
- (d) Represents change \$139 decrease in fair value of warrant liability resulting from remeasurement liability.
- (e) Represents change Interest expense increased in 2024, as compared to the prior year period, primarily due to increases in cash interest of \$66 and a decrease of non-cash interest of \$62 recognized from the Senior Secured Credit Facility (of these totals, interest that was allocated to discontinued operations increased by \$37), and additional increases of \$82 of derivative liability fair value changes. Additionally, interest expense increased as a result of RXP contingent consideration PIK interest of \$639 recognized from remeasurement the Subordinated Note.
- (f) Reflects gain on sale primarily from the sale of older tobacco equipment.

Refer to Note 9, "Other operating expenses, net," of the Notes to the Condensed Consolidated Financial Statements contained in Item 1 of this report for additional information regarding these charges.

Goodwill impairment

In connection with our strategic restructuring initiatives, the Company recorded goodwill impairment of \$33,360.

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Other income (expense)

	Changes From Prior Year	
	Three Months Ended	Nine Months Ended
Other income (expense):		
Unrealized loss on investment (a)	\$ 345	\$ 2,046
Realized loss on short-term investment securities	35	102
Other income, net	(12)	23
Interest income, net	(34)	(10)
Interest expense (b)	(1,157)	(2,689)
Total other expense	\$ (823)	\$ (528)

(a) Unrealized loss on investment includes fair value adjustments for our investment in Panacea Life Sciences Holdings, Inc. ("PLSH") during the three and nine month-period ended September 30, 2022. The investment was subsequently liquidated during 2022.

(b) Interest expense increased in 2023, as compared to the prior year period, primarily due to the interest recognized on the Senior Secured Credit Facility and Subordinated Note, as described below under 'Liquidity and Capital Resources.'

Liquidity and Capital Resources

We have incurred significant losses and negative cash flows from operations since inception and expect to incur additional losses until such time that we can generate significant revenue and profit in our tobacco and hemp/cannabis businesses. We had negative cash flow from operations of \$50,184 \$2,255 for the nine months ended **September 30, 2023** **March 31, 2024** and an accumulated deficit of \$349,373 \$384,446 as of **September 30, 2023** **March 31, 2024**. As of **September 30, 2023** **March 31, 2024**, we had cash and cash equivalents of \$2,850, restricted cash of \$7,500 \$1,517 and working capital from continuing operations of \$856 (\$9,497) (compared to working capital from continuing operations of \$31,587 (\$6,826) at **December 31, 2022** **December 31, 2023**). Given our projected operating requirements and existing cash and cash equivalents, there is substantial doubt about our ability to continue as a going concern through one year following the date that the Condensed Consolidated Financial Statements herein are issued.

Additionally, for the quarter ended September 30, 2023, the Company was not in compliance with the financial covenant related to consolidated Revenues, net pursuant to the Senior Secured Credit Facility debentures. The lenders have granted a waiver for the covenant violation. Without a waiver or other relief under the Senior Secured Credit Facility debenture agreements, one of the remedies the lenders have available to them, amongst others, is the ability to accelerate repayment of the debt, which the Company would not be able to immediately repay.

In response to these conditions, management is currently evaluating different strategies for reducing expenses, as well as pursuing strategic alternatives financing strategies which include raising additional funds through the issuance of securities, asset sales, and through arrangements with strategic partners. The Company has engaged a financial advisor to assist it in identifying strategic partners and financing to fund operations and to take actions to maximize the Company's liquidity. If capital is not available to the Company when, and in the amounts needed, it could be required to liquidate inventory or assets, cease or curtail operations, seek to negotiate new business deals with our business partners or seek protection under applicable bankruptcy laws or similar state proceedings. There can be no assurance that the Company will be able to raise the capital it needs to continue operations. Accordingly, there is substantial doubt regarding our ability to continue in operations. Management's plans do not alleviate substantial doubt about the Company's ability to continue as a going concern through one year following the date that the Condensed Consolidated Financial Statements are issued.

Our cash, short term investments, restricted cash and working capital as of September 30, 2023 and December 31, 2022 are set forth below:

	September 30		December 31,	
	2023	2022		
Cash and cash equivalents	\$ 2,850	\$ 3,020		
Short-term investment securities	\$ —	\$ 18,193		
Restricted cash	\$ 7,500	\$ —		
Working capital	\$ 856	\$ 31,587		

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Our cash, and cash equivalents and working capital as of March 31, 2024 and December 31, 2023 are set forth below:

	March 31		December 31	
	2024	2023		
Cash and cash equivalents	\$ 1,517	\$ 2,058		
Working capital	\$ (9,497)	\$ (6,826)		

Working Capital

As of **September 30, 2023** **March 31, 2024**, we had working capital from continuing operations, excluding assets and liabilities held for sale, of \$856 approximately (\$9,497) compared to working capital of \$31,587 approximately (\$6,826) at December 31, **2022** **2023** a decrease of \$30,731 \$2,671. This decrease in working capital was primarily due to a \$3,989 \$2,403 decrease in net current assets and was offset by an increase in net current liabilities of \$26,741, which includes in the third quarter \$18,165 of current portion of long-term debt obligations related to our Senior Secured Credit Facility \$268. Cash and Subordinate Note, previously classified as Non-current. Cash, cash equivalents short-term investment securities and restricted cash decreased by

\$10,863 \$541 and the remaining net current assets increased by \$6,874, \$1,862. As a result of the insignificant positive working capital balance, management has taken a number of steps to improve liquidity. Refer below to "Cash demands on operations."

Summary of Cash Flows

	Nine Months Ended			Three Months Ended		
	September 30,		Change	March 31,		Change
	2023	2022	\$	2024	2023	\$
Cash provided by (used in):						
Operating activities	\$ (50,184)	\$ (32,648)	(17,536)	\$ (2,255)	\$ (17,500)	15,245
Investing activities	17,352	380	16,972	15	14,723	(14,708)
Financing activities	40,162	33,296	6,866	1,699	18,209	(16,510)
Net change in cash, cash equivalents and restricted cash	\$ 7,330	\$ 1,028		\$ (541)	\$ 15,432	

Net cash used in operating activities

Cash used in operating activities increased \$17,536 decreased \$15,245 from \$32,648 \$17,500 in 2022 2023 to \$50,184 \$2,255 in 2023 2024. The primary driver for this increase decrease was higher lower net loss of \$77,923, as explained above, an increase \$12,443, a decrease of \$60,104 \$1,016 related to net adjustments to reconcile net loss to cash, and a decrease in cash used for working capital components related to operations in the amount of \$283 \$3,818 for the nine three months ended September 30, 2023 March 31, 2024, as compared to the nine three months ended September 30, 2022 March 31, 2023.

Net cash provided by investing activities

Cash provided by investing activities amounted to \$17,352 \$15 the nine three months ended September 30, 2023 March 31, 2024, as compared to cash provided by investing activities of \$380 \$14,723 for the nine three months ended September 30, 2022 March 31, 2023. The increase decrease in cash provided by investing activities of \$16,972 \$14,708 was the result of (i) an increase a decrease in net proceeds from short-term investments of \$12,985 \$12,959; (ii) \$3,500 of property, plant and equipment casualty loss insurance proceeds collected in the current prior year period (iii) \$682 from the investment in Change Agronomy Ltd. in the prior year period; (iv) \$1,043 \$90 from the acquisitions of RXP in the current period and GVB in the prior year period and (v) \$251 (iv) a decrease of \$178 of proceeds from the sale of property, plant and equipment. These increased decreased cash inflows were partially offset by an increase a decrease in cash outflows of \$1,489 \$2,019 related to the acquisitions of patents, trademarks and property, plant and equipment.

Net cash provided by financing activities

During the nine three months ended September 30, 2023 March 31, 2024, cash provided by financing activities increased decreased by \$6,866, \$16,510, from \$33,296 \$18,209 in the prior year period, to \$40,162, \$1,699, resulting from decreases in (i) the net proceeds of \$16,048 from issuance of long-term debt, (ii) proceeds of \$6,016 from issuance of detachable warrants, net and (iii) proceeds of \$2,563 from issuance of common stock related to the ATM, increased proceeds of \$198 from the issuance of notes payable and a decrease of \$71 offset by an increase in other financing net proceeds from warrant exercise of \$16, \$2,245. These cash inflows were offset by a decrease in net proceeds cash outflows of issuance of common stock of \$14,217, increased note payable payments of \$3,164, \$2,967 and taxes paid related to net share settlement of RSUs of \$420 and \$174 of option exercises that occurred in 2022, \$413.

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Cash demands on operations

As of September 30, 2023 March 31, 2024, we had approximately \$2,850 \$1,517 of cash and cash equivalents. Our principal sources of liquidity are our cash and cash equivalents and cash generated from our tobacco contract manufacturing business and hemp/cannabis business and proceeds from debt and equity financing activities, which such financings have cash flows provided total net proceeds throughout 2023 of \$37,173, including registered direct offerings completed in October 2023 (refer below for details of all debt and equity by financing activities). The Company has also received \$5,000 of casualty loss insurance recoveries from the Grass Valley fire, has business interruption coverage and has filed litigation to enforce its claim.

As discussed above, in response to the cash demands on operations, management has implemented programs to evaluate strategic alternatives activities for the Company's assets and cost cut initiatives intended to reduce our operating costs to provide additional cash runway. In October 2023 the Company decreased its principal debt balances by \$8,100, resulting in cash interest savings of approximately \$500 annually. However, our cash, cash equivalents, short-term investment securities, insurance proceeds, and debt/equity financings, as well as the sustained tobacco contract manufacturing and hemp/cannabis sales, currently are not forecasted to provide sufficient cash resources or liquidity through the remainder of fiscal 2023. quarter ended March 31, 2024 were \$1,699.

Senior Secured Credit Facility

On March 3, 2023, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement" "SPA") with each of the purchasers party thereto (each, including its successors JGB Partners, LP ("JGB Partners"), JGB Capital, LP ("JGB Capital") and assigns, a "Purchaser" JGB Capital Offshore Ltd. ("JGB Offshore" and collectively with JGB Partners and JGB Capital, the "Purchasers" "Holders") and JGB Collateral, LLC, a Delaware limited liability company, as collateral agent for the Purchasers Holders (the "Agent"). Pursuant which pursuant to the Purchase Agreement, agreement, the Company agreed to sell to the Purchasers (i) sold 5% Original Issue Discount Senior Secured Debentures (the "Debentures") original issuance discount senior secured debentures with an aggregate principal amount of \$21,053 and (ii) warrants to purchase up to 333,334 shares of the Company's common stock, par value \$0.00001 per share (the "Common Stock"), for an exercise price of \$19.125 per share, a 50% premium to the VWAP on the closing date (the "JGB Warrants"), for a total purchase price of \$20,000.

\$21,053. The Debentures bear interest at a rate of 7% per annum, payable monthly in arrears as of the last trading day of each month and on the maturity date. The Debentures mature on March 3, 2026. At the Company's election, subject to certain conditions, interest can be paid in cash, shares of the Company's common stock, or a combination thereof. The Debentures are subject to an exit payment equal to 5% of the original principal amount, or \$1,053, payable on the maturity date or the date the Debentures are paid in full (the "Exit Payment"). Any time after, March 3, 2024, the Company may irrevocably elect to redeem all of the then outstanding principal amount of the Debentures for cash in an amount equal to the entire outstanding principal balance, including accrued and unpaid interest, the Exit Payment and a prepayment premium in an amount equal to 3% of the outstanding principal balance as of the prepayment date (collectively, the "Prepayment Amount"). Upon the entry into a definitive agreement that would effect a change in control (as defined in the Debentures) of the Company, the Agent may require the Company to prepay the outstanding principal balance in an amount equal to the Prepayment Amount. Commencing on March 3, 2024, at its option, the holder of a Debenture may require the Company to redeem 2% of the original principal amount of the Debentures per calendar month which amount may at the Company's election, subject to certain exceptions, be paid in cash, shares of the Company's common stock, or a combination thereof.

