

REFINITIV

## DELTA REPORT

### 10-Q

ECOR - ELECTROCORE, INC.

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

The following comparison report has been automatically generated

**TOTAL DELTAS** 1048

■ CHANGES	120
■ DELETIONS	386
■ ADDITIONS	542

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

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED **September 30, 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 001-38538

**electroCore, Inc.**

(Exact name of Registrant as specified in its charter)

Delaware

20-3454976

(State or other jurisdiction of incorporation or organization)

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

200 Forge Way, Suite 205, Rockaway, NJ 07866

(Address of principal executive offices, including zip code)

(973) 290-0097

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	ECOR	The 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 type="checkbox"/>
Emerging growth company	<input checked="" 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 1, 2024, the registrant had 6,002,420 6,006,064 shares of common stock outstanding.

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#### REFERENCES TO ELECTROCORE

In this Quarterly Report on Form 10-Q (this "Report"), unless otherwise stated or the context otherwise requires, references to the "Company," "electroCore," "we," "us" and "our" refer to electroCore, Inc. a Delaware corporation and its subsidiaries.

#### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q, or Quarterly Report, contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed in the forward-looking statements. The statements contained in this report that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipate," "believe," "can," "continue," "could," "estimate," "expect," "intend," "may," "plan," "project," "seek," "should," "strategy," "target," "will," "would" and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to them. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to risks and uncertainties included in our Form 10-Qs, our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023, in our other filings with the U.S. Securities and Exchange Commission or in materials incorporated by reference therein, including the information in the sections entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in such filings. Furthermore, any such forward-looking statements in this Quarterly Report speak only as of the date of this report. Except as required by law, we undertake no obligation to update or revise any forward-looking statements to reflect events or circumstances after the date of such statements.

The electroCore logo, gammaCore, Truvaga, TAC-STIM, and other trademarks of electroCore, Inc. appearing in this Quarterly Report are the property of electroCore, Inc. All other trademarks, service marks and trade names in this Quarterly Report are the property of their respective owners. We have omitted the ® and ™ designations, as applicable, for the trademarks used in this Quarterly Report.

**ELECTROCORE, INC. AND SUBSIDIARIES**  
Condensed Consolidated Balance Sheets  
(unaudited)  
(in thousands, except share data)

	September 30, 2023	December 31, 2022	March 31, 2024	December 31, 2023
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 13,460	\$ 17,712	\$ 7,849	\$ 10,331
Restricted cash	250	250	250	250
Accounts receivable, net	589	401	475	717
Inventories, net	2,495	1,982	2,507	2,160
Prepaid expenses and other current assets	1,045	828	629	836
Total current assets	17,839	21,173	11,710	14,294
Inventories, noncurrent	813	2,194	—	607
Property and equipment, net	178	50	192	204
Operating lease right of use assets, net	518	565	1,540	502
Other assets, net	760	774	448	495
Total assets	<u>\$ 20,108</u>	<u>\$ 24,756</u>	<u>\$ 13,890</u>	<u>\$ 16,102</u>
<b>Liabilities and Equity</b>				
<b>Liabilities and Stockholders' Equity</b>				
Current liabilities:				
Accounts payable	\$ 3,033	\$ 2,129	\$ 2,322	\$ 2,163
Accrued expenses and other current liabilities	5,390	4,842	5,412	5,871
Current portion of operating lease liabilities	85	74	93	89
Total current liabilities	8,508	7,045	7,827	8,123
Noncurrent liabilities:				
Operating lease liabilities, noncurrent	560	625	1,567	537
Total liabilities	9,068	7,670	9,394	8,660
Commitments and contingencies (see Note 12)	—	—	—	—
Mezzanine Equity:				
Preferred Stock, par value \$0.001 per share; 10,000,000 shares authorized at September 30, 2023 and December 31, 2022; 0 shares issued and outstanding at September 30, 2023 and 71,173 shares issued and outstanding at December 31, 2022 (\$0.001 per share liquidation value)	—	—	—	
Stockholders' equity:				
Common Stock, par value \$0.001 per share; 500,000,000 shares authorized at September 30, 2023 and December 31, 2022; 5,998,836 shares issued and outstanding at September 30, 2023 and 4,744,886 shares issued and outstanding at December 31, 2022	6	5	6	
Common Stock, par value \$0.001 per share; 500,000,000 shares authorized at March 31, 2024 and December 31, 2023; 6,006,064 shares issued and outstanding at March 31, 2024 and 6,002,628 shares issued and outstanding at December 31, 2023	6	6	6	
Additional paid-in capital	172,304	163,520	173,188	172,704
Accumulated deficit	(161,172)	(146,370)	(168,710)	(165,204)

Accumulated other comprehensive loss		(98)	(69)
Total equity		11,040	17,086
Total liabilities and equity	\$ 20,108	\$ 24,756	
Accumulated other comprehensive income (loss)		12	(64)
Total stockholders' equity		4,496	7,442
Total liabilities and stockholders' equity	\$ 13,890	\$ 16,102	

See accompanying notes to unaudited condensed consolidated financial statements.

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**ELECTROCORE, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Operations  
(unaudited)  
(in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,		Three months ended March 31,	
	2023		2022		2023	2022
	\$ 4,508	\$ 1,976	\$ 10,839	\$ 6,032	\$ 5,443	\$ 2,780
Net sales	\$ 661	\$ 258	\$ 1,704	\$ 976	\$ 888	\$ 458
Cost of goods sold						
Gross profit	3,847	1,718	9,135	5,056	4,555	2,322
Operating expenses						
Research and development	1,249	1,617	4,213	3,892	399	1,809
Selling, general and administrative	6,724	5,657	20,233	18,121	8,005	6,710
Total operating expenses	7,973	7,274	24,446	22,013	8,404	8,519
Loss from operations	(4,126)	(5,556)	(15,311)	(16,957)	(3,849)	(6,197)
Other (income) expense						
Interest and other income	(94)	(103)	(298)	(145)	(225)	(119)
Other expense	—	—	—	5	4	—
Total other (income) expense	(94)	(103)	(298)	(140)	(221)	(119)
Loss before income taxes	(4,032)	(5,453)	(15,013)	(16,817)	(3,628)	(6,078)
Benefit from income taxes	—	—	211	445	122	211
Net loss	\$ (4,032)	\$ (5,453)	\$ (14,802)	\$ (16,372)	\$ (3,506)	\$ (5,867)
Net loss per share of common stock - Basic and Diluted	\$ (0.68)	\$ (1.20)	\$ (2.87)	\$ (3.45)		
Weighted average common shares outstanding - Basic and Diluted	5,945	4,544	5,149	4,746		
Net loss per share of common stock - Basic and Diluted (see Note 9)					(1.24)	\$ (0.53)
Weighted average common shares outstanding - Basic and Diluted (see Note 9)					6,617	4,743

See accompanying notes to unaudited condensed consolidated financial statements.

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**ELECTROCORE, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Comprehensive Loss  
(unaudited)  
(in thousands)

	Three months ended September 30,				Three months ended March 31,							
	2023		2022		2024							
	\$	(4,032)	\$	(5,453)	\$	(14,802)	\$	(16,372)	\$	(3,506)	\$	(5,867)
Net loss												
Other comprehensive loss:												
Foreign currency translation adjustment												
Other comprehensive loss												
Comprehensive loss												

See accompanying notes to unaudited condensed consolidated financial statements.

**ELECTROCORE, INC. AND SUBSIDIARIES**  
Condensed Consolidated Statements of Equity  
For the Three Months Ended March 31, 2024 and 2023  
(unaudited)  
(in thousands)

	Mezzanine Equity						Stockholders' Equity						Mezzanine Equity	Stockholders' Equity					
	Preferred Stock		Stockholders' Equity				Preferred Stock		Stockholders' Equity					Stockholders' Equity					
			Common Stock	Additional paid-in capital	Accumulated deficit	Comprehensive income (loss)			Common Stock	Additional paid-in capital	Accumulated deficit	Comprehensive income (loss)		Common Stock	Additional paid-in capital	Accumulated deficit	Comprehensive income (loss)	Total	
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	
Balances as of January 1, 2023	71	\$ —	4,745	\$ 5	163,520	\$ (146,370)	\$ (69)	\$ 17,086	—	\$ —	—	\$ 6,003	\$ 6	172,704	\$ (165,204)	\$ (64)	\$ 7,445		
Balances as of January 1, 2024																			
Net loss	—	—	—	—	—	(5,867)	—	(5,867)	—	—	—	—	—	—	—	—	(3,506)	—	
Other comprehensive income	—	—	—	—	—	—	56	56	—	—	—	—	—	—	—	—	—	76	
Issuance of stock related to employee compensation plans, net of forfeitures	—	—	1	—	—	—	—	—	—	—	—	3	—	—	—	—	—	—	
Preferred stock redemption	(71)	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
Share based compensation	—	—	—	—	572	—	—	572	—	—	—	—	484	—	—	—	—	484	
Balances as of March 31, 2023	—	—	4,746	5	164,092	(152,237)	(13)	11,847	—	\$ —	\$ 6,006	\$ 6	173,188	\$ (168,710)	\$ 12	\$ 4,495	—	—	
Balances as of March 31, 2024																			
Balances as of January 1, 2023																			
Net loss	—	—	—	—	(4,903)	—	(4,903)	—	—	71	\$ 4,745	\$ 5	163,520	\$ (146,370)	\$ (69)	\$ 17,086	—	(5,867)	
Other comprehensive income	—	—	—	—	—	—	(63)	(63)	—	—	—	—	—	—	—	—	—	(5,867)	

See accompanying notes to unaudited condensed consolidated financial statements.

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ELECTROCORE, INC. AND SUBSIDIARIES

**ELECTROSCAPE, INC. AND SUBSIDIARIES**

(unaudited)

(in thousands)

	Mezzanine Equity		Stockholders' Equity					
			Common			Additional		Accumulated other
	Preferred Stock		Stock		paid-in	Accumulated	comprehensive	Total
	Shares	Amount	Shares	Amount	capital	deficit	income (loss)	equity
Balance, January 1, 2022	—	\$ —	4,714	\$ 5	\$ 160,838	\$ (124,208)	\$ 13	\$ 36,648
Net loss	—	—	—	—	—	(5,582)	—	(5,582)
Other comprehensive loss	—	—	—	—	—	—	(27)	(27)
Issuance of stock related to employee compensation plans, net of forfeitures	—	—	1	—	—	—	—	—
Share based compensation	—	—	—	—	777	—	—	777
See accompanying notes to unaudited condensed consolidated financial statements.	4,715	5	161,615	—	(129,790)	—	(14)	31,816
Net loss	—	—	—	—	—	(5,337)	—	(5,337)
Other comprehensive income	—	8	—	—	—	—	(58)	(58)