The Company is required to maintain at least \$7,500 on its balance sheet as restricted cash in a separate account and has financial covenants to maintain certain quarterly revenue targets. As of September 30, 2023, the Company was not in compliance with its financial covenant tied to minimum consolidated Revenues, net of \$18,500. The Company has obtained a waiver (as described below) with the lender executed on October 16, 2023; accordingly, no event of default has occurred.

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The JGB Warrants are exercisable for five years from September 3, 2023, at an exercise price of \$19.125 \$306.00 per share, a 50% premium to the VWAP on the closing date, subject, with certain exceptions, to adjustments in the event of stock splits, dividends, subsequent dilutive offerings and certain fundamental transactions.

On June 22, 2023, as As a result of the June 19, 2023 offering, the Company's outstanding JGB warrants to purchase up to 333,334 20,834 shares of the Company's common stock for an exercise price of \$19.125 \$306.00 per share were automatically adjusted to be \$12.828 \$205.248 exercise price for up to 496,960 31,063 shares of common stock. There are no further anti-dilution adjustments on such warrants. In connection with the JGB October Amendment, the Company and Holders agreed to exercise the outstanding put provision to redeem 10,418 Warrants for an aggregate put price equal to \$2,500.

On October 16, 2023, Following the Company entered into a waiver JGB October and amendment that resulted December Amendments (as further described in a reduction Note 6 "Debt" of the outstanding principle Notes to Condensed Consolidated Financial Statements contained), as of its Senior Secured Credit Facility by \$8,100. The reduction reflects a waiver March 31, 2024 and repayment of December 31, 2023, respectively, the \$7,500 restricted cash balance required under terms of the original debenture agreements, which was held in an escrow account. The Company also assigned an existing promissory note pertaining to the Company's previous holdings in Panacea Life Science Holdings as additional consideration in the debt reduction transaction. In a non-

monetary exchange, the assigned value of the promissory note was allocated as \$600 to further principal reduction and \$2,000 to a reduction in the put price associated with the lenders outstanding warrants, which 166,667 of such the warrants were concurrently cancelled.

The remaining principal loan balance is approximately \$10,752, exit fee of approximately \$14,005 \$1,052 and remaining \$500 of the put price will be due at maturity in March 2026 in accordance with the original terms of the debenture agreements. The As of March 31, 2024, the Company was not required has pledged to pay any cash JGB the \$2,000 GVB promissory note and \$1,000 assignment of Needle Rock Farms to the lenders be applied as principal reduction in connection with this transaction, 2024.

On April 8, 2024, the Company, the Holders and the Agent entered into that certain Letter Agreement to modify the terms of the Amendment Agreement, the JGB SPA and the Debentures, as amended.

Under the terms of the Letter Agreement, the Holders are permitted to convert their debt to common stock at anytime and the Conversion Price (as defined in the Debentures) at which the Holders may convert the principal amount of their Debentures to the Company's common stock is reduced to \$2.14 per share in accordance with applicable Nasdaq rules. The principal amount of the Debentures converted shall be applied to the Monthly Allowance (as defined in the Debentures) for that month, and any excess shall be applied to the Monthly Allowances for the succeeding months. The conversions will be a dollar for dollar reduction of the remaining outstanding obligation owed to the Holders. The Agent and Holders have also agreed to daily limits on trading volume and minimum conversion amounts. The Holders converted \$428 of debt in exchange for 200,000 shares of common stock during the 20-day period.

The provisions in Section 3(c)(i) of the Debentures requiring 20% of any equity issuances to be paid to the Holders was suspended for 20 days.

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On May 10, 2024, the Company, the Holders and the Agent entered into that certain May 2024 Exchange Agreement and May 2024 Letter Agreement to modify the terms of the Amendment Agreement, the Securities Purchase Agreement and the Debentures, as amended.

Under the terms of the May 2024 Letter Agreement, the Company and Holders have agreed the Company shall incur an aggregate amendment charge to the undersigned holders equal to \$275, which shall be added to the principal balance of the Debentures.

Under the terms of the May 2024 Exchange Agreement, the Company and Holders exchanged an aggregate of \$2,328 in principal, fees and expenses owed under the Debentures for 395,000 shares of common stock and 895,000 immediately exercisable pre-funded warrants to purchase shares of common stock at an exercise price of \$.00001 (an effective per share price of \$1.69). The remaining principal balance of the Debentures is \$9,825 of which \$3,000 remains current with corresponding pledged assets.

As a result of the transaction, the exercise price on 5,876,887 of the Company's outstanding warrants is reduced to \$1.69 per share in accordance with the adjustment provisions therein.

Omnia Subordinated Note

On March 3, 2023, the Company executed a Subordinated Promissory Note (the "Subordinated Note") with a principal amount of \$2,865 in favor of Omnia Ventures, LP ("Omnia"). The Subordinated Note refinanced the 12% Secured Promissory Note with a principal amount of \$1,000 dated as of October 29, 2021 payable to Omnia (the "October Note") and the 12% Secured Promissory Note with a principal amount of \$1,500 dated as of January 14, 2022 payable to Omnia (the "January Note", and together with the October Note, the "Original Notes"), which were assumed by the Company in connection with the acquisition of GVB Biopharma.

Under the terms of the Subordinated Note, the Company is obligated to make interest payments in-kind (the "PIK Interest"). The PIK Interest accrues at a rate of 26.5% per annum, payable monthly. The Company is not permitted to prepay all or any portion of the outstanding balance on the Subordinated Note prior to maturity. The maturity date of the Subordinated Note is May 1, 2024.

In connection with the Subordinated Note, the Company issued to Omnia, warrants to purchase up to 45,000 2,813 shares of the Company's common stock. The Omnia Warrants are exercisable for seven years from September 3, 2023, at an exercise price of \$12.828 \$205.248 per share subject, with certain exceptions, to adjustments in the event of stock splits, dividends, subsequent dilutive offerings and certain fundamental transactions.

On April 29, 2024, the Company entered into a General Release and Settlement Agreement (the "Omnia Agreement") with Omnia Capital LP ("Omnia"). The Omnia Agreement settles and extinguishes all outstanding debt and interest owed to Omnia under the outstanding Subordinated Promissory Note dated March 3, 2023 (the "Old Note") and the put provision contained the outstanding common stock purchase warrant dated March 3, 2023 (the "Old Warrant"), amounting to a total of approximately \$5,228, for (i) a cash payment of \$249; (ii) 1,150,000 shares of common stock and 1,150,000 immediately exercisable pre-funded warrants to purchase shares of common stock at an exercise price of \$0.0001 that are exercisable until May 1, 2029 (at an effective per share price of \$2.14) and (iii) 460,000 immediately exercisable warrants to purchase an equal number of shares of common stock at an exercise price of \$2.14 until May 1, 2029 (the "New Warrant"). The New Warrant contains a put provision that permits the holder to require the Company to redeem the New Warrants, no earlier than May 1, 2025, for a purchase price equal to \$2.675 per New Warrant. Subject to limited exceptions, a holder of pre-funded warrants and New Warrants will not have the right to exercise any portion of its warrants if the holder, together with its affiliates, would beneficially own in excess of 19.99% of the number of shares of our common stock outstanding immediately after giving effect to such exercise. As part of the Omnia Agreement, the parties agreed to terminate and cancel the Old Note and the Old Warrant and released all debts, claims or other obligations against each other occurring prior to the date of the Omnia Agreement.

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[ATM Warrant Inducement Offering](#)

On ~~March 9, 2023~~ November 28, 2023, the Company commenced a warrant inducement offering with the holders of the Company's outstanding 1,986,229 warrants consisting of: (i) the common stock purchase warrants of the Company issued on or about June 22, 2023; (ii) the common stock purchase warrants of the Company issued on or about July 10, 2023; (iii) the common stock purchase warrants of the Company issued on or about July 21, 2023; and/or (iv) the common stock purchase warrants of the Company issued on or about October 19, 2023 (collectively, the "Existing Warrants"), which Existing Warrants are exercisable for an equal number of shares of common stock at an exercise price of \$8.40. The Company agreed to issue new warrants (the "Inducement Warrants") to purchase up to a number of shares of common stock equal to 200% of the number of shares of common stock issued pursuant to the exercise by the holders of the Existing Warrants during the inducement period, for cash, at a reduced exercise price equal to the Nasdaq Minimum Price (as defined in the as defined in Nasdaq Listing Rule 5635(d)).

For the period from January 1, 2024 to February 15, 2024, the date of shareholder approval, the Company entered into a Sales Agreement (the "Sales Agreement") warrant inducement agreements with Cowen and Company, LLC (the "Sales Agent") under which certain holders of the Company may issue and sell in a registered offering shares of our common stock having Existing Warrants to purchase an aggregate offering price of up to \$50,000 from time to time through or to the Sales Agent (the "ATM Offering"). The Company will pay 3.00% sales commission based on the gross proceeds of the sales price per share 820,769 shares of common stock sold. Total net proceeds during the second quarter at a reduced weighted average exercise price of ~~2023~~ approximately \$2,9504 (which were \$2,639. On June 19, 2023, the Company terminated the ATM Program subsequently reduced to \$1.69 in connection with the ~~June 2023 Capital Raise~~ May 2024 JGB debt for equity exchange). Pursuant to the warrant inducement agreements, the exercising holders of the Existing Warrants received 1,641,535 Inducement Warrants and the Company received aggregate gross proceeds of approximately \$2,421 from the exercise of the Existing Warrants. Additionally, on the date of Shareholder Approval, the exercise price of the 3,581,213 outstanding Inducement Warrants, was reduced to \$2.8237 based on the lowest Nasdaq Minimum Price (as defined in the as defined in Nasdaq Listing Rule 5635(d)) during the inducement period.

[June 19, 2023 April 2024 Registered Direct Offering](#)

On ~~June 19, 2023~~ April 8, 2024, the Company and certain investors entered into a securities purchase agreement ("April SPA") relating to the issuance and sale of shares of approximately ~~\$5,300~~ \$4,200 of shares and warrants, consisting of an aggregate of ~~747,974~~ 1,855,000 shares of common stock, 125,000 pre-funded warrants and ~~747,974~~ 1,980,000 warrants to purchase an equal number of shares, at a purchase price of \$7.05 per unit. The net proceeds to the Company from the offering were approximately \$4,800.

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The warrants were exercisable immediately upon issuance at an exercise price of \$7.05 per share of common stock, expire on June 22, 2028 and are subject to adjustment in certain circumstances, including upon any subsequent equity sales at a price per share lower than the then effective exercise price of such warrants, then such exercise price shall be lowered to such price at which the shares were offered.

As part of the offering, the Company entered into a warrant reprice letter and agreed to reduce the exercise price on the previously issued 747,974 warrants owned by the investors participating in the Offering from \$30.75 to \$7.05 and to add a provision in the warrants that upon any subsequent equity sales at a price per share lower than the then effective exercise price of such warrants, such exercise price shall be lowered to such price at which the shares were offered. As a result of the offerings completed in July 2023, the exercise price on the 1,495,948 warrants was automatically adjusted to \$2.42 per share and subsequently adjusted to \$0.525 per share in October.