<b>ELECTROCORE, INC. AND SUBSIDIARIES</b>						
<u>Condensed Consolidated Statements of Cash Flows</u>						
(in thousands)						
—	—	—	—	—	—	—
—	—	(unaudited)	—	752	—	—
—	—	(in thousands)	5	162,367	(135,127)	(72)
Balance, June 30, 2022	—	—	—	—	—	27,173
Net loss	—	—	—	—	(5,453)	—
Other comprehensive income	—	—	—	—	—	(82)
Issuance of stock related to employee compensation plans, net of forfeitures	—	—	—	—	—	(82)
Share based compensation	—	—	—	—	—	752
Balance, June 30, 2022	—	—	—	—	—	27,173
Net loss	—	—	—	—	(5,453)	—
Other comprehensive income	—	—	—	—	—	(82)
Issuance of stock related to employee compensation plans, net of forfeitures	—	—	—	—	—	(82)
Share based compensation	—	—	—	—	—	752
Balances as of September 30, 2022	—	—	—	—	—	—
Cash flows from operating activities:	—	—	—	—	—	—
Net loss	—	—	—	—	\$ (14,802)	\$ (16,372)
Adjustments to reconcile net loss to net cash used in operating activities:	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	1,298	2,095
Depreciation and amortization	—	—	—	—	735	400
Net noncash lease expense	—	—	—	—	46	34
Amortization of right of use assets	—	—	—	—	—	—
Inventory reserve charge	—	—	—	—	258	—
Increase in provision for bad debts	—	—	—	—	54	—
Changes in operating assets and liabilities:	—	—	—	—	—	—
Accounts receivable	—	—	—	—	(241)	74
Inventories	—	—	—	—	(72)	58
Prepaid expenses and other current assets	—	—	—	—	(219)	(22)
Accounts payable	—	—	—	—	904	963
Accrued expenses and other current liabilities	—	—	—	—	549	184
Operating lease liabilities	—	—	—	—	(55)	(45)
Net cash used in operating activities	—	—	—	—	(11,545)	(12,631)
Cash flows from investing activities:	—	—	—	—	—	—
Purchase of equipment	—	—	—	—	(165)	—
Net cash used in investing activities	—	—	—	—	(165)	—
Cash flows from financing activities:	—	—	—	—	—	—
Proceeds from share issue	—	—	—	—	8,144	—
Financing costs	—	—	—	—	(657)	—
Net cash provided by financing activities	—	—	—	—	7,487	—
Effect of changes in exchange rates on cash and cash equivalents	—	—	—	—	(29)	(163)
Net decrease in cash and cash equivalents and restricted cash	—	—	—	—	(4,252)	(12,794)
Cash and cash equivalents and restricted cash – beginning of period	—	—	—	—	17,962	34,689
Cash and cash equivalents and restricted cash – end of period	—	—	—	—	\$ 13,710	\$ 21,895
Supplemental cash flows disclosures:	—	—	—	—	—	—
Right-of-use asset and lease liability additions	—	—	—	—	—	\$ 1,055
Proceeds from sale of state net operating losses	—	—	—	—	\$ 211	\$ 211
Interest paid	—	—	—	—	\$ 8	\$ 6
Supplemental schedule of noncash activity:	—	—	—	—	—	—
Insurance premium financing	—	—	—	—	\$ 433	\$ 522

See accompanying notes to unaudited condensed consolidated financial statements.

## Note 1. The Company

electroCore, Inc. and its subsidiaries ("electroCore" or the "Company") is a commercial stage bioelectronic medicine and wellness company dedicated to improving health through its non-invasive vagus nerve stimulation ("nVNS") technology platform. The Company's focus is the commercialization of medical devices for the management and treatment of certain medical conditions and consumer product offerings utilizing nVNS to promote general **wellbeing** **wellness** and human performance in the United States and select overseas markets.

electroCore, headquartered in Rockaway, NJ, has two wholly owned subsidiaries: electroCore UK Ltd and electroCore Germany GmbH. The Company has paused operations in Germany, with sales into the country and the rest of Europe being managed by electroCore UK Ltd.

## Note 2. Summary of Significant Accounting Policies

### (a) Basis of Presentation

The accompanying condensed consolidated financial statements were prepared in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") and with instructions to Form 10-Q and Article 10 of Regulation S-X under the Securities Exchange Act of 1934, as amended. In the opinion of management, the Company has made all necessary adjustments, which include normal recurring adjustments necessary for a fair presentation of the Company's condensed consolidated financial position and results of operations for the interim periods presented. Certain information and disclosures normally included in the annual consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. These interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes for the year ended December 31, 2022, included in the Company's Annual Report on Form 10-K filed with the Securities and Exchange Commission on **March 8, 2023** **March 13, 2024**. The results for the three **and** **nine** months ended **September 30, 2023** **March 31, 2024** are not necessarily indicative of the results to be expected for a full year, any other interim periods or any future year or period.

**At a special stockholders meeting held on February 13, 2023, the Company's stockholders approved an amendment to the Company's certificate of incorporation to effect a reverse stock split of the Company's common stock at a ratio between 1-for-5 to 1-for-50 in order to achieve a minimum bid price of \$1.00 per share for a minimum of 10 consecutive trading days, as required for continued listing of the common stock on the Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2). The board of directors authorized a 1-for-15 ratio for the reverse stock split, which became effective on February 15, 2023. The accompanying condensed consolidated financial statements and notes to condensed consolidated financial statements give retroactive effect to the reverse stock split for all prior periods presented.**

### (b) Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of electroCore and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

### (c) Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include **allowances for doubtful accounts**, **trade credits, rebates, co-payment assistance and sales returns**, **valuation of inventory**, **estimated useful life of licensed products**, **and cloud computing arrangements**, **income taxes**, **stock compensation**, **incremental borrowing rate** and contingencies.

### (d) Cash, Cash Equivalents and Restricted Cash

The following table provides a reconciliation of cash, cash equivalents and restricted cash to the balance reflected on the Condensed Consolidated Statement of Cash Flows for **September 30, 2023 and 2022** at **March 31, 2024**:

	September 30, 2023	September 30, 2022	March 31, 2024
(in thousands)			
Cash and cash equivalents	\$ 13,460	\$ 21,645	\$ 7,849
Restricted cash	250	250	250
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 13,710</b>	<b>\$ 21,895</b>	

As of **September 30, 2023 and December 31, 2022** **March 31, 2024**, cash equivalents represented funds held in a money market **account** **account** and amounted to **\$4.2 million**.

**(e) Restricted Cash**

The Company's restricted cash consists of cash that the Company is contractually obligated to maintain in accordance with the terms of its corporate credit card arrangement with Citibank, N.A. and established in April 2022.

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**(f) Licensed Products**

The Company licenses a portion of its devices through its cash pay channels. The cost of these licensed devices is capitalized and included in Other Assets in the accompanying Condensed Consolidated Balance Sheets at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, and is being recognized as cost of goods sold on the straight-line method over the estimated 12-36 month useful life of the devices. If certain licensed devices are returned and no longer meet quality specifications or the carrying amount of certain licensed devices are no longer deemed to be recoverable, the Company records a charge to cost of goods sold to write down such licensed devices to zero. The net book value of these licensed devices at September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023 was \$735,000 447,000 and \$538,000, \$494,000, respectively. Changes in the value of these licensed devices in Other Assets is captured on the Statement of Cash Flows with inventories.

**(g) Warrant Accounting**

The Company accounts for common stock warrants in accordance with applicable accounting guidance provided in ASC Topic 815-40, Derivatives and Hedging – Contracts in Entity's Own Equity, or ASC Topic 815-40, as either derivative liabilities or equity instruments depending on the specific terms of the warrant.

**(h) Prior Year Presentation Recently Adopted Accounting Standards**

In November 2023, the FASB issued Accounting Standards Update (ASU) No. 2023-07, Segment Reporting (Topic 280), Improvements to Reportable Segment Disclosures which will require companies to disclose significant segment expenses that are regularly provided to the chief operating decision maker ("CODM"). The pronouncement is effective for annual filings for the year ended December 31, 2024. The Company is still assessing the impact of the adoption of this standard but does not expect it to have a material impact on its results of operations, financial position or cash flows.

Prior In December 2023, the FASB issued Accounting Standards Update (ASU) No. 2023-09, Income Taxes (Topic 740), Improvements to Income Tax Disclosures which will require companies to make additional income tax disclosures. The pronouncement is effective for annual filings for the year presentation has been conformed ended December 31, 2025. The Company is still assessing the impact of the adoption of this standard but does not expect it to current year presentation have a material impact on its results of operations, financial position or cash flows.

**Note 3. Going Concern, Significant Risks and Uncertainties**

*Going Concern*

The Company has experienced significant net losses and cash used in operations, and it expects to continue to incur net losses and cash used in operations for the near future as it works to increase market acceptance of its medical devices and wellness products. The Company has never been profitable and has incurred net losses and cash used in operations in each year since its inception. The Company has historically funded its operations from the sale of its common stock.

Sales to the United States Department of Veteran Affairs and Department of Defense ("VA/DoD") comprised 60.2 71.2% of the Company's revenue during the three months ended nine months ended September 30, 2023 March 31, 2024. The Company expects that a majority of its remaining 2023 the Company's sales will be made pursuant to its our qualifying contract under the Federal Supply Schedule or FSS, ("FSS"), which was secured by the Company us in December 2018, as well as open market sales to individual facilities within the government channels and to individual facilities through our distribution relationship with Lovell Government Services ("Lovell"). The initial term of our FSS is contract was scheduled to expire on January 15, 2024. The Company has submitted On January 5, 2024, we obtained a renewal modification to the initial contract, temporarily extending the term from January 15, 2024, to March 14, 2024, and subsequently extending the term to June 14, 2024, while the VA/DoD Federal Supply Schedule Service reviews our follow-on offer application for extension of a replacement FSS contract. Although the Company continues to work with the appropriate government personnel to replace its existing FSS contract, there can be no assurance that the VA/DoD will accept the Company's application which may limit or eliminate the Company's ability to sell certain gammaCore products into the government channel pursuant to its qualifying FSS contract under or individual facilities that utilize the Company's FSS from the Department of Veterans Affairs Office of Procurement and Logistics, but there is no assurance the FSS will be renewed, if at all, or renewed at terms favorable to the Company. contract number for open market purchases.

The Company has historically funded its operations from the sale of its common stock. On July 31, 2023, the Company entered into a registered direct offering with certain institutional and accredited investors, and concurrent private placements with such investors and certain of the Company's officers and directors, resulting in net proceeds to the Company of approximately \$7.5 million after deducting the placement agent fees and expenses, and other offering expenses payable by the Company. See Note 8, Shareholders' Equity, Securities Purchase Agreements.

The Company's expected cash requirements for the next 12 months from the date of these financial statements are issued and beyond are largely based on the commercial success of its products. The Company believes its cash and cash equivalents and anticipated revenue will enable it to fund its operating expenses, working capital, and capital expenditure requirements, as currently planned, through 12 months from the date of the accompanying financial statements. There are significant risks and uncertainties as to its ability to achieve these operating results. Due to the risks and uncertainties, there can be no assurance that the Company will have sufficient cash flow and liquidity to fund its planned activities, which could force it to significantly reduce or curtail its activities and potentially cease operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern within one year of the date of these accompanying financial statements are issued. The accompanying financial statements do not include any adjustment that might result from the outcome of this uncertainty.