The remaining 390,247 previously issued warrants were not repriced and remain at an exercise price of \$30.75 on their original terms.

In addition, as a result of the offering, the Company's outstanding warrants to purchase up to 333,334 shares of the Company's common stock for an exercise price of \$19.125 per share were automatically adjusted as follows: \$12.828 exercise price for up to 496,960 shares of common stock, of which 166,667 were canceled in October 2023 (see above discussion of amendment and waiver under Senior Secured Credit Facility).

July 6, 2023 Registered Direct Offering.

On July 6, 2023, the Company and certain investors entered into a securities purchase agreement relating to the issuance and sale of approximately \$3,000 of shares and warrants, consisting of an aggregate of 778,634 shares of common stock and 1,557,268 warrants to purchase an equal number of shares, at a purchase price of \$3.80 per unit. The warrants are exercisable six months after issuance at an exercise price of \$3.80 per share of common stock and expire on the later of January 10, 2029 and the date Stockholder Approval (as defined below) is obtained. The net proceeds to the Company from the offering were approximately \$2,600. As a result of the subsequent offering completed in July 2023, the exercise price on the 1,557,268 warrants was automatically adjusted to \$2.42 per share and subsequently adjusted to \$0.525 per share in October.

July 19, 2023 Registered Direct Offering.

On July 19, 2023, the Company and certain investors (entered into a securities purchase agreement relating to the issuance and sale of approximately \$11,700 of shares and warrants, consisting of an aggregate of 4,373,219 shares of common stock and 8,746,438 warrants to purchase an equal number of shares, at a purchase price of \$2.67 \$2.14 per unit. The warrants are exercisable immediately at an exercise price of \$2.42 \$2.14 per share of common stock and expire five years after issuance, shareholder approval, as defined in the April SPA (which were subsequently reduced to \$1.69 in connection with the May 2024 JGB debt for equity exchange). The net proceeds to the Company from the offering were approximately \$10,742. As a result of the subsequent offering completed in October 2023, the exercise price on the 8,746,438 warrants was automatically adjusted to \$0.525 per share, \$3,913.

October 2023 Public Offering Outstanding Warrants

On October 17, 2023 As of May 13, 2024, we had the Company entered into a securities purchase agreement with certain investors, pursuant to which the Company agreed to sell and issue, in a registered public offering, (i) an aggregate of 7,600,000 shares of the Company's common stock, par value \$0.00001 per share, (ii) following warrants to purchase 20,000,000 shares of common stock (the "Common Warrants") and (iii) pre-funded warrants to purchase 2,400,000 shares of common stock (the "Pre-Funded Warrants"). The Common Warrants have an exercise price of \$0.525, are immediately exercisable and have a term of exercise equal to five years following the original issuance date. The Pre-Funded Warrants have an exercise price of \$0.0001, are immediately exercisable and are exercisable at any time after their original issuance until such Pre-Funded Warrants are exercised in full. The shares were offered at a combined public offering price of \$0.525 per share and two accompanying Common Warrants. The Pre-Funded Warrants were offered at a combined public offering price of \$0.5249 per Pre-Funded Warrant and two accompanying Common Warrants, outstanding:

	# of warrants outstanding	Exercise price	Expiration date
July 2022 RDO warrants	4,067	\$ 492.00	July 25, 2027
Senior Secured Credit Facility - JGB	20,645	\$ 205.248	September 3, 2028
Senior Secured Credit Facility - JGB Pre-Funded	895,000	\$ 0.00001	NA
July 19, 2023 RDO warrants	28,125	\$ 1.69	July 20, 2028
October 2023 CMPO warrants	168,750	\$ 1.69	October 19, 2028
Inducement warrants	3,581,213	\$ 1.69	February 15, 2029
April 2024 RDO	1,980,000	\$ 1.69	*

April 2024 RDO - Placement Agent	118,800	\$ 1.69	*
Omnia Pre-Funded	1,150,000	\$ 0.00001	NA
Omnia warrants	460,000	\$ 1.69	May 1, 2029
	<u>8,406,600</u>		

*5 years after shareholder approval

In addition, the Company issued the placement agent warrants to purchase up to 1,000,000 shares of common stock (equal to 10% of the aggregate number of shares and Pre-Funded Warrants sold in the offering) at an exercise price of \$0.65625, which represents 125% of the public offering price per share and accompanying Common Warrant. The placement agent agreed not to exercise the such warrants until the Company subsequently increases its authorized shares of common stock.

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The offering closed on October 19, 2023 with gross proceeds to the Company of approximately \$5,250, before deducting the placement agent fees of \$367 and other offering expenses payable by the Company of approximately \$288. As a result of the offering, the exercise price on 11,799,654 previously outstanding warrants were automatically adjusted from \$2.42 per share to \$0.525 per share.

The Pre-Funded Warrants were subsequently exercised on a cashless basis in October 2023, resulting in issuance of 2,399,512 shares of common stock.

Critical Accounting Policies and Estimates

The preparation of our Condensed Consolidated Financial Statements in accordance with accounting principles generally accepted in the U.S. requires management to make estimates, assumptions and judgments that affect the amounts reported in the financial statements and accompanying notes. Our estimates, assumptions and judgments are based on historical experience and various other assumptions believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying amount of assets and liabilities that are not readily apparent from other sources. Making estimates, assumptions and judgments about future events is inherently unpredictable and is subject to significant uncertainties, some of which are beyond our control. Management believes the estimates, assumptions and judgments employed and resulting balances reported in the Condensed Consolidated Financial Statements are reasonable; however, actual results could differ materially.

Except as described below, there **There** have been no material changes to the information set forth in our Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023**.

Contingent consideration

Contingent consideration is a financial liability recorded at fair value. The amount of contingent consideration to be paid is based on the occurrence of future events, such as the achievement of certain revenue milestones. Accordingly, the estimate of fair value contains uncertainties as it involves judgment about the likelihood and timing of achieving these milestones as well as the discount rate used. Changes in fair value of the contingent consideration liability result from changes to the assumptions used to estimate the probability of success for each milestone, the anticipated timing of achieving the milestones and the discount period and rate to be applied. A change in any of these assumptions could produce a different fair value, which could have a material impact on the results from operations. The impact of changes in key assumptions are described in Note 6 to the Condensed Consolidated Financial Statements.

Detachable Warrants

Warrants issued pursuant to debt or equity offerings that the Company may be required to redeem through payment of cash or other assets outside its control are classified as liabilities and therefore measured at fair value. The Company uses a Monte Carlo valuation model to estimate fair value at each issuance and period-end date. The key assumptions used in the model are the expected future volatility in the price of the Company's shares and the expected life of the warrants. The impact of changes in key assumptions are described in Note 6 to the Condensed Consolidated Financial Statements.

Impact of Recently Issued Accounting Standards

In the normal course of business, we evaluate all new accounting pronouncements issued by the FASB, SEC, or other authoritative accounting bodies to determine the potential impact they may have on our Condensed Consolidated Financial Statements. See Note 1 "Nature of Business and Summary of Significant Accounting Policies" of the Notes to Condensed Consolidated Financial Statements contained in Item 1 of this report for additional information about these recently issued accounting standards and their potential impact on our financial condition or results of operations.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined by Item 303(a)(4) of Regulation S-K.

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Item 3. Quantitative and Qualitative Disclosures about Market Risk

There have been no material changes to the information set forth in our Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023**.

Item 4. Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures:

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in its Securities Exchange Act of 1934 ("Exchange Act") reports are recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including the Company's **interim** chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Our **interim** chief executive officer and chief financial officer, after evaluating the effectiveness of the Company's "disclosure controls and procedures" (as defined in the Exchange Act Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this quarterly report, have concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Form 10-Q to ensure information required to be disclosed is recorded, processed, summarized and reported within the time period specified by SEC rules, based on their evaluation of these controls and procedures as required by paragraph (b) of Exchange Act Rules 13a-15 or 15d-15.

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(b) Changes in Internal Control over Financial Reporting:

There were no changes in our internal control over financial reporting during the quarter ended **September 30, 2023** **March 31, 2024** that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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Part II. OTHER INFORMATION

Item 1. Legal Proceedings

See Note 11 - Commitments and Contingencies – Litigation - to our **consolidated financial statements** Condensed Consolidated Financial Statements included in this Quarterly Report for information concerning our on-going litigation. In addition to the lawsuits described in Note 11, from time to time we may be involved in claims arising in the ordinary course of business. To our knowledge other than the cases described in Note 11 to our consolidated financial statements, no material legal proceedings, governmental actions, investigations or claims are currently pending against us or involve us that, in the opinion of our management, could reasonably be expected to have a material adverse effect on our business and financial condition.

Item 1A. Risk Factors

There Except as set forth below, there have been no material changes from the risk factors disclosed in Item 1A of Part I of our Annual Report on Form 10-K for the year ended **December 31, 2022** December 31, 2023, as filed with the SEC on **March 9, 2023** March 28, 2024 or Part II of.

Our securities are currently listed on the Nasdaq. If Nasdaq delists our Quarterly Report securities from trading on Form 10-Q its exchange, we could face significant material adverse consequences, including:

- a limited availability of market quotations for our securities;
- reduced liquidity with respect to our securities;
- a determination that shares of our Class A common stock are "penny stock" which will require brokers trading in our shares to adhere to more stringent rules, possibly resulting in a reduced level of trading activity in the secondary trading market for our shares;
- a limited amount of news and analyst coverage; and
- a decreased ability to issue additional securities or obtain additional financing in the future.

On April 4, 2024, we received a deficiency letter from the Nasdaq Listing Qualifications Department indicating that we were not in compliance with Nasdaq's Listing Rule 5550(b)(1) because our stockholders' equity for the **quarter** year ended **March 31, 2023** December 31, 2023, as **filed** reported in our Form 10-K, was below the minimum stockholders' equity requirement of \$2,500,000 (the "Stockholders' Equity Requirement"). In accordance with Nasdaq rules, we have been provided 45 calendar days to submit a plan to regain compliance with the SEC on May 9, 2023, other than Stockholders' Equity Requirement (the "Compliance Plan"). If the **following** Compliance Plan is accepted, Nasdaq may grant up to 180 calendar days from the date of the notice for us to regain compliance with the Stockholders' Equity Requirement.

We **have intend to timely submit** a history of losses, and we **expect** Compliance Plan to incur significant expenses and continuing losses for the foreseeable future and there is substantial doubt regarding our ability Nasdaq to continue as a going concern.

We have incurred significant losses and negative cash flows from operations since inception and expect to incur additional losses until such time that we can generate significant revenue and profit in our tobacco and hemp/cannabis businesses, which casts substantial doubt regarding our ability to continue as a going concern. As of October 31, 2023, we had cash and cash equivalents of approximately \$6,298.

Doubts about our ability to continue as a going concern have and could continue to negatively impact our relationships with our commercial partners and our ability, as part of our cost-cutting measures, to obtain, maintain, restructure and/or terminate agreements with them, or negatively impact our negotiating leverage with such parties, which could have a material adverse effect on our business, financial condition and results of operations or result in litigation. Furthermore, any loss of key personnel, employee attrition or material erosion of employee morale arising out of doubts about our ability to operate as a going concern could have a material adverse effect on our ability to effectively conduct our business, and could impair our ability to execute our business plan, thereby having a material adverse effect on our business, financial condition and results of operations.

We need additional funding to execute our business plan and to continue operations even **regain** compliance with the **anticipated** proceeds from the October 2023 public equity offering. We continue to seek and evaluate opportunities to raise additional funds through the issuance of our securities, asset sales, and through arrangements with strategic partners. We have engaged a financial advisor to assist us in identifying strategic partners and financing to fund operations and to take actions to maximize our liquidity. If capital is not available to us when, and in the amounts needed, we could be required to liquidate our inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings. Stockholders' Equity Requirement. There can be no assurance that we Nasdaq will be able to raise the capital we need to continue accept our operations.

We may be unable to comply with the covenants in our senior secured debentures.

Our senior secured debentures contain customary representations, warranties and covenants including among other things and subject to certain exceptions, covenants that restrict us from incurring additional indebtedness, creating plan or permitting liens on assets, making or holding any investments, repaying outstanding indebtedness, paying dividends or distributions and entering into transactions with affiliates. We are also required to maintain certain quarterly revenue targets.

As a result of these covenants, our ability to respond to changes in business and economic conditions and engage in beneficial transactions, including to obtain additional financing as needed, may be restricted. Furthermore, our failure to comply with the covenants could result in a default under such agreements, which could permit the debt holders to accelerate our obligation to repay the debt. Although we recently received a waiver with respect to our compliance with such covenants, there is no assurance that we will be able to secure a similar waiver for regain compliance with Listing Rule 5550(b)(1) or maintain compliance with any other Nasdaq requirement in the future. If our securities are delisted from Nasdaq due to non-compliance with Rule 5550(b)(1) or the failure to comply with any future covenants. If any of our debt is accelerated, we

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likely satisfy another applicable Nasdaq rule, such delisting would not have sufficient funds available to repay it. Substantially all of our assets, including intellectual property, are collateralized under the debentures. If such debt is accelerated, we could be required to liquidate our inventory, cease or curtail operations, or seek protection under applicable bankruptcy laws or similar state proceedings.

We could continue to incur restructuring and impairment charges as we continue to pursue a cost cutting initiative and pursue strategic alternatives.

We continue to evaluate opportunities to optimize the cost structure of our operations in order to implement a cost savings initiative. These actions could result in significant charges which could adversely affect our financial condition and results of operations. Future actions could result in restructuring and related charges, including but not limited to impairments and employee termination costs that could be significant. We have incurred significant impairment charges for long-lived assets, including goodwill and intangible assets, which are subject to periodic impairment analysis and review, and remain subject to the potential for additional charges. Identifying and assessing whether impairment indicators exist, or if events or changes in circumstances have occurred, including market conditions, operating results, competition and general economic conditions, requires significant judgment. Any of the above future actions could result in charges that could have an adverse effect on our financial condition and results of operations.

The continued success of our cannabinoid-containing products, if any, is subject to a number of constantly-evolving state and federal laws, regulations, and uncertain regulatory enforcement policies pertaining to hemp-derived CBD and/or cannabis more generally.

The Agriculture Improvement Act of 2018, or the "2018 Farm Bill," was signed into law on December 20, 2018. This 2018 Farm Bill expressly excluded "hemp" from the federal Controlled Substances Act of 1970 and the Controlled Substances Import and Export Act's, as amended (the "CSA")'s definition of marijuana and, accordingly, declassified substances derived from or containing any part(s) of the cannabis plant containing not more than 0.3% THC on a dry-weight basis from Schedule I. In effect, the 2018 Farm Bill legalized the cultivation and commercial sale of hemp in the United States, subject to applicable state laws and regulations and applicable federal Food, Drug & Cosmetic Act (FDCA) provisions, including any implementing regulations, as interpreted and enforced by the FDA.

Local, state, federal, and international hemp and CBD laws and regulations are broad in scope and subject to evolving interpretations, which could require us to incur substantial costs associated with compliance requirements. In addition, violations of these laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our operations. In addition, it is possible that regulations may be enacted in the future that will be directly applicable to our current and/or future cannabinoid business(es). It is also possible that the federal government will begin strictly enforcing existing laws, which may limit the legal uses of the hemp plant and its derivatives and extracts, such as cannabinoids. We cannot predict the nature of any future laws, regulations, interpretations, or applications, nor can it determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have on its activities in the cannabis industry.

In addition, the 2018 Farm Bill did not alter the FDA's authority to regulate products containing cannabis or cannabis-derived compounds, including cannabinoids, under the FDCA. Hemp products, including cannabinoids, that qualify as drugs, food, dietary supplements, veterinary products, and cosmetics, for example, are subject to regulation by the FDA. Following passage of the 2018 Farm Bill, the FDA reaffirmed its enforcement authority and reiterated the requirement that a product containing CBD or other cannabinoid(s) (hemp-derived or otherwise) that is marketed with a claim of therapeutic benefit implicitly or explicitly attributed to, or based on, the presence of the cannabinoid as an ingredient, or any other health/medical claim, must be approved by the FDA for its intended use(s) before it may be introduced into interstate commerce. We currently have cannabinoid-containing retail offerings in virtually all forms of consumption (e.g., supplements, topical products, gummies, tinctures, vape products, and others). We are, accordingly, subject to some level of regulatory risk.

given the FDA's current position that CBD is an active drug ingredient that cannot be marketed as a food or dietary supplement under the FDCA. However, we believe our offerings are consistent with others on the market that pose a low risk of regulatory enforcement.

Additionally, while the 2018 Farm Bill and analogous state legislation has reduced the amount of DEA oversight of hemp-derived cannabinoids, this is a rapidly evolving area of U.S. law and substantial uncertainty remains as to the future of federal and state regulation of cannabinoid products. Many states have varying requirements, including licensure requirements that must be met prior to engaging in applicable hemp operations. We are in the process of reviewing and complying with applicable state requirements, but we may not have or be aware of all the necessary authorizations needed to engage in the business we conduct in

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each applicable state. Any regulations the FDA issues relating to the sale, marketing, and/or other activities involving cannabinoid or certain cannabinoid-containing products could have a material adverse effect **impact** on our business, financial condition **the trading price and results of operations**.

Given the uncertainty surrounding future state regulations and the continuing barriers that still exist for cannabinoids in certain product categories due to FDA regulation, it is unknown to what extent FDA's regulation of the applicable product categories in which we offer cannabinoid-containing products may have on our business.

Costs associated with compliance with numerous laws and regulations could impact our financial results. In addition, we have become and could in the future become subject to increased enforcement and/or litigation risks associated with the CBD industry.

The manufacture, labeling and distribution of products containing CBD or other cannabinoids is governed by various federal, state and local agencies. Our commercialization of various cannabinoid-containing products at the retail level may give rise to heightened regulatory scrutiny and greater risk of consumer litigation, either of which likely restricts the scope of the permissible marketing claims we can lawfully make about such products or our ability to continue selling them in the United States at all. The shifting compliance environment and the need to build and maintain robust systems to comply with different hemp or CBD-related regulations in jurisdictions may increase costs and/or the risk that we may violate one or more applicable regulatory requirements. If **transfer** our operations, or any of our activities or products, are found to be in violation of any such laws or any other governmental regulations that apply to the manufacture, distribution, or sale of FDA-regulated products, generally, or to products containing cannabinoids, more specifically, we may be subject to penalties, including, without limitation, civil and criminal penalties, damages, fines, the curtailment or restructuring of its operations, any of which could adversely affect our ability to operate its business or its financial results.

Failure to comply with any applicable FDA requirements, relating to CBD or otherwise, may result in, among other things, injunctions, product withdrawals, recalls, product seizures, fines and criminal prosecutions. Our advertising is also subject to regulation by the FTC under the Federal Trade Commission Act. Additionally, analogous state advertising and labeling laws are often enforced by state attorneys general, and any state or federal enforcement action based on potentially misleading or deceptive advertising is often followed by costly class-action complaints under state consumer-protection laws.

The FDA, on its own and in collaboration with the FTC, has issued numerous warning letters to companies offering for sale of topical, oral, and other types of products containing CBD, which were not approved under the FDA's NDA process, in response to their making unsubstantiated claims on product webpages, online stores, and social media websites about the products' purported therapeutic or other drug-like benefits in connection with CBD or other cannabinoids. The FDA deemed that companies "used these online platforms to make unfounded, egregious claims about their products' ability to limit, treat or cure cancer, neurodegenerative conditions, autoimmune diseases, opioid use disorder, and other serious diseases, without sufficient evidence and the legally required FDA approval."

The agency has continuously demonstrated its commitment to taking action against companies making medical claims about products containing CBD (as the active ingredient), as selling unapproved products with unsubstantiated therapeutic claims can put patients and consumers at risk. The FDA does not believe CBD has been shown to be safe and effective for any therapeutic use, except as used in Epidiolex, the only new drug containing natural, hemp-derived CBD that has been approved by FDA under the NDA process, which was approved for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome in patients 2 years of age and older. The agency's principal concern with CBD products on the market that are unlawfully claiming to treat serious medical conditions is that deceptive marketing of unproven treatments may keep some patients from accessing appropriate, recognized therapies to treat serious and even fatal diseases. Additionally, because they are not evaluated by the FDA, there may be other ingredients that are not disclosed, which may be harmful.

The FDA has pledged to continue to monitor the marketplace and take enforcement action as-needed to protect the public against companies illegally selling products containing CBD as the active ingredient, claiming to prevent, diagnose, treat, or cure serious diseases, such as cancer, Alzheimer's disease, psychiatric disorders and diabetes; illegally selling cannabis and cannabis-derived products that can put consumers at risk; and marketing and distributing such products in violation of the FDA's authorities.

We, or those who market the hemp-derived products we manufacture and/or distribute, may inadvertently make claims in the future about the efficacy or safety of such products, which, due to the presence of CBD or other cannabinoids as ingredients or for any other reason, may be deemed to be unsubstantiated claims and/or render the products unapproved new drugs in violation of the FDCA.

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

None

Item 3. Default Upon Senior Securities.

None

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Item 4. Mine Safety Disclosures

None

Item 5. Other Information

During the three months ended **September 30, 2023** **March 31, 2024**, there were no modifications, adoptions or terminations by any directors or officers to any contract, instruction or written plan for the purchase or sale of securities of the Company that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or non-Rule 10b5-1 trading agreements.

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Item 6. Exhibits

Exhibit 3.1	Certificate of Amendment to Restated Articles of Incorporation filed October 16, 2023
Exhibit 4.1	Waiver and Amendment Agreement (Incorporated March 28, 2024 (incorporated by reference from Exhibit 10.1 to the Company's 3.1 from Form 8-K filed with the Commission on October 16, 2023 April 3, 2024))
Exhibit 4.2	Form of Common Warrant (Incorporated by reference from Exhibit 4.1 to the Company's Form 8-K filed with the Commission on October 18, 2023)
Exhibit 4.3	Form of Pre-Funded Warrant (Incorporated by reference from Exhibit 4.2 to the Company's Form 8-K filed with the Commission on October 18, 2023)
Exhibit 4.4	Form of Placement Agent Warrant (Incorporated by reference from Exhibit 4.3 to the Company's Form 8-K filed with the Commission on October 18, 2023)
Exhibit 10.1	Retention Agreement between the Company and John Miller dated August 23, 2023
Exhibit 10.2	Retention Agreement between the Company and R. Hugh Kinsman dated August 20, 2023, as amended
Exhibit 10.3	Restated Employment Agreement between the Company and Peter Ferola dated August 20, 2023, as amended
Exhibit 31.1	Section 302 Certification - Chief Executive Officer
Exhibit 31.2	Section 302 Certification - Chief Financial Officer
Exhibit 32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance 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
Exhibit 104	Cover Page Interactive Data File (formatted as Inline XBRL)

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized:

22nd CENTURY GROUP, INC.