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#### Concentration of Revenue Risks

The Company earns a significant amount of its revenue (i) in the United States from the Department of Veterans Affairs and Department of Defense ("VA/DoD") DoD pursuant to its qualifying contract under the FSS and open market sales to individual VA facilities, (ii) in the United States from sales of Veterans Affairs facilities, its TAC-STIM products to several units of the DoD, and (iii) in the United Kingdom from the National Health Service. The VA/DoD accounted for 10% Service ("NHS").

or more of total net sales during the three and nine months ended September 30, 2023 and 2022. During the three and nine months ended September 30, 2022, the National Health Service accounted for 10% or more of total net sales. The following table reflects the respective concentration as a percentage of the Company's net sales for the three and nine months ended September 30, 2023 and 2022: sales:

	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
<b>Revenue channel:</b>				
Rx gammaCore - VA/DoD	60.7%	58.1%	60.2%	59.7%
National Health Service	8.1%	17.6%	9.2%	16.1%
<b>Revenue channel:</b>				
VA/DoD			71.2%	61.3%

For the three months ended March 31, 2024, Lovell accounted for more than 10% of our VA/DoD net sales. One VA/DoD facility accounted for more than 10% of total VA/DoD net sales during the three and nine months ended September 30, 2023. Two and March 31, 2023. During the three VA/DoD facilities accounted for more than 10% of total VA/DoD net sales during the three and nine months ended September 30, 2022, respectively. During the three and nine months ended September 30, 2023 March 31, 2024 and 2022, one facility accounted for more than 10% of net sales from the National Health Service. NHS.

#### Foreign Currency Exchange

The Company has foreign currency exchange risk related to revenue and operating expenses in currencies other than the local currencies in which it operates. The Company is exposed to currency risk from the potential changes in the functional currency values of its assets, liabilities, and cash flows denominated in foreign currencies.

#### Note 4. Revenue

##### Product Net Sales

(in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2023	2022	2023	2022
<b>Channel</b>				
Rx gammaCore - Department of Veteran Affairs and Department of Defense	\$ 2,737	\$ 1,167	\$ 6,523	\$ 3,597
Rx gammaCore - U.S. Commercial	439	392	1,310	1,133
Outside the United States	464	417	1,298	1,189
<b>Geographical Net Sales</b>				
TAC-STIM	267	—	704	—
Other	601	—	1,000	—
The following table presents product net sales disaggregated by geographic market: Channel and Geographic Market (in thousands):				
	\$ 4,508	\$ 1,976	\$ 10,839	\$ 6,032
<b>Channel:</b>				
Rx gammaCore - VA/DoD			\$ 3,875	\$ 1,705
Rx gammaCore - U.S. Commercial			433	430
Outside the United States			449	410
Truvaga	Three months ended September 30,		385	147
Other	Nine months ended September 30,		201	88
Total Net Sales	\$ 5,443		\$ 2,780	

<b>Geographic Market:</b>	Three months ended March 31,					
	2023	2022	2023	2022	2024	2023
Product revenue						
United States	\$ 4,044	\$ 1,559	\$ 9,541	\$ 4,843	\$ 4,994	\$ 2,370
United Kingdom	412	347	1,117	968	385	321
Other	33	25	98	128	45	43
License revenue						
Japan	19	45	83	93	19	46
Total Net Sales	\$ 4,508	\$ 1,976	\$ 10,839	\$ 6,032	\$ 5,443	\$ 2,780

The Company generally invoices the customer and recognizes revenue once its performance obligations are satisfied, at which point payment is unconditional. Agreed upon payment terms with customers are within 30 days of shipment. Accordingly, contracts with customers do not include a significant financing component.

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#### Note 5. Inventories

As of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, inventories consisted of the following:

(in thousands)	September 30,		December 31,		March	
	2023	2022	2022	2021	2024	31, December 31, 2023
Raw materials	\$ 1,058	\$ 944			\$ 1,153	\$ 832
Work in process	1,899	2,879			776	1,538
Finished goods	351	353			578	397
Total inventories, net	3,308	4,176			2,507	2,767
Less: noncurrent inventories	813	2,194				
Current inventories	\$ 2,495	\$ 1,982			\$ 2,507	\$ 2,160

The reserve for obsolete inventory was \$0.5 \$0.6 million and \$0.7 million \$0.7 million as of September 30, 2023 March 31, 2024 and December 31, 2022 December 31, 2023, respectively. The Company records charges for obsolete inventory in cost of goods sold. As of September 30, 2023 and December 31, 2022 December 31, 2023, noncurrent inventory was comprised of approximately \$0.0 \$0.5 million and \$0.1 million in raw materials and \$0.8 million and \$2.1 million \$0.1 million of work in process, respectively. Inventory classified under the category "Work in process" consists of prefabricated assembled product.

#### Note 6. Leases

For each of the three and nine months ended September 30, 2023 March 31, 2024 and 2022, 2023, the Company recognized lease expense of \$38,000 and \$114,000, \$38,000. This expense does not include non-lease components associated with the lease agreements as the Company elected not to include such charges as part of the lease expense.

On February 6, 2024, the Company entered into The First Amendment to Lease Agreement ("the Agreement") to extend its Rockaway, New Jersey lease for an additional 10 years. The Amendment is effective May 1, 2024, and expires on July 31, 2034, with a tenant option to renew for an additional five years.

The increase in the term of the lease for the existing leased property was accounted for as a lease modification, therefore, the associated operating lease right of use assets and operating lease liabilities for the existing space were remeasured as of February 6, 2024.

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#### Supplemental Balance Sheet Information for Operating Leases:

(in thousands)	September 30,		December 31,		March	
	2023	2022	2022	2021	2024	31, December 31, 2023
<b>Operating leases:</b>						
Operating lease right of use assets	\$ 518	\$ 565			\$ 1,540	\$ 502
Operating lease liabilities:						

Current portion of operating lease liabilities	85	74	93	89
Noncurrent operating lease liabilities	560	625	1,567	537
Total operating lease liabilities	<u>\$ 645</u>	<u>\$ 699</u>	<u>\$ 1,660</u>	<u>\$ 626</u>
Weighted average remaining lease term (in years)	5.4	6.1	15.0	5.2
Weighted average discount rate	13.8%	13.8%	13.5%	13.8%

**Future minimum** The Agreement also includes the expansion of leased property from 13,643 square feet to 22,557 square feet. The Company will account for the expansion space as an increase in lease right of use assets effective the commencement date of June 1, 2024. The lease for the expansion space also expires on July 31, 2034, with a tenant option to renew for an additional five years.

The below future lease payments table includes payment terms under **non-cancellable operating leases** the Agreement for the entire 22,557 square feet through the 10-year renewal period, and, therefore, will not agree to the lease liabilities on the Company's Condensed Consolidated Balance Sheets as of **March 31, 2024**. **September 30, 2023**

Future lease payments as of March 31, 2024:

(in thousands)				
Remainder of 2023			\$ 41	
2024			168	
Remainder of 2024				\$ 209
2025			171	369
2026			161	368
2027			157	376
2028 and thereafter			216	
Total future minimum lease payments			914	
2028				391
2029 and thereafter				5,227
Total future lease payments				6,940
Less: Amounts representing interest			(269)	(4,260)
<b>Total</b>			<b>\$ 645</b>	<b>2,680</b>

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#### Note 7. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities as of **September 30, 2023** **March 31, 2024** and December 31, **2022** **2023** consisted of the following:

(in thousands)	September 30, 2023	December 31, 2022	March	
			31, 2024	31, 2023
Accrued professional fees	\$ 715	\$ 524	\$ 387	\$ 282
Accrued bonuses and incentive compensation	1,873	2,042	1,362	2,352
Accrued litigation legal fees expense	1,035	1,001	1,101	1,041
Accrued insurance expense	433	264	62	247
Accrued research and development expenses			655	655
Accrued vacation and other employee related expenses	573	534	958	628
Accrued severance and other related charges	113	—		
Accrued inventory purchases			204	—
Accrued valued-added tax	224	133	350	272
Deferred revenue	180	152	130	245
Other	244	192	203	149
	<u>\$ 5,390</u>	<u>\$ 4,842</u>	<u>\$ 5,412</u>	<u>\$ 5,871</u>

Finance and Security Agreement

On July 5, 2023, the Company entered into a Commercial Insurance Premium Finance and Security Agreement (the "2023 Agreement"). The 2023 Agreement provides for a single borrowing by the Company of approximately \$618,000 with a ten-month term and an annual interest rate of 6.03%. The proceeds from this transaction were used to partially fund the premiums due under certain of the Company's insurance policies. The amounts payable are secured by the Company's right under such policies. The Company began paying monthly installments of approximately \$62,000 in July 2023. As of September 30, 2023 March 31, 2024 the remaining balance under the Agreement was approximately \$433,000. \$62,000.

On July 5, 2022, the Company entered into a Commercial Insurance Premium Finance and Security Agreement (the "2022 Agreement"). The 2022 Agreement provides for a single borrowing by the Company of approximately \$783,000 with a nine-month term and an annual interest rate of 2.49%. The proceeds from this transaction were used to partially fund the premiums due under certain of the Company's insurance policies. All borrowings under the 2022 Agreement were repaid as of September 30, 2023.

During the three and nine months ended September 30, 2023 March 31, 2024, the Company recognized \$4,000 and \$13,000 \$4,200 in aggregate interest expense related to the 2023 Agreement and 2022 Agreement, respectively. Agreement.

#### Note 8. Shareholders' Equity

##### Securities Purchase Agreements

On July 31, 2023, the Company entered into a Securities Purchase Agreement ("First SPA") in connection with a registered direct offering and concurrent private placement with certain institutional and accredited investors pursuant to which the Company issued and sold an aggregate of 1,062,600 shares of common stock, 613,314 pre-funded common stock purchase warrants that are exercisable upon issuance, and warrants to purchase up to an aggregate of 837,955 shares of common stock. On July 31, 2023, the Company also entered into a Securities Purchase Agreement ("Second SPA") in connection with a concurrent private placement with six of the Company's officers and directors pursuant to which the Company issued and sold 169,968 shares of common stock and warrants to purchase up to an aggregate of 84,982 shares of common stock. The combined effective offering price of the securities sold pursuant to the First SPA and the Second SPA was \$4.4125 per share of common stock and related common stock purchase warrant. The common stock purchase warrants will be exercisable commencing six months after the date of issuance at a price of \$4.35 per share and will expire five years after they first become exercisable. The net proceeds to the Company resulting from the First SPA and Second SPA was approximately \$7.5 million, after deducting the placement agent fees and expenses, and other offering expenses payable by the Company, and excluding the proceeds, if any, from the exercise of the common stock purchase warrants sold in the concurrent private placements.

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The Company accounts for common stock warrants in accordance with applicable accounting guidance provided in ASC Topic 815-40, Derivatives and Hedging – Contracts in Entity's Own Equity, or ASC Topic 815-40, as either derivative liabilities or equity instruments depending on the specific terms of the warrant. The Company determined that the warrants associated with its First SPA and Second SPA qualified for equity classification.

##### Reverse Stock Split

On February 13, 2023, the Company held a special meeting (the "Special Meeting") of stockholders of the Company. At the Special Meeting, the Company's shareholders voted to approve an amendment to the Company's Certificate of Incorporation to effect a reverse stock split of the Company's common stock (the "Reverse Stock Split") at a ratio between 1-for-51-for-5 and 1-for-501-for-50.

Following the Special Meeting, the board of directors of the Company approved a 1-for-151-for-15 Reverse Stock Split. The Reverse Stock Split became effective on February 15, 2023.

Upon the effectiveness of the Reverse Stock Split, every 15 shares of common stock were automatically combined and converted into one share of common stock. Appropriate adjustments were also made to all outstanding derivative securities of the Company, including all outstanding equity awards and warrants.

No fractional shares were issued in connection with the Reverse Stock Split. Instead, all fractional shares received a cash payment based on the closing sales price on the Nasdaq Capital Market of the Company's common stock on February 14, 2023.

##### Redemption and Elimination of Series A Preferred Stock

All shares of Series A Preferred Stock that were not present in person or by proxy as of immediately prior to the opening of the polls at the Special Meeting were automatically redeemed by the Company (the "Initial Redemption"). Any outstanding shares of Series A Preferred Stock that had not been so redeemed were redeemed automatically upon the approval at the Special Meeting of the Reverse Stock Split (the "Subsequent Redemption"). Each share of Series A Preferred Stock redeemed was entitled to receive an amount equal to \$0.01 in cash for each 10 whole shares of Series A Preferred Stock owned immediately prior to the Redemption.

On March 6, 2023, the Company filed a certificate of elimination (the "Certificate of Elimination"), with the Secretary of State of the State of Delaware with respect to the Series A Preferred Stock. The Certificate of Elimination (i) eliminated the previous designation of 80,000 shares of Series A Preferred Stock from the Company's Certificate of Incorporation, none of which were outstanding at the time of the filing of the Certificate of Elimination, and (ii) caused such shares of Series A Preferred Stock to resume their status as authorized but unissued and non-designated shares of preferred stock.

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#### Dividend Preferred

On December 2, 2022, the Company's board of directors declared a dividend of one one-thousandth of a share of Series A Preferred Stock, par value \$0.001 per share ("Series A Preferred Stock"), for each outstanding share of the Company's common stock, to stockholders of record on December 19, 2022.

Each share of Series A Preferred Stock entitled the holder thereof to 1,000,000 votes per share, and each fraction of a share of Series A Preferred Stock had a ratable number of votes. Thus, each one-thousandth of a share of Series A Preferred Stock was entitled to 1,000 votes. The outstanding shares of Series A Preferred Stock voted together with the outstanding shares of the Company's common stock as a single class exclusively with respect to the proposal to adopt an amendment to the Company's Certificate of Incorporation, as amended, to reclassify the outstanding shares of the Company's Common Stock into a smaller number of shares of common stock at a ratio specified in or determined in accordance with the terms of such amendment (the "Reverse Stock Split").

The Company was not solely in control of the redemption of the shares of Series A Preferred Stock since the holders had the option of deciding whether to vote in respect of the above described Reverse Stock Split, which determined whether a given holder's shares of Series A Preferred Stock were redeemed in the Initial Redemption or the Subsequent Redemption. Since the redemption of the Series A Preferred Stock was not solely in the control of the Company, the shares of Series A Preferred Stock were classified within mezzanine equity in the Company's audited consolidated balance sheet as of December 31, 2022. The shares of Series A Preferred Stock were measured at redemption value. The value of the shares of Series A Preferred Stock as of March 31, 2024, December 31, 2023 and December 31, 2022 was \$0, \$0, and \$71, respectively.

#### Stock Purchase Warrants

The following table presents a summary of stock purchase warrants outstanding as of **September 30, 2023** **March 31, 2024**:

	Number of Warrants (in thousands)	Weighted Average Exercise Price	Weighted		Number of Warrants (in thousands)	Weighted Average Exercise Price	Weighted		Remaining Aggregate Intrinsic Value (in thousands)
			Average Remaining Contractual	Aggregate Intrinsic Value (in thousands)			Average Remaining Contractual	Aggregate Intrinsic Value (in thousands)	
Outstanding, January 1, 2023	1	\$ 229.50	3.0	\$ —	—	—	—	—	—
Outstanding, January 1, 2024	923	—	—	—	924	\$ 4.54	5.1	\$ 1,477	—
Stock purchase warrants (a)	923	—	—	—	—	—	—	—	—
Exercised	—	—	—	—	—	—	—	—	—
Expired	—	—	—	—	—	—	—	—	—
Outstanding, September 30, 2023	924	\$ 4.35	5.3	\$ 1,596	—	—	—	—	—
Exercisable, September 30, 2023	1	\$ 229.50	2.2	\$ —	—	—	—	—	—
Outstanding, March 31, 2024	924	\$ 4.54	4.8	\$ 1,680	—	—	—	—	—
Exercisable, March 31, 2024	924	\$ 4.54	4.8	\$ 1,680	—	—	—	—	—

(a) 613,314 pre-funded warrants were excluded from the aforementioned table. Such pre-funded warrants were not exercised as of **September 30, 2023** **March 31, 2024**.

#### Note 9. Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted loss per share is computed by dividing net loss by the weighted-average number of shares of common stock outstanding adjusted to give effect to potentially dilutive securities. Due to their nominal exercise price of \$0.001 per share, 613,314 pre-funded warrants are considered common stock equivalents and are included in weighted average shares outstanding in the accompanying condensed consolidated statement of operations as of the closing date of the Company's July 2023 Securities Purchase Agreements. Restricted stock and unit awards, stock options, and warrants (other than the pre-funded warrants) have not been included in the diluted loss per share calculation as their inclusion would have had an anti-dilutive effect.

The potential common stock equivalents that have been excluded from the computation of diluted loss per share consist of the following:

(in thousands)	Nine months ended September 30,			Three months ended March 31, 2024
	2023		2022	
	2024	2023	2022	2023
Outstanding stock options	537	418	501	437
Restricted stock and unit awards	231	62		
Restricted and deferred stock units			525	161
Stock purchase warrants	924	1	924	1
	1,692	481		

#### Note 10. Income Taxes

The Company may be eligible, from time to time, to receive cash from the sale of its net operating losses under New Jersey's Department of the Treasury - Division of Taxation NOL Transfer Program. On January 10, 2023, During the three months ended March 31, 2024 and 2023, the Company received a net cash payment of \$122,000 and \$211,000 from the sale of its New Jersey state net operating losses, respectively.

#### Note 11. Stock Based Compensation

The following table presents a summary of activity related to stock options during the nine months ended September 30, 2023 March 31, 2024:

	Number of Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Weighted Average Remaining Contractual Term				Aggregate Intrinsic Value (in thousands)
				Options (in thousands)	Weighted Average Exercise Price	Remaining Contractual Term (Years)	Remaining Contractual Term (Years)	
Outstanding, January 1, 2023	440	\$ 55.65	7.5					
Outstanding, January 1, 2024				516	\$ 37.46	7.7	\$ 307	
Granted	206					—	\$ —	
Exercised	—					—	\$ —	
Cancelled	(109)					(15)	\$ —	
Outstanding, September 30, 2023	537	\$ 38.42	7.9					
Exercisable, September 30, 2023	253	\$ 72.07	6.5					
Outstanding, March 31, 2024				501	\$ 37.03	7.5	\$ 349	
Exercisable, March 31, 2024				293	\$ 58.13	6.5	\$ 76	

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The intrinsic value is calculated as the difference between the fair market value at September 30, 2023 March 31, 2024 and the exercise price per share of the stock options. As of September 30, 2023, all options outstanding had no material intrinsic value.

The following table presents a summary of activity related to restricted and deferred stock units ("Stock Units") granted during the nine months ended September 30, 2023 March 31, 2024:

	Number of Shares (in thousands)	Weighted Average Grant Date Fair Value	Number of Shares (in thousands)	Average Grant Date Fair Value
Nonvested, January 1, 2023	127	\$ 11.85		
Nonvested, January 1, 2024			227	\$ 7.41
Granted	137		201	
Vested	(25)		(3)	
Cancelled	(8)		—	
Nonvested, September 30, 2023	231	\$ 7.74		
Nonvested, March 31, 2024			425	\$ 6.81

In general, Stock Units granted to employees vest over two to four-year periods.

Immediately following the Company's annual meeting of stockholders, the Company generally grants each non-employee director an equity award that vests over a 12-month period. Upon a non-employee director's initial appointment or election to the board of directors, the Company grants such non-employee director an equity award subject to vesting as determined by the board of directors.

The Company recognized stock compensation expense for its equity awards as follows:

(in thousands)	Nine months ended September 30,				Three months ended March 31,
	Three months ended September 30,		2023 2022		2024 2023
	2023	2022	2023	2022	2024 2023
Selling, general and administrative	\$ 477	454	\$ 1,102	1,835	\$ 439 \$ 510
Research and development	60	106	178	240	35 57
Cost of goods sold	6	6	18	20	10 5
Total expense	\$ 543	566	\$ 1,298	2,095	\$ 484 \$ 572

Total unrecognized compensation cost related to unvested awards as of September 30, 2023 March 31, 2024 was \$2.1 million \$2.4 million and is expected to be recognized over the next 1.7 2.0 years.

#### Valuation Information for Stock-Based Compensation

The fair value of each stock option award during the three and nine months ended September 30, 2023 March 31, 2024 and 2022 2023 was estimated on the date of grant using the Black-Scholes model. Effective July 1, 2023, expected volatility was based 100% on the Company's historical common stock volatility. For the periods presented below, and prior to July 1, 2023, expected volatility was based on a composite comprising of 50% of the Company's historical common stock volatility; the remaining 50% was based on historical volatility of its peers. The risk-free interest rate was based on the average U.S. Treasury rate that most closely resembled the expected life of the related award. The expected term of the award was calculated using the simplified method. No dividend was assumed as the Company does not pay regular dividends on its common stock and does not anticipate paying any dividends in the foreseeable future.

The weighted average assumptions used in the Black-Scholes option pricing model in valuing stock options granted in the three and nine months ended September 30, 2023 and 2022 March 31, 2023 are summarized in the table below. No options were granted during the three months ended March 31, 2024.

	Three months ended March 31, 2023	
	Nine months ended September 30, 2024 2020%	
	2023	2022
Fair value at grant date	\$ 3.46	
Expected volatility		14.0%
Risk-free interest rate		3.9%
Expected holding period, in years	\$ 3.95	0.53
Expected volatility		122.4%
Dividend yield		84.0%
Risk-free interest rate		4.1%
The fair value of each Stock Unit is the market close price of the Company's common stock on the trading day immediately preceding the date of grant. Expected holding period, in years	5.8	1.7%
		6.0

Dividend yield	—%	—%
<b>Note 12. Contingencies</b>		

*Stockholders Litigation*

On July 8, 2019, and August 1, 2019, purported stockholders of the Company served putative class action lawsuits in the Superior Court of New Jersey for Somerset County, captioned *Paul Kuehl vs. electroCore, Inc., et al.*, Docket No. SOM-L 000876-19 and *Shirley Stone vs. electroCore, Inc., et al.*, Docket No. SOM-L 001007-19, respectively. In addition to the Company, the defendants include present and past directors and officers, Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities LLC and BTIG, LLC, the underwriters for its IPO; and two of the Company's stockholders. On August 15, 2019, the Superior Court entered an order consolidating the Kuehl and Stone actions, which proceeded under Docket No. SOM-L 000876-19.

Each plaintiff was appointed a co-lead plaintiff. The plaintiffs filed a consolidated amended complaint, which sought certification of a class of stockholders who purchased common stock in the IPO or whose purchases are traceable to that offering. The consolidated amended complaint alleged that the defendants violated Sections 11, 12(a)(2) and 15 of the Securities Act with respect to the registration statement and related prospectus for the IPO. The complaint sought unspecified compensatory damages, interest, costs and attorneys' fees.

On December 14, 2021, the Superior Court granted the defendants' motion to dismiss based on the federal forum selection clause in our certificate of incorporation with prejudice and granted the defendants' motion to dismiss without prejudice. On January 27, 2022, the plaintiffs filed a notice of appeal to the Appellate Division. The appeal was fully briefed, and oral argument was heard on April 19, 2023. On May 15, 2023, the Appellate Division unanimously affirmed the dismissal. The time for further appeals has expired.