Date: **November 6, 2023** May 15, 2024

/s/ **John J. Miller** Lawrence D. Firestone

John J. Miller Lawrence D. Firestone

Interim Chief Executive Officer

(Principal Executive Officer and Authorized Officer)

Date: **November 6, 2023** May 15, 2024

/s/ **R. Hugh Kinsman** Daniel A. Otto

R. Hugh Kinsman Daniel A. Otto

Chief Financial Officer

(Principal Accounting and Financial Officer)

6443

Exhibit 3.1



Filed in the
Office of
Secretary of
State of
Nevada
Business
Number
E0607512005-
3 Filing
Number
20233560667
Filed On
10/16/2023
1:06:00 PM
Number of
Pages 2



EXHIBIT 10.1

RETENTION AGREEMENT

This Retention Agreement (this "Agreement") is made this 23rd day of August, 2023 (the "Effective Date"), by and between 22nd Century Group, Inc., a Nevada corporation (the "Company") and John Miller (the "Employee").

WHEREAS, as a material inducement for the Employee's continued employment with the Company, the Company desires to provide the Employee with a Retention Bonus (as defined below) and the Employee desires to accept such continued employment, in each case, pursuant to the terms and conditions of this Agreement, effective as of the Effective Date.

NOW, THEREFORE, the parties hereto, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. Retention Bonus Award.

(a) The Employee is eligible for a lump sum cash payment equal to \$370,000 (the "Retention Bonus"), less applicable withholding taxes. If the Employee remains an Employee in Good Standing (as defined below) through the date of the applicable payment, (i) \$92,500 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on August 31, 2023, (ii) \$92,500 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on October 31, 2023 and (iii) \$185,000 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on February 29, 2024. If the Employee is not an Employee in Good Standing on any of the above payment dates, the Employee shall not be eligible to receive any remaining portion of the Retention Bonus.

(b) For purposes of this Agreement, the Employee shall be considered to be an "Employee in Good Standing" on a given date if, on or before that date, (i) the Employee's employment with the Company has not terminated for Cause (as defined in that certain Employment Agreement dated as of November 11, 2022, by and between the Employee and the Company (the "Employment Agreement")), (ii) the Employee has not tendered oral or written notice of intent to resign or retire effective as of a date on or before the given date (other than for Good Reason (as defined in the Employment Agreement)), and (iii) the Employee has not engaged in actions which constitute a material breach of this Agreement.

2. Severability. The provisions of this Agreement are severable and the invalidity, illegality or unenforceability of any one or more provisions shall not affect the validity, legality or enforceability of any other provision. In the event that a court of competent jurisdiction shall determine that any provision of this Agreement or the application thereof is unenforceable in whole or in part because of the duration or scope thereof, the parties hereto agree that said court in making such determination shall have the power to reduce the duration and scope of such provision to the extent necessary to make it enforceable, and that the Agreement in its reduced form shall be valid and enforceable to the full extent permitted by law.

3. No Waiver. The failure of a party to insist upon strict adherence to any term of

this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

4. Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed entirely within that state. The Company and the Employee agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Employee's employment with the Company will be brought only to the exclusive jurisdiction of the courts of the State of New York or the federal courts located in the State of New York, in each case located in Buffalo, New York, and each of the Company and the Employee hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Further, the Company and the Employee agree that, after a legal dispute is before a court as specified in this Section 4, and during the pendency of such dispute before such court, all actions, suits, or proceedings with respect to such dispute or any other dispute, including without limitation, any counterclaim, cross-claim or interpleader, will be subject to the exclusive jurisdiction of such court.

5. **Withholding Taxes.** The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

6. **Entire Agreement/Amendments.** This Agreement and the Employment Agreement contain the entire understanding of the parties with respect to the subject matter hereto and supersedes any and all prior agreements, arrangements and understandings, whether written or oral, between the parties with respect thereto. There are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties with respect to the subject matter herein other than those expressly set forth herein. This Agreement may not be altered, modified, or amended except by written instrument signed by the parties hereto. The Employee acknowledges and agrees that he is not relying on any representations or promises by any representative of the Company concerning the meaning of any aspect of this Agreement. This Agreement may not be altered or modified other than in a writing signed by the Employee and an authorized representative of the Company.

7. **Notice.** For the purpose of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

If to the Employee: To Employee's last address set forth on the payroll records of the Company

If to the Company: 500 Seneca Street, Suite 507
Buffalo, NY 14204
Attn: General Counsel

If notice is mailed, it shall be effective upon mailing, or if notice is personally delivered or sent by telecopy or other electronic facsimile transmission, it shall be effective upon receipt.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. In the event of the Employee's death, all amounts payable hereunder to the Employee that are then unpaid, shall be paid to the Employee's beneficiary designated by her in writing to the Company or, in the absence of such designation, to Employee's estate.

9. **Section 409A.** The intent of the parties is that payments and benefit under this Agreement comply with or be exempt from Section 409A and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith or exempt therefrom, as applicable.

10. **Authority.** The Employee represents that the Employee has full power and authority to enter into this Agreement, and further represents that entering into this Agreement will not result in a conflict of interest with a party to any pending litigation relating to or against the Company, with attorneys representing a party to any pending litigation relating to or against the Company, or with any governmental or administrative agency.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

22ND CENTURY GROUP, INC.

By _____

Name: Rick Sanders

Title: Chairman of the Compensation Committee of the Board

EMPLOYEE

John Miller

[signature page to Retention Agreement – John Miller]

EXHIBIT 10.2

RETENTION AGREEMENT

This Retention Agreement (this "Agreement") is made this 20th day of August, 2023 (the "Effective Date"), by and between 22nd Century Group, Inc., a Nevada corporation (the "Company") and R. Hugh Kinsman (the "Employee").

WHEREAS, as a material inducement for the Employee's continued employment with the Company, the Company desires to provide the Employee with a Retention Bonus (as defined below) and the Employee desires to accept such continued employment, in each case, pursuant to the terms and conditions of this Agreement, effective as of the Effective Date.

NOW, THEREFORE, the parties hereto, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. Retention Bonus Award.

(a) The Employee is eligible for a lump sum cash payment equal to \$370,000 (the "Retention Bonus"), less applicable withholding taxes. If the Employee remains an Employee in Good Standing (as defined below) through the date of the applicable payment, (i) \$92,500 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on August 31, 2023, (ii) \$92,500 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on October 31, 2023 and (iii) \$185,000 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on February 29, 2024. If the Employee is not an Employee in Good Standing on any of the above payment dates, the Employee shall not be eligible to receive any remaining portion of the Retention Bonus.

(b) For purposes of this Agreement, the Employee shall be considered to be an "Employee in Good Standing" on a given date if, on or before that date, the Employee's employment with the Company has not terminated for any reason or no reason, the Employee has not tendered oral or written notice of intent to resign or retire effective as of a date on or before the given date, the Employee has not engaged in actions which constitute a material breach of this Agreement, and the Employee has not breached the terms of his Employment Agreement, dated as of June 15, 2022, by and between the Employee and the Company (the "Employment Agreement").

2. **Severability.** The provisions of this Agreement are severable and the invalidity, illegality or unenforceability of any one or more provisions shall not affect the validity, legality or enforceability of any other provision. In the event that a court of competent jurisdiction shall determine that any provision of this Agreement or the application thereof is unenforceable in whole or in part because of the duration or scope thereof, the parties hereto agree that said court in making such determination shall have the power to reduce the duration and scope of such provision to the extent necessary to make it enforceable, and that the Agreement in its reduced form shall be valid and enforceable to the full extent permitted by law.

3. **No Waiver.** The failure of a party to insist upon strict adherence to any term of

this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

4. **Governing Law; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed entirely within that state. The Company and the Employee agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Employee's employment with the Company will be brought only to the exclusive jurisdiction of the courts of the State of New York or the federal courts located in the State of New York, in each case located in Buffalo, New York, and each of the Company and the Employee hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Further, the Company and the Employee agree that, after a legal dispute is before a court as specified in this Section 4, and during the pendency of such dispute before such court, all actions, suits, or proceedings with respect to such dispute or any other dispute, including without limitation, any counterclaim, cross-claim or interpleader, will be subject to the exclusive jurisdiction of such court.

5. **Withholding Taxes.** The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes as may be required to be withheld pursuant to any applicable law or regulation.

6. **Entire Agreement/Amendments.** This Agreement and the Employment Agreement contain the entire understanding of the parties with respect to the subject matter hereto and supersedes any and all prior agreements, arrangements and understandings, whether written or oral, between the parties with respect thereto. There are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties with respect to the subject matter herein other than those expressly set forth herein. This Agreement may not be altered, modified, or amended except by written instrument signed by the parties hereto. The Employee acknowledges and agrees that he is not relying on any representations or promises by any representative of the Company concerning the meaning of any aspect of this Agreement. This Agreement may not be altered or modified other than in a writing signed by the Employee and an authorized representative of the Company.

7. **Notice.** For the purpose of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or overnight courier or three days after it has been mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

If to the Employee: To Employee's last address set forth on the payroll records of the Company

If to the Company: 500 Seneca Street, Suite 507
Buffalo, NY 14204
Attn: General Counsel

If notice is mailed, it shall be effective upon mailing, or if notice is personally delivered or sent by telecopy or other electronic facsimile transmission, it shall be effective upon receipt.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. In the event of the Employee's death, all amounts payable hereunder to the Employee that are then unpaid, shall be paid to the Employee's beneficiary designated by her in writing to the Company or, in the absence of such designation, to Employee's estate.

9. **Section 409A.** The intent of the parties is that payments and benefit under this Agreement comply with or be exempt from Section 409A and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith or exempt therefrom, as applicable.

10. **Authority.** The Employee represents that the Employee has full power and authority to enter into this Agreement, and further represents that entering into this Agreement will not result in a conflict of interest with a party to any pending litigation relating to or against the Company, with attorneys representing a party to any pending litigation relating to or against the Company, or with any governmental or administrative agency.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

22ND CENTURY GROUP, INC.

By _____
Name: Nora Sullivan
Title: Chairperson of the Board

By _____
Name: Rick Sanders
Title: Chairman of the Compensation Committee of the Board

By _____
Name: Peter Ferola
Title: Chief Legal Officer

EMPLOYEE

R. Hugh Kinsman

[signature page to Retention Agreement – R. Hugh Kinsman]

FIRST AMENDMENT TO RETENTION AGREEMENT

This First Amendment to Retention Agreement (this “First Amendment”) is made this 23rd day of August, 2023 (the “Effective Date”), by and between 22nd Century Group, Inc., a Nevada corporation (the “Company”) and R. Hugh Kinsman (the “Employee”). Company and Executive are each alternatively referred to herein as a “Party” and, collectively as, the “Parties.”

WHEREAS, the Parties have entered into that certain Retention Agreement dated August 20, 2023 (the “Original Agreement”); and

WHEREAS, the Parties have agreed to amend the Original Agreement as set forth herein.

NOW, THEREFORE, the Parties hereto, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. Amendment. The Original Agreement is hereby amended by deleting Section 1(b) in its entirety and replacing such section with the following:

“(b) For purposes of this Agreement, the Employee shall be considered to be an “Employee in Good Standing” on a given date if, on or before that date, (i) the Employee’s employment with the Company has not terminated for Cause (as defined in that certain Employment Agreement dated as of June 15, 2022, by and between the Employee and the Company (the “Employment Agreement”)), (ii) the Employee has not tendered oral or written notice of intent to resign or retire effective as of a date on or before the given date (other than for Good Reason (as defined in the Employment Agreement)), and (iii) the Employee has not engaged in actions which constitute a material breach of this Agreement.”