On September 26, 2019, and October 31, 2019, purported stockholders of the Company served putative class action lawsuits in the United States District Court for the District of New Jersey captioned *Allyn Turnofsky vs. electroCore, Inc. Inc.*, et al., Case 3:19-cv-18400, and *Priewe vs. electroCore, Inc., et al.*, Case 1:19-cv-19653, respectively. In addition to the Company, the defendants include present and past directors and officers, and Evercore Group L.L.C., Cantor Fitzgerald & Co., JMP Securities LLC and BTIG, LLC, the underwriters for the IPO. The plaintiffs each seek to represent a class of stockholders who (i) purchased the Company's common stock in the IPO or whose purchases are traceable to the IPO, or (ii) who purchased common stock between the IPO and September 25, 2019. The complaints each alleged that the defendants violated Sections 11 and 15 of the Securities Act and Sections 10(b) and 20(a) of the Exchange Act, with respect to (i) the registration statement and related prospectus for the IPO, and (ii) certain post-IPO disclosures filed with the SEC. The complaints sought unspecified compensatory damages, interest, costs and attorneys' fees. The *Priewe* case was voluntarily dismissed on February 19, 2020.

In the *Turnofsky* case, on November 25, 2019, several plaintiffs and their counsel moved to be selected as lead plaintiff and lead plaintiff's counsel. On April 24, 2020, the Court granted the motion of Carole Tibbs and the firm Bragar, Eagel & Squire, P.C. On July 17, 2020, the plaintiffs filed an amended complaint in *Turnofsky*. In addition to the prior claims, the amended complaint added an additional director defendant and two investors as defendants, and adds a claim against the Company and the underwriters for violating Section 12(a)(2) of the Securities Act.

On September 15, 2020, the Company and the other defendants filed a motion to dismiss the amended complaint for failure to state a claim. On November 6, 2020, the plaintiffs filed their opposition to the motion to dismiss. The Company and the other defendants filed reply papers in support of the motion on December 7, 2020. Argument of the motion to dismiss occurred on June 18, 2021. On August 13, 2021, the Court dismissed the amended complaint with leave to re-plead. On October 4, 2021, the plaintiffs filed a second amended complaint in the *Turnofsky* case. The defendants moved to dismiss, and briefing on the motion was complete on January 7, 2022. On July 13, 2023, the court dismissed the second amended complaint with leave to re-plead. The plaintiffs did not file a third amended complaint. On August 23, 2023, the plaintiffs provided the court with an order of dismissal, and the court entered the order on August 24, 2023. On September 8, 2023, plaintiff Carole Tibbs filed a notice of appeal to the United States Court of Appeals for the Third Circuit. The appeal has been docketed as number 23-2655. The principal brief of appellant and appendix are to be filed by December 4, 2023 on January 5, 2024. The appellees' brief is due on January 3, 2024 February 15, 2024, and the appellant's reply brief is due January 24, 2023.

On March 4, 2021, purported stockholder Richard Maltz brought a purported stockholder derivative action in the United States District Court for the District of New Jersey. The action is captioned *Richard Maltz, derivatively filed on behalf of electroCore, Inc., vs. Francis R. Amato, et al.*, Case 3:21-cv-04135. The defendants include present and past directors and officers. Argument of the Company. The plaintiff purports to pursue derivative claims on behalf of the Company in connection with the IPO and actions occurring between the IPO and September 25, 2019. The complaint alleges that demand on the board of directors is excused. The complaint purports to allege claims against the defendants for violating Section 14(a) of the Exchange Act, breaching fiduciary duties, unjust enrichment and waste of corporate assets. The complaint also purports to allege claims for contribution in connection with the *Turnofsky* case described above, pursuant to Section 11(f) of the Securities Act and Sections 10(b) and 21D of the Exchange Act. The complaint seeks unspecified compensatory damages, interest, costs and attorneys' fees; declaratory relief; and an order requiring changes to corporate governance and internal procedures and a vote on proposed amendments to the Bylaws and Certificate of Incorporation. motion has not yet been scheduled.

On March 8, 2021, purported stockholder Erin Yuson brought a purported stockholder derivative action in the United States District Court for the District of New Jersey. The action is captioned *Erin Yuson, derivatively on behalf of electroCore, Inc., vs. Francis R. Amato, et al.*, Case 3:21-cv-04481. The defendants include present and past directors and officers of the Company. The plaintiff purports to pursue derivative claims on behalf of the Company in connection with a 2019 proxy statement and actions occurring from the IPO through September 25, 2019. The complaint alleges that demand on the board of directors is excused. The complaint purports to allege claims against the defendants for violating Section

14(a) of the Exchange Act and breaching fiduciary duties. The complaint seeks unspecified compensatory damages, interest, costs and attorneys' fees; declaratory relief; and an order requiring changes to corporate governance and internal procedures and a vote on proposed amendments to the Bylaws and Certificate of Incorporation.

The plaintiffs in the Maltz and Yuson derivative actions agreed to consolidate and stay those actions. The actions are stayed until and through the resolution of any motion for summary judgment in the Turnofsky federal securities class action. A stipulation to that effect was filed by the plaintiffs on April 14, 2021, and ordered by the court on April 30, 2021. On June 9, 2023, the cases were administratively dismissed without prejudice.

The Company intends to continue to vigorously defend itself in these matters. However, in light of, among other things, the preliminary stage of these litigation matters, the Company is unable to determine the reasonable probability of loss or a range of potential loss. Accordingly, the Company has not established an accrual for potential losses, if any, that could result from any unfavorable outcome, and there can be no assurance that these litigation matters will not result in substantial defense costs and/or judgments or settlements that could adversely affect the Company's financial condition.

The Company is subject to various claims, complaints and legal actions in the normal course of business from time to time. The Company is not aware of any further currently pending litigation for which it believes the outcome could have a material adverse effect on its operations or financial position. The Company expenses associated legal fees including those relating to the stockholder litigation described in this Note 12 in the period they are incurred.

#### Note 13. Severance and other related charges

During the three and nine months ended **September 30, 2023** **March 31, 2023**, the Company entered into separation agreements with two former employees of which agreements required an aggregate payments totaling \$113,000 and \$445,000, respectively, of \$332,000. The charge for these payments is included in Selling, general and administrative expense in the accompanying Condensed Statement of Operations for the nine three months ended **September 30, 2023** **March 31, 2023**. As of **September 30, 2023** **March 31, 2024**, the Company has an outstanding payable of \$113,000 \$13,762 in connection with these charges. This outstanding payable is included in Accrued expenses and other current liabilities in the accompanying Condensed Consolidated Balance Sheet as of **September 30, 2023** **March 31, 2024** (see Note 7).

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#### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

##### MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read this section in conjunction with our unaudited interim condensed consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q and our audited consolidated financial statements and related notes thereto and management's discussion and analysis of financial condition and results of operations for the year ended **December 31, 2022** **December 31, 2023** included in our Annual Report on Form 10-K, filed with the Securities and Exchange Commission, or SEC. As discussed in the section titled "Cautionary Note Regarding Forward-Looking Statements," the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those under the caption "Risk Factors" in the aforementioned Annual Report and this Form 10-Q.

**Note:** Information concerning the shares of our common stock and related share prices in this Item 2 has been adjusted to reflect the 1- for-15 reverse split of our common stock that was made effective on February 15, 2023. (See Note 2 - "Basis of Presentation" to the accompanying condensed consolidated financial statements).

##### Overview

We are a commercial stage bioelectronic medicine and wellness company dedicated to improving health and quality of life through our propriety non-invasive vagus nerve stimulation ("nVNS") technology platform. Our focus is the commercialization of medical devices for the management and treatment of certain medical conditions and the development and commercialization of consumer product offerings utilizing nVNS to promote general wellbeing and human performance in the United States and select overseas markets.

nVNS is a platform bioelectronic technology that modulates neurotransmitters and immune function through its effects on both the peripheral and central nervous systems. Our nVNS treatment is delivered through a proprietary high-frequency burst waveform that safely and comfortably passes through the skin and stimulates therapeutically relevant fibers in the vagus nerve. Various scientific publications suggest that nVNS works through several a variety of mechanistic pathways including the modulation of neurotransmitters.

Historically, vagus nerve stimulation or VNS, required an invasive surgical procedure to implant a costly medical device. This limitation has generally limited VNS from being used by anyone other than the most severe patients. Our non-invasive medical devices and general wellness products are self-administered and intended for regular or intermittent use over many years.

Our business is supported by our in-house capabilities spanning research and include product development, regulatory affairs and compliance, sales and marketing, product testing, assembly, fulfillment, and customer support. We derive revenues from the sale of medical devices and wellness products in the United States and select overseas markets. We have two principal product categories:

- Handheld, personal use medical devices for the management and treatment of certain medical conditions; conditions such as primary headache; and
- Handheld, personal use consumer product offerings utilizing nVNS technology to promote general wellbeing and human performance.

We believe our nVNS treatment may be used in the future to effectively treat additional medical conditions, promote general wellbeing, or improve human performance. conditions.

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Our goal is to be a leader in non-invasive neuromodulation by using our proprietary nVNS platform technology to deliver better health. To achieve this, we offer multiple propositions:

- Prescription gammaCore medical devices for the treatment of certain medical conditions such as primary headache;
- Our Truvaga product products for the support of general health and wellbeing; and
- Our TAC-STIM product for human performance as defined by the United States Air Force Research Laboratory, performance.

Our flagship gammaCore product Sapphire is a prescription medical device currently that is FDA cleared for a variety of primary headache conditions. It gammaCore is available by prescription only and our flagship model, gammaCore Sapphire is a portable, reusable, rechargeable and reloadable personal use option for patients to use at home or on the go. Prescriptions are written by a health care provider and dispensed from a specialty pharmacy, through the patient's healthcare provider system, or fulfilled shipped directly to certain patients in the United States directly from our facility in Rockaway, NJ. After the initial prescription is filled, access to additional therapy can be refilled for certain of our gammaCore medical devices periodically products through the input of a prescription-only authorization.

We offer two versions of our Truvaga product products for the support of general health and wellbeing. Truvaga 350 is a personal use consumer electronics general wellness product that does not and Truvaga Plus, which was launched in April 2024, is our next generation, app-enabled general wellness product. Neither product require a prescription, and is both are available direct-to-consumer from electroCore at [www.truvaga.com](http://www.truvaga.com). Our Truvaga product is not intended for medical use.

Our TAC-STIM product is a form of nVNS for human performance and has been developed in collaboration with the United States Department of Defense Biotech Optimized for Operational Solutions and Tactics, or "BOOST" program.

In June 2023, we announced that our TAC-STIM product, had been selected products are available as a Commercial Off the Shelf (COTS) solution to be a part professional organizations and are the subject of ongoing research and evaluation within the United States Air Force Special Operations Command, the United States Army Special Operations Command and at the United States Air Force Research Laboratories, or "AFRL", Real-Time Assessing Laboratory.

Truvaga and Augmenting Cognitive Performance TAC-STIM products are intended for general wellness in Extreme Environments, or "A2PEX" Grant Program. A2PEX is a five-year project led by the Florida Institute for Human and Machine Cognition, or "IHMC" that includes internationally recognized leaders in wearable technologies from industry and academia. The goal of A2PEX is to build a wearable system to sense, assess and augment cognitive performance in operational environments. Sensors developed by A2PEX partners will develop electrophysiological and biomarker sensors to assess Airmen stress/fatigue in extreme environments. electroCore's proprietary TAC-STIM nVNS product has been commissioned by IHMC for integration into the A2PEX system compliance with the goal of mitigating fatigue FDA guidance document entitled "General Wellness: Policy for Low-Risk Devices; Guidance for Industry and augmenting performance. FDA Staff, issued on September 27, 2019." Truvaga and TAC-STIM products are not intended to diagnose, treat, cure, or prevent any disease or medical condition.

We are exploring strategies to make our TAC-STIM product available to other branches of the active-duty military and certain human performance professionals in the United States and abroad.

Our TAC-STIM product is not a medical device and is not intended to diagnose, cure, mitigate, prevent, or treat a disease or condition.

We have focused most of our historical sales efforts in Our two channels, largest customers by revenue are the United States Department of Veterans Affairs and United States Department of Defense, or VA/DoD, and the United Kingdom National Health Service, or NHS, utilizing our FDA cleared and CE marked gammaCore medical device product, gammaCore.

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The United States Department of Veteran Affairs VA comprised 60.7% and 60.2% 71.2 of our revenue during the three and nine months ended September 30, 2023, respectively. We expect that a March 31, 2024. The majority of our 2023 2024 sales will be were made through open market sales to individual facilities within the VA Hospital system and a smaller amount pursuant to our qualifying contract under the Federal Supply Schedule, or FSS, which was secured by us in December 2018 as well as open market sales to individual facilities within the government channels. and through Lovell Government Services, or Lovell. The initial term of our FSS is contract was scheduled to expire on January

15, 2024. On January 5, 2024, we obtained a modification to the initial contract, temporarily extending the term from January 15, 2024, to March 14, 2024, and subsequently extended to June 14, 2024. Although we continue to work with the appropriate government personnel to replace our existing FSS contract, there can be no assurance that the VA/DoD will accept our application which may limit or eliminate our ability to sell certain gammaCore products into the government channel pursuant to our qualifying FSS contract or individual facilities that utilize our FSS contract number for open market purchases.

In August 2023, we signed a non-exclusive distribution agreement with Lovell providing Lovell the right to list and distribute certain gammaCore products into the federal market. Lovell is a Service-Disabled Veteran-Owned Small Business (SDVOSB) offering medical and pharmaceutical goods and services to federal healthcare providers. Listing products with Lovell is intended to streamline the sales process to a variety of government procurement channels through Lovell's compliance with contracting regulations and its provision of logistical solutions connected directly into government contracting portals, all of which are intended to help government agencies meet their SDVOSB procurement goals. Customers for these vehicles are federal healthcare systems such as the Veterans Health Administration (VHA, which includes the VA/DoD), the Military Health System (MHS), and Indian Health Services (IHS), which we believe serve up to approximately 21 million patients combined. Between November 2023 and January 2024, certain gammaCore products were added to the FSS, the VA/DoD's Distribution and Pricing Agreement or DAPA, GSA Advantage, and Defense Logistics Agency's ECAT system procurement portals through the Lovell contract vehicles, enabling the purchase of gammaCore products within the government channel and throughout the federal markets, including, but not limited to, the VA/DoD. The gammaCore products offered through Lovell provide government customers with similar product configuration options to those currently sold through our existing FSS contract and open market sales made directly to individual VA/DoD facilities. We have submitted expect a renewal application for extension significant portion of our 2024 sales to continue in the government channel broadly, and to our largest customer the VA/DoD, specifically, pursuant to our FSS contract if replaced and / or through our relationship with Lovell and its qualifying contract under the FSS, from the Department of Veterans Affairs Office of Procurement GSA, DAPA, and Logistics, but there is no assurance the FSS will be renewed, if at all, or renewed at terms favorable to us. Our sales function in this channel is comprised of electroCore employees and independent contractors. ECAT contracts for which gammaCore has been added.

Sales under the Med Tech Funding Mandate, or MTFM, program for cluster headache in the UK comprised 6.5% 5.6% and 7.89.4% of our revenue during the three and nine months ended September 30, 2023, March 31, 2024 and 2023, respectively. During the remainder of 2023, we plan on continued expansion under this program, as well as continue to utilize distribution partners to commercialize our nVNS technology in territories outside the United States and United Kingdom. In October 2023, we were notified by NHS Supply Chain that it intends to continue to include the gammaCore device within their framework agreement, commencing March 2024 through March 2026 with an our option to extend for a further two years. In the remainder of 2023, 2024, we expect NICE to review the guidance document and any changes in recommendation or pricing may adversely impact our ability to work with NHS England on the MTFM program.

We believe there may be significant opportunities beyond these two areas. Specifically, we believe there may be a large commercial opportunity for our gammaCore medical device with additional insurance covered lives, cash pay, physician dispense, and direct-to-consumer direct-to consumer approaches, along with general wellness and human performance propositions through our Truvaga and TAC-STIM products. Therefore, during the remainder of 2023, we will continue our investments to expand our efforts in these channels and markets. markets in 2024.

We face a variety of challenges and risks that we will need to address and manage as we pursue our strategies, including our ability to develop and retain an effective sales force, achieve market acceptance of our gammaCore medical device among physicians, clinicians, patients, and third-party payers, expand the use of our gammaCore medical device to additional therapeutic indications, and to develop our nascent wellness and human performance business, business including the recent launch of Truvaga Plus, our next generation app-enabled device under the Truvaga brand.

Because of the numerous risks and uncertainties associated with our commercialization efforts, as well as research and product development activities, we are unable to predict the timing or amount of increased expenses, or when, if ever, we will be able to achieve or maintain profitability. Even if we are able to increase sales of our products, we may not become profitable. If we fail to become profitable or are unable to sustain profitability, then we may be unable to continue our operations at planned levels and be forced to reduce or terminate our operations.

Our expected cash requirements for the next 12 months and beyond are based on the commercial success of our products and our ability to control operating expenses. There are significant risks and uncertainties as to our ability to achieve these operating results. Due to these risks and uncertainties, we may need to reduce our activities significantly more than our current operating plan and cash flow projections assume in order to fund operations for the next 12 months. There can be no assurance that we will have sufficient cash flow and liquidity to fund our planned activities, which could force us to significantly reduce or curtail our activities and, ultimately potentially cease operations. These conditions raise substantial doubt about our ability to continue as a going concern. See "Liquidity Outlook."

#### Critical Accounting Policies and Estimates

The significant accounting policies and basis of presentation of our condensed consolidated financial statements are described in Note 2 "Summary of Significant Accounting Policies" of the consolidated financial statements included in our Annual Report on Form 10-K, filed with the Securities and Exchange Commission, or SEC on March 8, 2023 ("2022 Annual Report"), and in Note 2 "Summary of Significant Accounting Policies" of the condensed consolidated financial statements included within this quarterly report on Form 10-Q.

The preparation of our financial statements is in accordance with accounting principles generally accepted in the United States of America, or GAAP, which require us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses and other related disclosures. While we believe our estimates, assumptions and judgments are reasonable, they are based on information presently available. Actual results may differ significantly from these estimates due to changes in judgments, assumptions and conditions as a result of unforeseen events or otherwise, which could have a material impact on our financial position and results of operations.

The critical accounting policies, and the judgements, estimates, and assumptions associated with such policies, that we believe have the greatest potential impact on the condensed consolidated financial statements are disclosed in the section titled *Critical Accounting Policies and Estimates* in Part II of our *2022 Annual Report*, *Report on Form 10-K*, filed with the *Securities and Exchange Commission*, or SEC on March 13, 2024.

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## Results of Operations

**Comparison of the three months ended *September 30, 2023* *March 31, 2024* to the three months ended *September 30, 2022* *March 31, 2023***

The following table sets forth amounts from our condensed consolidated statements of operations for the three months ended *September 30, 2023* *March 31, 2024* and *2022* *2023*:

	For the three months ended September 30,			For the three months ended March 31,		
	2023	2022	Change	2024	2023	Change
<b>(in thousands)</b>						
<b>Consolidated statements of operations:</b>						
Net sales	\$ 4,508	\$ 1,976	\$ 2,532			
Cost of goods sold	661	258	403			
Gross profit	3,847	1,718	2,129			
<i>Gross margin</i>				84%	84%	
Operating expenses						
Research and development	1,249	1,617	(368)	399	1,809	(1,410)
Selling, general and administrative	6,724	5,657	1,067			
Total operating expenses	7,973	7,274	699	8,404	8,519	(115)
Loss from operations	(4,126)	(5,556)	1,430			
Other (income) expense						
Interest and other income	(94)	(103)	9	(225)	(119)	(106)
Other expense				4	—	4
Total other (income) expense	(94)	(103)	9	(221)	(119)	(102)
Loss before income taxes	(4,032)	(5,453)	1,421			
Benefit from income taxes	—	—	—	122	211	(89)
Net loss	\$ (4,032)	\$ (5,453)	\$ 1,421			
<i>Net Sales</i>						

Net sales for the three months ended *September 30, 2023* *March 31, 2024* increased *128%* *96%* as compared to the three months ended *September 30, 2022* *March 31, 2023*. The increase of *\$2.5 million* *\$2.7 million* is due to an increase in net sales across major channels including our prescription gammaCore medical devices sold in the U.S. United States and abroad; and revenue from the sales of our nonprescription general well being wellness and human performance Truvaga and TAC-STIM products. We expect that the majority of our remaining 2024 fiscal year revenue will continue to come from the VA/DoD. See above Overview for discussion regarding our FSS contract with the VA/DoD.

The following table sets forth our product net sales:

	Three months ended September 30,		Three months ended March 31,	
	2023	2022	2024	2023
<b>(in thousands)</b>				
<b>Product</b>				
Rx gammaCore - Department of Veteran Affairs and Department of Defense	\$ 2,737	\$ 1,167	\$ 3,875	\$ 1,705
Rx gammaCore - U.S. Commercial	439	392	433	430

Outside the United States	464	417	449	410
Truvaga	267	—	385	147
TAC-STIM	601	—	301	88
	\$ 4,508\$	1,976	\$ 5,443\$	2,780

#### Gross Profit

Gross profit increased by \$2.1 \$2.2 million for the three months ended September 30, 2023 March 31, 2024 compared to the three months ended September 30, 2022 March 31, 2023. Gross margin was 85% 84% and 87% for both of the three months ended September 30, 2023 March 31, 2024 and 2022 2023, respectively. Our evolving commercial strategy has resulted in the launch of cash payment models under which we license a portion of our devices. The cost of the licensed device is being recognized as cost of goods sold over the estimated useful life of the device. There was no effect in the current quarter in the incremental increase in gross margin associated with the licensing of a portion of our devices, while there was a 9.0% incremental increase in the three months ended September 30, 2022. In recent quarters, we have sold an increasing number of longer duration therapy, resulting in a higher average selling price, as well as selling an increased number of refill kits with a lower cost of goods.

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#### Research and Development

Research and development expense for the three months ended September 30, 2023 of \$1.2 million decreased \$368,000 as compared to the prior year period. This decrease in research and development expense was due to a decrease in compensation associated with cost cutting measures offset by our targeted investments to support the future iterations of our therapy delivery platform, including the use of our intellectual property around the delivery of smart phone-integrated and smart phone-connected non-invasive therapies.

#### Selling, General and Administrative

Selling, general and administration expense of \$6.7 million for the three months ended September 30, 2023 increased by \$1.1 million, or 19%, as compared to \$5.7 million for the previous year period. This increase was primarily due to greater variable selling and marketing costs consistent with our increase in net sales.