2. Reaffirmation of Original Agreement. Except as expressly supplemented by this First Amendment, the Original Agreement is hereby reaffirmed, ratified and confirmed and continues in full force and effect unaffected hereby.

3. Governing Law; Jurisdiction. The provisions of Section 4 of the Original Agreement shall apply *mutatis mutandis* to this Amendment, and the Original Agreement as modified by this First Amendment, taken together as a single agreement, reflecting the terms as modified hereby.

4. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first set forth above.

22ND CENTURY GROUP, INC.

By _____

Name: Rick Sanders
Title: Chairman of the Compensation Committee of the Board

EMPLOYEE

R. Hugh Kinsman

EXHIBIT 10.3

22nd CENTURY GROUP, INC.
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT ("Agreement") is dated as of _____, 2023 (the "Effective Date") between 22nd CENTURY GROUP, INC., a Nevada corporation ("Company") and Peter Ferola ("Employee").

WHEREAS, the Company and the Employee are parties to that certain Employment Agreement dated September 19, 2022 (the "Original Agreement");

WHEREAS, the Company and the Employee desire to amend and restate the Original Agreement in its entirety with this Agreement, which shall be effective upon the Effective Date.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

1. ORIGINAL EMPLOYMENT DATE

The Employee's employment with the Company commenced on October 22, 2022 (the "Original Employment Date").

2. EMPLOYMENT DUTIES AND TERM

2.1 General. As of the Original Employment Date, the Company employs the Employee as, and the Employee agrees to serve as, Chief Legal Officer and Corporate Secretary of the Company upon the terms and conditions specified in this Agreement. The Employee shall perform such duties and services for the Company as may be determined from time to time by the Company's Chairperson ("Chairperson") of the Board of Directors (the "Board") provided that such duties and services shall be consistent in all material respects with the Employee's position Chief Legal Officer and Corporate Secretary of the Company. The Employee will be a direct report to the Chairperson. The Employee agrees to serve the Company faithfully and to the best of his ability under the direction of the Chairperson.

2.2 Exclusive Services. The Employee shall devote his full working time throughout the Employment Term (as defined in Section 2.3) to the performance of services for the Company. During the Employment Term, the Employee will not be employed by any other person or entity, or be self-employed, without the prior approval of the Board. The Employee shall use his best efforts, judgment and energy to improve and advance the business and interests of the Company in a manner consistent with the duties of his position. Upon the Employee's execution of this Agreement and during the Employment Term, the Employee will disclose to the Company any existing or proposed participation or membership in trade or professional associations, and any existing or proposed appointments as a member of the board of directors (or similar governing

body) of any for-profit or not-for-profit entity; all such participations, memberships and appointments shall be subject to approval by the Chairperson.

2.3 Employment Term. The Employee's employment under this Agreement began on the Original Employment Date and shall continue until the earlier of (1) the 3-year anniversary of the Original Employment Date or (2) termination pursuant to Section 5 of this Agreement. This Agreement shall automatically renew for additional 1-year terms following the expiration of the initial 3-year term unless notice of non-renewal is given, by either party, at least 90 days' prior to the commencement of the next applicable 1-year renewal period. For the purposes of this Agreement, "Employment Term" means the period beginning on the Original Employment Date and ending on the date that Employee's employment with the Company terminates for any reason.

3. COMPENSATION

3.1 Base Salary. During the Employment Term, the Employee shall be paid an annual base salary ("Base Salary") in the amount of \$422,000.00, payable in accordance with the Company's payroll practices. Base Salary is subject to increase, from time to time, in the sole and absolute discretion of the Board.

3.2 Retention Bonus. The Employee is eligible for a lump sum cash payment equal to \$500,000 (the "Retention Bonus"), less applicable withholding taxes. If the Employee remains an Employee in Good Standing (as defined below) through the date of the applicable payment, (i) \$125,000 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on August 31, 2023, (ii) \$125,000 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on October 31, 2023 and (iii) \$250,000 of the Retention Bonus, less applicable withholding taxes, will be paid to the Employee on February 29, 2024. If the Employee is not an Employee in Good Standing on any of the above payment dates, the Employee shall not be eligible to receive any remaining portion of the Retention Bonus.

For purposes of this Agreement, the Employee shall be considered to be an "Employee in Good Standing" on a given date if, on or before that date, the Employee's employment with the Company has not terminated for any reason or no reason (other than for Good Reason (as defined below)), the Employee has not tendered oral or written notice of intent to resign or retire effective as of a date on or before the given date (other than for Good Reason), the Employee has not engaged in actions which constitute a material breach of this Agreement, and the Employee has not breached the terms of this Agreement.

3.3 Cash Bonus Opportunity. During the Employment Term, the Employee will be eligible to earn an annual cash bonus targeted at 100% of Base Salary (the "Cash Bonus"). The amount of the Cash Bonus awarded to the Employee in any year will be determined by the Board, in consultation with the CEO, based on annual performance metrics and strategic goals for the Company and annual individual objectives for the Employee. Payment of the Cash Bonus in respect of a Company fiscal year will be made not later than 120 days following the end of the applicable Company fiscal year, provided that, if the Employment Term ends prior to payment

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(other than with Cause), the Employee shall be entitled to such Cash Bonus award to be paid when such cash bonus award would otherwise have been payable under this Agreement.

3.4 Performance Unit Awards. During the Employment Term, the Employee will be eligible to receive an annual award of Performance Units (as defined in the 2021 Plan). The target annual Performance Unit award to the Employee will be 100% of Base Salary, and each such award shall be subject to performance, vesting and other requirements specified by, or determined in accordance with, the 2021 Plan.

3.5 Reimbursement of Expenses. The Company shall reimburse the Employee for reasonable travel and other business expenses incurred by him in the fulfillment of his duties hereunder upon presentation by the Employee of an itemized

account of such expenditures, in accordance with Company practices and policies.

4. EMPLOYEE BENEFITS

The Employee shall, during the Employment Term, be included to the extent eligible thereunder in all employee benefit plans, programs or arrangements (including plans, programs or arrangements providing for retirement benefits, disability benefits, health and life insurance, or vacation and paid holidays) which shall from time to time be established by the Company for, or made available to, its management employees generally.

5. TERMINATION OF EMPLOYMENT

5.1 Termination Events.

5.1.1. By the Company. The Company may terminate the Employee's employment at any time for Cause (as hereinafter defined), without Cause, or upon the Employee's Disability (as hereinafter defined).

5.2 Termination Without Cause.

5.2.1. Severance Benefits. If the Employee's employment is terminated by the Company without Cause (which shall include, for the avoidance of doubt, non-renewal of the Employment Term by the Company):

(i) within thirty (30) days of the effective date of the Employee's termination (or such earlier time as may be required by law), the Company shall pay to the Employee the following (collectively, the "**Accrued Obligations**"):

(A) his then current Base Salary accrued, but unpaid, as of the effective date of such termination;

(B) any unpaid Cash Bonus for a prior fiscal year;

(C) any benefits payable to the Employee pursuant to Section 4 through the date of termination; and

(D) any expenses to which the Employee is entitled to reimbursement pursuant to Section 3.5.

(ii) The Company shall continue to pay the Employee the Base Salary (at the rate in effect immediately prior to such termination) for a period of 24 months following the effective date of termination (such period being referred to hereinafter as the "**Severance Period**"). The payments shall occur in installments in the same amount in effect immediately prior to such termination and at the same regular payment intervals as the Employee's Base Salary was being paid on the effective date of termination and such installments shall be deemed a series of separate payments within the meaning of Treas. Reg. §1.409A-2(b)(2)(iii).

(iii) If the Employee timely elects to continue health insurance coverage under the Company's applicable group health insurance plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), then the Company shall directly pay, or reimburse Employee for, the COBRA premium for the Employee and Employee's covered dependents under such plan during the Severance Period, provided that (a) the Employee will be responsible for paying the same portion of the premium that the Company requires to be paid by its management employees under the applicable plan, and (b) the Company's obligation to pay or reimburse the Employee for such premiums will terminate on the date Employee becomes eligible to receive reasonably comparable health insurance coverage from a subsequent employer (and Employee agrees to promptly notify the Company of such eligibility). If the Company determines that it cannot provide the benefit required by this Section 5.2.1(ii) without potentially breaching the Company's applicable group health insurance contract, violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act) or incurring an excise tax, the Company shall in lieu thereof during the Severance Period pay to the Employee a

taxable monthly payment in an amount equal to the portion of the COBRA premium otherwise payable or reimbursable by the Company under this Section 5.2.1(ii).

(iv) The Company shall pay an amount equal to (A) the actual Cash Bonus that would have been payable to the Employee pursuant to Section 3.3 had the Employment Term not been terminated prior to the payment date of such Cash Bonus, multiplied by (B) a fraction, the numerator of which is the number of days elapsed in the Company's fiscal year prior to such termination and the denominator of which is 365, when the same would have been payable to the Employee but for such termination (the "Pro Rata Bonus").

(v) Any unpaid Retention Bonus.

(vi) The Employee shall have no further right to receive any other compensation or benefits after such termination of employment except as specifically determined in accordance with the terms of the employee

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benefit plans or programs of the Company. In the event of the Employee's death during the Severance Period, Base Salary continuation payments under this Section 5.2.1 shall continue to be made during the remainder of the Severance Period to the beneficiary designated in writing for this purpose by the Employee or, if no such beneficiary is specifically designated, to the Employee's estate.

5.2.2 Termination of Severance Benefit. If, during the Severance Period, the Employee breaches any of his obligations under this Agreement (including, without limitation, the Employee's obligations under Section 6), the Company may, in addition to all other rights and remedies upon written notice to the Employee, terminate the Severance Period and cease to make any further payments or provide any benefits described in Section 5.2.1.

5.2.3 Release. The Company's obligation to pay the Base Salary and provide health insurance benefits described in Section 5.2.1 shall be subject to the following conditions: (i) within 21 days after the effective date of termination or resignation, the Employee shall have executed and delivered to the Company a Termination Agreement and Release ("Release") in the form of Exhibit A attached hereto, and (ii) the Release shall not have been revoked by the Employee during the revocation period specified therein. If the Employee fails to deliver a fully executed Release to the Company before expiration of such 21 day period, or such release is revoked as permitted therein, then the Company will have no obligation to make any of the payments or provide any of the benefits specified in Section 5.2.1.

5.3 Termination for Cause. If the Employee's employment is terminated by the Company for Cause, or the Employee resigns from his employment hereunder for any reason, the Employee shall be entitled only to the Accrued Obligations through and including the date of termination or resignation. The Employee shall have no further right to receive any other compensation or benefits after such termination or resignation of employment, except as determined in accordance with the terms of the employee benefit plans or programs of the Company.

5.4 Resignation. If the Employee resigns from his employment hereunder for any reason, the Employee shall be entitled to the Accrued Obligations through and including the date of termination or resignation. The Employee shall have no further right to receive any other compensation or benefits after such termination or resignation of employment, except as determined in accordance with the terms of the employee benefit plans or programs of the Company.

5.5 Cause. Termination for "Cause" shall mean termination of the Employee's employment by the Company because of:

(i) any willful act or omission that constitutes a material breach by the Employee of any of his material obligations under this Agreement or any material written Company policy or procedure and failure to cure such breach after notice of, and

a reasonable opportunity to cure, such breach;

(ii) the continued willful failure or refusal of the Employee to substantially perform the duties reasonably required of him as an employee of the Company;

(iii) an act of moral turpitude, dishonesty or fraud by, or criminal conviction (excluding non-felony convictions relating solely to vehicle and traffic offenses) of, the Employee which in the reasonable determination of the Board would render his continued employment by the Company damaging or detrimental to the Company;

(iv) any material misappropriation of Company property by the Employee; or

(v) any other willful misconduct by the Employee which is materially injurious to the financial condition or business reputation of, or is otherwise materially injurious to, the Company.