#### Other (Income) Expense

Other (Income) Expense for the three months ended September 30, 2023 was consistent with the comparable prior year period.

#### Comparison of the nine months ended September 30, 2023 to the nine months ended September 30, 2022

The following table sets forth amounts from our condensed consolidated statements of operations for the nine months ended September 30, 2023 and 2022:

	For the nine months ended September 30,			Change
			2023	
	(in thousands)		2022	
<b>Consolidated statements of operations:</b>				
Net sales	\$ 10,839	\$ 6,032	\$ 4,807	
Cost of goods sold	1,704	976	728	
Gross profit	9,135	5,056	4,079	
Operating expenses				
Research and development	4,213	3,892	321	
Selling, general and administrative	20,233	18,121	2,112	
Total operating expenses	24,446	22,013	2,433	
Loss from operations	(15,311)	(16,957)	1,646	
Net (income) expense				
Net Sales				
Net sales for the nine months ended September 30, 2023 increased 80% as compared to the prior year period. The increase of \$4.8 million is due to an increase in net sales across major channels including our prescription gammaCore medical devices sold in the U.S. and abroad; and revenue from the sales of our nonprescription Truvaga and TAC-STIM products, as well as increased prescription gammaCore medical device sales outside the United States. We expect that the majority of remaining 2023 fiscal year revenue will continue to come from our U.S. channels. The amount of revenue we recognize from the sale of our TAC-STIM product, however, may fluctuate significantly from quarter to quarter.				
Benefit for income taxes	211	445	(234)	
Net loss	24	\$ (14,802)	\$ (16,372)	\$ 1,570

The following table sets forth our channel net sales:

(in thousands)	Nine months ended September 30,	
	2023	2022
Product		
Rx gammaCore - Department of Veteran Affairs and Department of Defense	\$ 6,523	\$ 3,597
Rx gammaCore - U.S. Commercial	1,310	1,133

Outside the United States	1,298	1,189
Truvaga	704	—
<b>Gross Profit</b>	<b>1,000</b>	<b>—</b>
Other	4	113
Gross profit increased \$4.1 million for the nine months ended September 30, 2023 compared to the prior year. Gross margin of 84% for the nine months ended September 30, 2023 was consistent with results for the nine months ended September 30, 2022. Our evolving commercial strategy has resulted in the launch of cash payment models under which we license a portion of our devices. The cost of the licensed device is being recognized as cost of goods sold over the estimated useful life of the device. The incremental increase in gross margin associated with the licensing of a portion of our devices was 1.8% and 8.0% in the nine months ended September 30, 2023 and 2022, respectively. In recent quarters, we have sold an increasing number of longer duration therapy, resulting in a higher average selling price, as well as selling an increased number of refill kits with a lower cost of goods. Gross profit and gross margin for the remainder of 2023 will be largely dependent on revenue levels, product mix, and any changes in the estimated useful lives of licensed devices.		

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#### Research and Development

Research and development expense increased by \$321,000 or 8% for the nine months ended September 30, 2023 first quarter of 2024 was \$399,000 as compared to \$1.8 million in the prior year period, first quarter of 2023. This increase was primarily due to targeted a significant reduction in investments to support associated with the future iterations development of our therapy delivery platform, including the use next generation of our intellectual property around the delivery of smart phone-integrated smartphone-integrated and smart phone-connected smartphone-connected non-invasive therapies. This increase was partially offset by a decrease in compensation expense associated with cost cutting measures effected April 1, 2023. For the remainder of 2023, 2024, we plan expect our research and development expense to continue to invest in the next generation of our therapy delivery platform, although we expect our level of investment to decrease during the remainder of the year.

#### Selling, General and Administrative

Selling, general and administrative expense of \$20.2 million \$8.0 million for the nine three months ended September 30, 2023 March 31, 2024 increased \$2.1 by \$1.3 million, or 19%, as compared to \$18.1 million \$6.7 million for the previous year period. This increase was primarily due to severance charges totaling \$445,000, as well as our greater variable selling and marketing costs consistent with our increase in sales. continuing targeted investments in sales and marketing to support our commercial efforts, offset by decreases in insurance and stock-based compensation expenses. During the remainder of 2023, 2024, we plan on continuing to make targeted investments in sales and marketing to support our commercial efforts, particularly around sales and marketing efforts across all major U.S. channels.

#### Other (Income) Expense

The increase in Other (Income) Expense is interest and other income increased by \$106,000 primarily due to rising receipt of \$123,000 in recovery proceeds related to a 2023 casualty loss, offset somewhat to a decline in interest rates. income.

#### Benefit from Income Taxes

We may be eligible, from time to time, to receive cash from the sale of our net operating losses under New Jersey's Department of the Treasury - Division of Taxation NOL Transfer Program. On January 10, 2023, During the three months ended March 31, 2024 and 2023, we received a payment net cash payments of approximately \$122,000 and \$211,000 from the sale of our New Jersey state net operating losses, losses, respectively.

#### Cash Flows

The following table sets forth the significant sources and uses of cash for the periods noted below:

(in thousands)	For the nine months ended September 30,		For the three months ended March 31,	
	2023	2022	2024	2023
<b>Net cash (used in) provided by</b>				
Operating activities	\$ (11,545)	\$ (12,631)	\$ (2,558)	\$ (5,860)
Investing activities	\$ (165)	—	—	—
Financing activities	\$ 7,487	\$ —	\$ —	\$ —

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#### Operating Activities

Net cash used in operating activities was \$11.5 million for the nine months ended September 30, 2023 and \$12.6 million for the three months ended March 31, 2024 and \$5.9 million for the nine months ended September 30, 2023, respectively. This decrease is primarily due to the decrease in our net loss adjusted for non-cash expense items.

#### Investing Activities

During the nine months ended September 30, 2023, cash used in investing activities was related to equipment purchases. No cash was provided by investing activities during the nine months ended September 30, 2022.

#### Financing Activities

During the three months ended March 31, 2024 and 2023, no cash was provided by financing activities for the nine months ended September 30, 2023 was \$7.5 million which was attributable to (i) our July 31, 2023 Securities Purchase Agreement ("First SPA") in connection with a registered direct offering and concurrent private placement with certain institutional and accredited investors pursuant to which the Company issued and sold an aggregate of 1,062,600 shares of common stock, 613,314 pre-funded common stock purchase warrants that are exercisable upon issuance, and warrants to purchase up to an aggregate of 837,955 shares of common stock and (ii) a Securities Purchase Agreement ("Second SPA") in connection with a concurrent private placement with certain of the Company's officers and directors pursuant to which we issued and sold 169,968 shares of common stock and warrants to purchase up to an aggregate of 84,982 shares of common stock.

#### Liquidity Outlook

In the remainder of 2023, we expect to continue to incur substantial negative cash flows from operations. We intend to continue to make targeted investments in sales and marketing, as well as the next generation of our therapy delivery platform.

We expect that a majority of our remaining 2023 sales will be made pursuant to our qualifying contract under the Federal Supply Schedule, or FSS, as well as open market sales to individual facilities within the government channels. The FSS is scheduled to expire on January 15, 2024. We have submitted a renewal application for extension of our qualifying contract under the FSS from the Department of Veterans Affairs Office of Procurement and Logistics, but there is no assurance the FSS will be renewed, if at all, or renewed at terms favorable to us. In addition, other possible changes including those relating to the payer and competitive landscape, our commercialization strategy, our development activities, and regulatory matters, may occur beyond our control that would cause us to consume our available capital more quickly.

We have historically funded our operations from the sale of our common stock. As described immediately above, on July 31, 2023, we entered into a registered direct offering with certain institutional and accredited investors, and concurrent private placements with such investors and certain of our officers and directors which closed on August 2, 2023, resulting in net proceeds of approximately \$7.5 million after deducting the placement agent fees and expenses, and other offering expenses payable by us.

Our expected cash requirements for the next 12 months and beyond are largely based on the commercial success of our products. We believe our cash and cash equivalents will enable us to fund our operating expenses, working capital, and capital expenditure requirements, as currently planned, through 12 months from the date of the accompanying financial statements. There are significant risks and uncertainties as to our ability to achieve these operating results. Due to these risks and uncertainties, there can be no assurance that we will have sufficient cash flow and liquidity to fund our planned activities, which could force us to significantly reduce or curtail our activities and, ultimately, potentially cease operations. These conditions raise substantial doubt about our ability to continue as a going concern within one year of the date these accompanying financial statements are issued. The accompanying financial statements do not include any adjustment that might result from the outcome of this uncertainty.

On January 18, 2022, we filed a Form S-3 registration statement, or the 2022 Shelf Registration Statement, with the SEC, for the issuance of common stock, preferred stock, warrants, rights, debt securities and units, which we refer to collectively as the Shelf Securities, up to an aggregate amount of \$75.0 million. The 2022 Shelf Registration Statement was declared effective on January 25, 2022. The proposed maximum offering price per unit and the proposed maximum aggregate offering price per class of security will be determined from time to time by us in connection with the issuance by us of the securities registered under the 2022 Shelf Registration Statement. Until such time as the aggregate market value of our securities held by non-affiliates equals or exceeds \$75.0 million, the aggregate maximum offering price of all securities issued by us in any given 12-calendar month period pursuant to this and any of our other registration statements may not exceed one-third of the aggregate market value of our securities held by non-affiliates. Approximately \$7.3 million of the securities issued or issuable pursuant to the July 31, 2023 Registered Direct Financing the July 2023 Securities Purchase Agreements were issued pursuant to the 2022 Shelf Registration Statement. We have agreed, subject to certain limited exceptions, not to issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or any securities convertible into or exchangeable for shares of our Common Stock on or before January 29, 2024, without the prior written consent of the lead institutional investors in the transactions conducted pursuant to the First SPA. We have also agreed generally not to effect or enter into an agreement to effect any issuance of our securities involving a Variable Rate Transaction, as defined in the First SPA, until August 2, 2024.

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#### Item 3. Quantitative and Qualitative Disclosures About Market Risk

We develop our products in the United States and sell those products into several countries. As a result, our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in foreign markets. Most of our sales in Europe are denominated in British Pound Sterling and our license agreement with

Teijin Limited is denominated in Japanese Yen. As our sales in currencies other than the U.S. dollar increase, our exposure to foreign currency fluctuations may increase. In addition, changes in exchange rates also may affect the end-user prices of our products compared to those of our foreign competitors, who may be selling their products based on local currency pricing. These factors may make our products less competitive in some countries.

If the U.S. dollar uniformly increased or decreased in strength by 10% relative to the foreign currencies in which our sales were denominated, our net income would have correspondingly increased or decreased by an immaterial amount for the three months ended **September 30, 2023** **March 31, 2024**.

Our exposure to market interest rate risk is confined to our cash and cash equivalents and marketable securities. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we may maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio, if any, are not leveraged, are classified as available for sale and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents, we do not believe that an increase in market rates would have any material negative impact on interest income recognized in our statement of operations. We have no investments denominated in foreign currencies and therefore our investments are not subject to foreign currency exchange risk. We contract with investigational sites, suppliers and other vendors in Europe and internationally. In addition, our license agreement requires payments to us to be denominated in Japanese Yen. We are subject to fluctuations in foreign currency rates in connection with these agreements. We do not hedge our foreign currency exchange rate risk.

All of the potential changes noted above are based on sensitivity analyses performed on our financial position as of **September 30, 2023** **March 31, 2024**.