5.6 Termination by the Employee For Good Reason.

(i) This Agreement may be terminated by the Employee upon notice to the Company of any event constituting "Good Reason" as defined herein.

(ii) As used herein, the term "**Good Reason**" means: (A) the failure of the Company to pay Employee's compensation in accordance with this Agreement without the prior written consent of the Employee; (B) a reduction in the Employee's Base Salary; (C) a reduction in the Employee's bonus opportunity; (D) any material breach by the Company of any material provision of this Agreement or any material provision of any other agreement between the Employee and the Company; (E) a Change of Control (as defined in the Company's 2021 Omnibus Incentive Plan) of the Company; (F) a material, adverse change in the Employee's title, authority, duties, or responsibilities (other than temporarily while the Employee is physically or mentally incapacitated or as required by applicable law); (G) change in the Chairperson who is in place as of the date hereof; or (H) change in Employee's reporting structure that is in place as of the date hereof. Provided, however, that the Employee shall not be deemed to have Good Reason pursuant to this provision unless the Employee gives the Company written notice that the specified conduct or event has occurred and making specific reference to this Section 5.6 and the Company fails to cure such conduct or event within thirty (30) days of receipt of such notice.

(iii) In the event the Employee terminates this Agreement under this Section 5.6, Employee shall be entitled to the severance benefits described under Section 5.2, pertaining to Severance Benefits, provided that the Employee (i) elects to comply with the Restrictive Covenants set forth in Section 6, and (ii) executes a Release as described under Section 5.2.3. If Employee disavows the Restrictive Covenants and chooses to compete with the Company in violation of the covenants set forth in Section 6, then Employee forfeits all Severance Benefits provided in Section 5.2.

5.7 Death or Disability. In the event of termination of employment by reason of death or Disability, the Employee (or his estate, as applicable) shall be entitled to the Accrued Obligations through the date of termination. Other benefits shall be determined in accordance with the benefit plans maintained by the Company, and the Company shall have no further obligation

hereunder. For purposes of this Agreement, "**Disability**" means a physical or mental disability or infirmity of the Employee that, in the sole opinion of the Board, prevents (with or without reasonable accommodation) the normal performance of substantially all his material duties as an employee of the Company, which disability or infirmity shall exist for any continuous period of 90 days.

5.8 Resignation of Positions. Upon termination of Employee's employment with the Company for any reason, the Employee agrees to immediately resign from all positions and offices in which he is then serving the Company and its subsidiaries.

6. CONFIDENTIALITY; NONSOLICITATION AND NONCOMPETITION

6.1 Confidentiality. The Employee covenants and agrees with the Company that he will not at any time during the Employment Term and thereafter, except in performance of his obligations to the Company hereunder or with the prior written consent of the Company, directly or indirectly, disclose any secret or Confidential Information that he may learn or has learned by reason of his association with the Company. The term "**Confidential Information**" includes information not previously made generally available to the public by the Company, with respect to the Company's products, facilities, applications and methods, trade secrets and other intellectual property, systems, procedures, manuals, confidential reports, product price lists, customer lists, technical information, financial information (including the revenues, costs or profits associated with any of the Company's products), business and strategic plans, prospects or opportunities, but shall exclude any information which the Company intentionally makes generally available to the public other than as a result of disclosure by the Employee in violation of this Section 6.1. The Employee will be released of his obligations under this Section 6.1 to the extent the Employee is required to disclose under any applicable laws, regulations or directives of any government agency, tribunal or authority having jurisdiction in the matter or under subpoena or other process of law provided that the Employee provides the Company with prompt written notice of such requirement. In addition, the Employee will not be in breach of any obligations under Section 6.1, and will not be criminally or civilly liable under any Federal or state trade secret law, for the disclosure of Confidential Information that is made in confidence to a Federal, state or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law involving the Company or is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If the Employee files a lawsuit for retaliation by the Company for reporting a suspected violation of law involving the Company, the Employee may disclose Confidential Information, including trade secrets, to his attorney and use such Confidential Information in the court proceeding if such Confidential Information is filed under seal.

6.2 Acknowledgment of Company Assets. The Employee acknowledges that the Company, at the Company's expense, has acquired, created and maintains, and will continue to acquire, create and maintain, significant goodwill with its current and prospective customers, strategic partners, vendors and employees and significant Confidential Information, and that such goodwill and Confidential Information is valuable property of the Company. The Employee further acknowledges that to the extent such goodwill and Confidential Information will be

generated through the Employee's efforts, such efforts will be funded by the Company and the Employee will be fairly compensated for such efforts. The Employee acknowledges that all goodwill developed by the Employee relative to the Company's customers, strategic partners, vendors and employees, and all Confidential Information developed by the Employee, shall be the sole and exclusive property of the Company and shall not be personal to the Employee. Accordingly, in order to afford the Company reasonable protection of such goodwill and of the Company's Confidential Information, the Employee agrees as follows:

6.2.1. No solicitation; Non-Interference. During the Employment Term and for a period of two years after termination of employment for any reason (such two-year period, the "**Post-Termination Restrictive Covenant Period**"), the Employee shall not, directly or indirectly, as an investor, lender, officer, director, manager, or as an employee, associate, consultant or agent of any individual or entity, or in any other capacity: (i) solicit or endeavor to entice away from the Company any individual who is employed by the Company (except pursuant to a general solicitation which is not directed specifically at any such employees); (ii) solicit or endeavor to entice away from the Company any entity who is at the time of termination, or was within the then most recent 12-month period, a customer of the Company; (iii) interfere with the business relationship between the Company

and any customer, strategic partner, supplier or vendor of the Company or attempt to persuade or encourage any customer, strategic partner, supplier or vendor of the Company to cease doing business with the Company or to engage in any activity competitive with the Company; or (iv) make or publish any disparaging remarks about the Company, its products, prospects or management. The Company agrees not to make or publish any disparaging remarks about the Employee during the Post-Termination Restrictive Covenant Period.

6.2.2 Change of Control Activity. The Employee agrees that during the Post-Termination Restrictive Covenant Period, the Employee shall not, directly or indirectly, or in any individual or representative capacity, engage or otherwise participate in any Change of Control Activity with respect to the Company. **“Change of Control Activity”** means (a) effect, seek, offer or propose (whether publicly or otherwise) to effect, or cause or participate in, or in any way assist any other individual or entity to effect, seek, offer or propose (whether publicly or otherwise) to effect or participate in: (i) any acquisition of any securities (or beneficial ownership thereof) or all or substantially all of the assets of the Company, (ii) any tender or exchange offer, merger or other business combination involving the Company, (iii) any recapitalization, restructuring, liquidation, dissolution or other extraordinary transaction with respect to the Company, or (iv) any “solicitation” of “proxies” (as such terms are used in the proxy rules of the Securities and Exchange Commission) or consents to vote any voting securities of the Company; (b) form, join or in any way participate in a “group” (as defined under the Securities Exchange Act of 1934, as amended) with respect to the securities of the Company; (c) make any public announcement with respect to, or submit an unsolicited proposal for or offer of (with or without condition), any extraordinary transaction involving the Company or its securities or assets; or (d) enter into any discussions or arrangements with any third party with respect to any of the foregoing.

6.2.3 Non-Competition. During the Employment Term and during the Post-Termination Restrictive Covenant Period, the Employee shall not, directly or indirectly, as an investor, lender, officer, director, manager, or as an employee, associate, consultant or agent of

any individual or entity, or in any other capacity, (other than as an investor owning not more than a 1% interest in a publicly-traded entity), engage in the Restricted Business (as hereinafter defined) anywhere in the world other than on behalf of the Company. The Employee acknowledges and agrees that the Company conducts business throughout the world, that the Company's legitimate and protectable business interests are throughout the world, and therefore this Section 6.2.3 is intended to prohibit competitive activities by the Employee throughout the world. **“Restricted Business”** means research and product development with respect to, the manufacture, distribution, marketing or sale of, or the licensing of intellectual property related to, tobacco products, hemp products, cannabis products, cannabinoids or other products made from or related to the tobacco plant or the cannabis plant, including but not limited to hemp, hemp/cannabis, industrial hemp, marijuana, marijuana/cannabis, *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*. The non-competition provisions of this Section 6.2 shall not apply to Employee's practice of law.

6.3 Exclusive Property. The Employee confirms that all Confidential Information is and shall remain the exclusive property of the Company. All business records, and documents (whether in paper or electronic media) kept or made by Employee relating to the business of the Company shall be and remain the property of the Company. Upon termination of the Employee's employment with the Company for any reason, the Employee promptly deliver to the Company all of the following that are in the Employee's possession or under his control: (i) all computers, telecommunication devices and other tangible property of the Company and its affiliates, and (ii) all documents and other materials, in whatever form, which include Confidential Information or which otherwise relate in whole or in part to the present or prospective business of the Company, including but not limited to, drawings, graphs, charts, specifications, notes, reports, memoranda, and computer disks and tapes, and all copies thereof.

6.4 Injunctive Relief; Tolling. Without intending to limit the remedies available to the Company, the Employee acknowledges that a breach of any of the covenants contained in this Section 6 may result in material and irreparable injury to the Company or its affiliates or subsidiaries for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company shall be entitled to seek a temporary restraining order and/or a preliminary or permanent injunction restraining the Employee from engaging in activities

prohibited by this Section 6 or such other relief as may be required specifically to enforce any of the covenants in this Section 6. If for any reason, it is held that the restrictions under this Section 6 are not reasonable or that consideration therefore is inadequate, such restrictions shall be interpreted or modified to include as much of the duration and scope identified in this Section 6 as will render such restrictions valid and enforceable including, if applicable, modifications to the geographic scope of Section 6.2.3. The Post-Termination Restrictive Covenant Period will not include any period during which the Employee is in violation of Sections 6.1, 6.2.1, 6.2.2 or 6.2.3.

6.5 Communication to Third Parties. The Employee agrees that the Company shall have the right to communicate the terms of this Section 6 to any third parties, including but not limited to, any prospective employer of the Employee. The Employee waives any right to assert any claim for damages against Company or any officer, employee or agent of Company arising from such disclosure of the terms of this Section 6.

6.6 Independent Obligations. The provisions of this Section 6 shall be independent of any other provision of this Agreement. The existence of any claim or cause of action by the Employee against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense of the enforcement of this Section 6 by the Company.

6.7 Non-Exclusivity. The Company's rights and the Employee's obligations set forth in this Section 6 and in Section 7 are in addition to, and not in lieu of, all rights and obligations provided by applicable statutory or common law.

7. INVENTIONS

The term "Invention" means any discovery, concept or idea, whether or not patentable or copyrightable, including but not limited to processes, methods, formulae and techniques, as well as improvements thereof or know-how related thereto. The Employee will promptly and fully inform the Company in writing of any Invention which is conceived, made, or reduced to practice by the Employee, either solely or jointly with another or others, during the Employment Term or within 12 months after termination of the Employee's employment for any reason, setting forth in detail the procedures employed and the results achieved. The Company and/or its nominee or assign will be the sole owner, without payment of royalty or any other compensation to the Employee, of any such Invention which (i) is conceived, made or reduced to practice with the use of Confidential Information or the Company's equipment, facilities, materials, personnel or other resources, or (ii) at the time it is conceived, made or reduced to practice relates to the Company's present or prospective business or actual or demonstrably anticipated research or development, or (iii) is the result of any work performed by the Employee for the Company. With respect to each such Invention of which the Company is the owner, the Employee will execute and deliver promptly to the Company (without charge to the Company but at its expense) such written instruments and do such other acts as may be necessary in the opinion of the Company to obtain and maintain United States and/or foreign letters patent or United States and/or foreign copyright registrations and to vest the entire right and title thereto in the Company.

8. CERTAIN PAYMENTS

Notwithstanding anything in this Agreement to the contrary, if any amounts due to the Employee under this Agreement and any other plan or program of the Company constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Internal Revenue Code of 1986, as amended (the "Code")), then the aggregate of the amounts constituting the parachute payment shall be reduced to an amount that will equal three times his "base amount" (as defined in Section 280G(b)(3) of the Code) less \$1.00. The determination to be made with respect to this Section 8 shall be made by an accounting firm jointly selected by the Company and the Employee and paid by the Company, and which may be the Company's independent auditors.

9. SECTION 409A. All payments and benefits to which the Employee could become entitled under this Agreement are intended either to be excluded from the requirements of Section 409A of the United States Internal Revenue Code ("Section

409A") or to comply with Section 409A. To the extent that the provisions of this Agreement are subject to Section 409A, they shall be construed and interpreted to comply with Section 409A and any payments pursuant

to such provisions will be made within the time prescribed by Section 409A. Each payment of compensation under this Agreement shall be treated as a separate payment of compensation for purposes of Section 409A.

10. MISCELLANEOUS.

10.1 Notices. All notices or communications hereunder shall be in writing, addressed as follows:

To the Company,

**22nd Century Group, Inc.
500 Seneca Street, Suite 507
Buffalo, New York 14204
Attention: Director, Human Resources**

To the Employee, at such address maintained in the Company's records as the Employee's primary residential address.

All such notices shall be conclusively deemed to be received and shall be effective, (i) if sent by hand delivery, upon receipt, (ii) if sent by nationally recognized overnight carrier, upon receipt; or (iii) if sent by registered or certified mail, on the fifth day after the day on which such notice is mailed.

10.2 Severability. Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

10.3 Assignment. Neither this Agreement nor any rights hereunder shall be assignable or otherwise subject to hypothecation by the Employee.

10.4 Entire Agreement. This Agreement represents the entire agreement of the parties and shall supersede any and all previous contracts, arrangements or understandings between the Company and the Employee relating to the subject matter hereof. This Agreement may be amended at any time by mutual written agreement of the parties hereto.

10.5 Withholding. The payment of any amount pursuant to this Agreement shall be subject to applicable withholding and payroll taxes, and such other deductions as may be required under the applicable law or Company's employee benefits plans, if any.

10.6 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed entirely within that state. The Company and the Employee agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out

of or in connection with, this Agreement or the Employee's employment with the Company will be brought only to the exclusive jurisdiction of the courts of the State of New York or the federal courts located in the State of New York, in each case located in Buffalo, New York, and each of the Company and the Employee hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Further, the Company and the Employee agree that, after a legal dispute is before a court as specified in this Section 10.6, and during the pendency of such dispute before such court, all actions, suits, or proceedings with respect to such dispute or any other dispute, including without limitation, any counterclaim, cross-claim or interpleader, will be subject to the exclusive jurisdiction of such court.

10.7 Costs of Enforcement. In the event of a dispute or action to enforce the terms of this Employment Agreement, the prevailing party shall be entitled to its costs and expenses incurred in connection therewith, including all attorneys' fees.

10.8 Legal Advice. The Employee hereby represents and warrants to the Company that he has had the opportunity to seek independent legal advice prior to the execution and delivery of this Agreement and that he has availed himself of that opportunity prior to signing this Agreement and that he is signing this Agreement voluntarily without any undue pressure. Employee represents that he: (i) is familiar with the covenants set forth in Section 6 and (ii) is fully aware of his obligations hereunder, including, without limitation, the reasonableness of the length of time, scope and geographic coverage of such covenants.

10.9 Absence of Conflicting Obligations. The Employee represents and warrants that his execution, and delivery of this Agreement, and his performance of services for the Company as contemplated by this Agreement, do not conflict with or breach any contractual, fiduciary or other legal obligation owed by the Employee to any other individual or entity.

10.10 Counterparts. This Employment Agreement may be executed in multiple counterparts (including by means of electronic signatures, or facsimile or PDF signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together will constitute one and the same instrument.

[Signature page follows]

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IN WITNESS WHEREOF, the Company has caused this Agreement to be duly executed and the Employee has hereunto set his hand, as of the day and year first above written.

22nd CENTURY GROUP, INC.

By

Name: Nora Sullivan
Title: Chairperson of the Board

Peter Ferola

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EXHIBIT A

22nd CENTURY GROUP, INC.
TERMINATION AGREEMENT AND RELEASE

In consideration of the payments and benefits to be provided to me by 22nd Century Group, Inc. (the "Company") pursuant to Section 5.2.1 of the Amended and Restated Employment Agreement between the Company and me dated _____, 2023 (the "Employment Agreement"), I agree as follows:

1. Termination. My employment with the Company is terminated effective _____ and I will not thereafter apply for employment with the Company.

2. Release. On behalf of myself and my heirs, successors, executors, administrators, trustees, legal representatives, agents and assigns, I fully and forever release and discharge the Company, its subsidiaries, divisions and affiliates and its and all of their predecessors, successors, assigns, directors and officers (collectively "Released Parties") from any and all claims, demands, suits, causes of action, obligations, promises, damages, fees, covenants, agreements, attorneys' fees, debts, contracts and torts of every kind whatsoever, known or unknown, at law or in equity, foreseen or unforeseen, which against the Released Parties I ever had, now have or which I may have for, upon or by reason of any matter, cause or thing whatsoever relating to or arising from my employment with the Company or the termination thereof, specifically including, but not limited to, all claims under the following: the Civil Rights Acts of 1866, 1871, 1964 and 1991; the Age Discrimination in Employment Act of 1967; the Older Workers' Benefit Protection Act of 1990; the Americans with Disabilities Act; the Equal Pay Act; the Employee Retirement Income Security Act; the Worker Adjustment Retraining Notification Act; the Family and Medical Leave Act; the National Labor Relations Act; the Occupational Safety and Health Act; the New York State Human Rights Law; the New York City Human Rights Law; the New York State Labor Law; §§ 120 and 241 of the New York State Workers' Compensation Law; any contract of employment, express or implied; and any and all other federal, state or local laws, rules or regulations.

I hereby waive the right to receive any personal relief (i.e. monetary or equitable relief) as a result of any lawsuit or other proceeding brought by the EEOC or any other governmental agency, based on or related to any of the matters from which I have released the Released Parties. I also will take all actions necessary, if any, now or in the future, to make this Release effective.

The foregoing release shall not operate to release the Company from its obligations to make payments and provide benefits as provided under Section 5.2.1 of the Employment Agreement.

In connection with the foregoing release (i) I acknowledge that the payments and benefits under Section 5.2.1 of the Employment Agreement are good and sufficient consideration to which I would not otherwise be entitled but for my execution and delivery to the Company of this instrument, (ii) I acknowledge that I have been advised by the Company to consult with an attorney before signing this instrument, (iii) the Company has allowed me at least twenty-one (21) days from the date I first receive this instrument to consider it before being required to sign it and return it to the Company, and (iv) I may revoke this instrument, in its entirety, within seven (7) days after

signing it by delivering written notice of such revocation to the Company on or before 5:00 p.m. on the seventh day of such revocation period.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the _____ day of _____.

**FIRST AMENDMENT TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This FIRST AMENDMENT TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "**First Amendment**") is made this 23rd day of August, 2023 (the "**Effective Date**"), by and between 22nd Century Group, Inc., a Nevada corporation (the "**Company**") and Peter Ferola (the "**Employee**"). Company and Executive are each alternatively referred to herein as a "**Party**" and, collectively as, the "**Parties**."

WHEREAS, the Parties have entered into that certain Amended and Restated Employment Agreement dated August 20, 2023 (the "**Original Agreement**"); and

WHEREAS, the Parties have agreed to amend the Original Agreement as set forth herein.

NOW, THEREFORE, the Parties hereto, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

1. Amendment. The Original Agreement is hereby amended by deleting the last paragraph in Section 3.2 in its entirety and replacing such paragraph with the following:

"For purposes of this Agreement, the Employee shall be considered to be an "**Employee in Good Standing**" on a given date if, on or before that date, (i) the Employee's employment with the Company has not terminated for Cause (as defined below), (ii) the Employee has not tendered oral or written notice of intent to resign or retire effective as of a date on or before the given date (other than for Good Reason (as defined below)), and (iii) the Employee has not engaged in actions which constitute a material breach of this Agreement."

2. Reaffirmation of Original Agreement. Except as expressly supplemented by this First Amendment, the Original Agreement is hereby reaffirmed, ratified and confirmed and continues in full force and effect unaffected hereby.

3. Governing Law; Jurisdiction. The provisions of Section 10.6 of the Original Agreement shall apply *mutatis mutandis* to this Amendment, and the Original Agreement as modified by this First Amendment, taken together as a single agreement, reflecting the terms as modified hereby.

4. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first set forth above.

I. **22ND CENTURY GROUP, INC.**

By _____

Name: Rick Sanders
Title: Chairman of the Compensation
Committee of the Board

II. EMPLOYEE

III.

Peter Fero

Exhibit 31.1

CERTIFICATIONS

I, John J. Miler, Interim Lawrence D. Firestone, Chief Executive Officer of 22nd CENTURY GROUP, INC., certify that:

1. I have reviewed this quarterly report on Form 10-Q of 22nd CENTURY GROUP, INC.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15 (f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
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 registrant's board of directors (or persons performing 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 6, 2023** May 15, 2024

/s/ **John J. Miller** **Lawrence D. Firestone**

John J. Miller **Lawrence D. Firestone**

Interim Chief Executive Officer **and Director**

(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS

I, **R. Hugh Kinsman**, **Daniel A. Otto**, Chief Financial Officer of 22nd CENTURY GROUP, INC., certify that:

1. I have reviewed this quarterly report on Form 10-Q of 22nd CENTURY GROUP, INC.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15 (f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
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 registrant's board of directors (or persons performing 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 6, 2023** **May 15, 2024**

/s/ R. Hugh Kinsman **Daniel A. Otto**

R. Hugh Kinsman **Daniel A. Otto**

Chief Financial Officer

(Principal Accounting and Financial Officer)

Exhibit 32.1

Written Statement of the Principal Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. §1350

Solely for the purposes of complying with 18 U.S.C. §1350, I, the undersigned Chief Executive Officer of 22nd CENTURY GROUP, INC. (the "Company"), and I, the undersigned Chief Financial Officer of the Company, hereby certify, to the best of my knowledge, that the quarterly report on Form 10-Q of the Company for the quarter ended **September 30, 2023** **March 31, 2024** (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification is being furnished solely to accompany this Report pursuant to 18 U.S.C. 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and is not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Date: **November 6, 2023** **May 15, 2024**

/s/ John J. Miller **Lawrence D. Firestone**

John J. Miller **Lawrence D. Firestone**

Interim Chief Executive Officer and Director

Date: **November 6, 2023** **May 15, 2024**

/s/ R. Hugh Kinsman **Daniel A. Otto**

R. Hugh Kinsman **Daniel A. Otto**

Chief Financial Officer

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