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#### **Item 4. Controls and Procedures**

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

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the rules and forms, and that such information is accumulated and communicated to us, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decision making regarding required disclosure. In designing and evaluating our disclosure controls and procedures, we recognize that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, as ours are designed to do, and we apply our judgment in evaluating whether the benefits of the controls and procedures that we adopt outweigh their costs.

As required by Rule 13a-15(b) of the Exchange Act, an evaluation as of **September 30, 2023** **March 31, 2024** was conducted under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures, as of **September 30, 2023** **March 31, 2024** were not effective due to the material weakness described below.

##### *Management's Report in Internal Control Over Financial Reporting*

During October 2023, a vendor notified us that it had not received a payment we made via wire transfer based on instructions the Company believed were sent by the vendor. **We continue to investigate the matter, but our** **internal controls over vendor management, as designed, would not have timely prevented an unauthorized payment based on incorrect vendor information from occurring.** As such, the Company has concluded that a material weakness exists in its internal controls over financial reporting. This material weakness did not result in any identified misstatement, and there were no changes to previously reported financial results.

##### *Remediation Plan for the Material Weakness*

Management is committed to the remediation of the material weakness described above. In the **fourth** **first** quarter of **2023, 2024**, management has implemented and will continue to implement measures designed to ensure that the control deficiencies contributing to the material weakness are remediated, such that these controls are designed, implemented, and operating effectively.

Remediation efforts include but are not limited to (a) enhance processes and procedures around payment security, (b) verifying changes to vendor information on a timely basis, and (c) using alternate channels to verify changes to vendor payment information.

Management will test and evaluate the implementation of internal controls and revised processes to ascertain whether they are designed and operating effectively to provide reasonable assurance that they will prevent or detect a material error in our financial statements.

The material weakness will not be considered remediated, however, until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that controls are operating effectively.

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

Except as described above, there was no change in our internal control over financial reporting as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act, that occurred during the three months ended **September 30, 2023** **March 31, 2024** that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

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## PART II— OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

The information set forth in Note 12. *Commitments and Contingencies* of the condensed consolidated financial statements included with this quarterly report on Form 10-Q is incorporated here by reference to this Part II Item 1.

#### Item 1A.

##### RISK FACTORS

You should carefully consider the risk factors included in Item 1A. of our Annual Report on Form 10-K for the year ended December 31, 2022 December 31, 2023 (Annual Report) filed with the SEC on March 8, 2023 and our Quarterly Report on Form 10-Q filed with the SEC on May 3, 2023 ("Q1 10-Q"), in addition to the following risk factor, March 13, 2024 and the other information in this report on Form 10-Q, including the section of this report titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes. If any of the events described in our Annual Report, Q1 10-Q, and the following risk factor and the risks described elsewhere in this report on Form 10-Q occur, our business, operating results and financial condition could be seriously harmed. This report on Form 10-Q also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described in our Annual Report Q1 10-Q, below and elsewhere in this report.

###### **Updated Risk Factor**

***We have identified a material weakness in our internal control over financial reporting, and determined that our disclosure controls were not effective. If we are unable to remediate this material weakness, or if we experience additional material weaknesses in the future, we may not be able to accurately or timely report our financial condition or results of operations and investors may lose confidence in our financial reports and the market price of our common stock could be adversely affected.***

As a public company, we are required to maintain effective disclosure controls and procedures and implement and maintain internal control over financial reporting and to report any material weaknesses in such internal control. Section 404 of the Sarbanes-Oxley Act requires that we evaluate and determine the effectiveness of our internal control over financial reporting. Beginning with our second annual report following our IPO, for our fiscal year ended December 31, 2020, management has provided a report on internal control over financial reporting. The Sarbanes-Oxley Act also requires that our management report on internal control over financial reporting be attested to by our independent registered public accounting firm, to the extent we (i) are no longer an "emerging growth company," as defined by the JOBS Act, and (ii) have annual revenues greater than \$100 million in the most recent fiscal year for which audited financial statements are available. We do not expect to have our independent registered public accounting firm attest to our management report on internal control over financial reporting for so long as we are an emerging growth company or have annual revenues under \$100 million. If and when we have to design and implement the internal control over financial reporting required to comply with this obligation, such process will be time consuming, costly, and complicated.

In preparation of our condensed consolidated financial statements for this Quarterly Report, we determined that a material weakness in our internal control over financial reporting existed relating to payment security controls and procedures, which weakness did not result in any identified material misstatement, nor any change to previously reported financial results. In addition, management determined that our disclosure controls were ineffective as of September 30, 2023 due to the existence of this material weakness. To remediate this material weakness, we are undertaking efforts that include but are not limited to, (a) enhancing processes and procedures around payment security, (b) verifying changes to vendor information on a timely basis, and (c) using alternate channels to verify changes to vendor payment information. The material weakness will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that controls are operating effectively. We can give no assurance that this implementation will remediate this material weakness in our internal control or that material weaknesses or significant deficiencies in our internal control over financial reporting will not be identified in the future.

If we are unable to remediate this material weakness, or if we experience additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations and investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could be adversely affected, and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC, or other regulatory authorities, which could require additional financial and management resources.

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### Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

### Item 3. DEFAULTS UPON SENIOR SECURITIES

None.

### Item 4. MINE SAFETY DISCLOSURES

Not applicable.

### Item 5. OTHER INFORMATION

(a) **Resignation and Reappointment of a Director.** Consistent with the certificate of incorporation and amended and restated bylaws of the Company, and in order to achieve a more equal balance of membership among the three classes of members of the board of directors of the Company, the board has determined that one of the Class III directors with a term expiring at the 2024 Annual Meeting of Stockholders should move to Class II with a term expiring at the 2026 Annual Meeting of Stockholders. Accordingly, on November 6, 2023, Thomas J. Errico, M.D., resigned as a Class III director with a term expiring at the 2024 Annual Meeting of Stockholders, and was immediately reappointed to the board as a Class II director with a term expiring at the 2026 Annual Meeting of Stockholders. The resignation and reappointment of Dr. Errico was effected solely to create a more equal balancing of the board classes and was not due to any disagreement with the Company, the board or the management of the Company. For all other purposes, including equity award vesting and other compensation matters, Dr. Errico's service on the board of directors is deemed to have continued uninterrupted. Dr. Errico will continue to serve on the Company's Compensation and Nominating and Governance Committees, and he will continue as the Chair of the Nominating and Governance Committee.**Not applicable.**

(b) Not applicable.

(c) **Trading Plans** **Plans**.

During the quarter ended **September 30, 2023** **March 31, 2024**, no director or Section 16 officer adopted or terminated any Rule 10b5-1 trading arrangements or non-Rule 10b5-1 trading arrangements (in each case, as defined in Item 408(a) of Regulation S-K promulgated by the Securities and Exchange Commission).

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#### **Item 6. EXHIBITS**

Exhibit Number	Description
10.1**	<a href="#">electroCore, Inc. Non-Employee Director Compensation Executive Severance Policy</a>
31.1*	<a href="#">Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1*	<a href="#">Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2*	<a href="#">Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

\* Filed herewith.

\*\* Incorporated by reference to the Company's Current Report on Form S-1 as filed with the Commission on August 24, 2023

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## SIGNATURES

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

Company Name

Date: **November 8, 2023** **May 8, 2024**

By: \_\_\_\_\_ /s/ DANIEL S. GOLDBERGER

**Daniel S. Goldberger**

**Chief Executive Officer**

**(Principal Executive Officer)**

Date: **November 8, 2023** **May 8, 2024**

By: \_\_\_\_\_ /s/ BRIAN M. POSNER

**Brian M. Posner**

**Chief Financial Officer**

**(Principal Financial and Accounting Officer)**

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## EXHIBIT 10.1

### **electroCore, Inc. Executive Severance Policy**

#### **ARTICLE I.**

##### **PURPOSE**

The electroCore, Inc. Executive Severance Policy ("the Policy") is established to provide eligible executives of electroCore, Inc. or any of its wholly-owned subsidiaries (collectively, the "Company") who incur an Involuntary Termination of Employment (as defined below) with severance pay and other benefits in accordance with and subject to the terms and conditions set forth in this Policy.

This Policy is intended to be an unfunded employee benefit plan maintained for a select group of management or highly compensated employees for purposes of the Employee Retirement Income Security Act of 1974, as amended. All previous existing pay plans, programs, agreements and practices that provide for the payment of severance benefits, whether formal or informal (each a "Prior Severance Plan"), are hereby revoked and terminated for any Participant (as defined below). This document applies to Participants who incur an Involuntary Termination of Employment on and after May 3, 2024 (the "Effective Date"). The payment of severance benefits, if any, payable to any executive who incurred a Termination of Employment prior to the Effective Date of this Policy shall be determined in accordance with the terms of the Prior Severance Plan, applicable to such individual at the time of his Termination of Employment.

#### **ARTICLE II.**

##### **DEFINITIONS**

When used in this Policy, the following words shall have the following meaning unless the context clearly indicates otherwise.

**Section 2.01** **"Accrued Obligations"** means the sum of (i) the Participant's unpaid base salary earned through the date of his Termination of Employment, (ii) any reimbursable business expenses incurred prior to the Participant's Termination of Employment, (iii) any earned but unpaid vacation pay as of the Participant's Termination of Employment and (iv) any vested benefits to which the Participant is entitled under any benefit plan, program or arrangement maintained by the Company.

**Section 2.02** **"Administrator"** shall be the Committee.

**Section 2.03** **"Base Compensation"** means (a) with respect to the CEO, the sum of the Participant's gross annual base salary and target annual incentive bonus, and (b) with respect to all other Participants, such Participant's gross base salary, in each case as in effect immediately prior to the Participant's Termination of Employment or as in effect immediately prior to any reduction in the Participant's Base Compensation that results in the Participant's Termination of Employment for Good Reason.

**Section 2.04** **"Board"** means the board of directors of electroCore, Inc.

**Section 2.05** **"Cause"** means any of the following:

(a) the Participant's willful failure to fulfill, in any material respect, his duties and responsibilities to the Company (other than by reason of death, illness or disability);

- (b) The Participant's willful misconduct, gross negligence or willful acts of personal dishonesty in the performance of his duties to the Company that directly, materially and demonstrably impairs or damages the property, goodwill, reputation, business or finances of the Company;
- (c) The conviction of, or plea of nolo contendere by, the Participant to, a felony or a crime involving moral turpitude that materially and demonstrably impairs or damages the property, goodwill, reputation, business or finances of the Company;
- (d) The Participant's commission of fraud or embezzlement against the Company;
- (e) the Participant's willful or intentional violation of any lawful policy of the Company that directly, materially and demonstrably impairs or damages the property, goodwill, reputation, business or finances of the Company; or
- (f) the Participant's breach of the terms of the Restrictive Covenant Agreement.

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Notwithstanding the foregoing, no failure or violation described in (a), (b) or (e) above shall constitute Cause unless (i) the Administrator provides the Participant with a written notice describing the Participant's acts or omissions that constitute a failure or violation described in (a), (b) or (e) above, (ii) the Participant fails to cure such failure or violation within 10 business days after he receives such written notice and (iii) following the expiration of the cure period, the Company terminates the Participant's employment due to such failure or violation; provided, however, that if the Administrator determines that the failure or violation described in (a), (b) or (e) is not capable of being cured, the Company may terminate the Participant's employment for Cause at any time after the Administrator provides the written notice described in (i) above.

**Section 2.06** "CEO" means the Chief Executive Officer of electroCore, Inc.

**Section 2.07** "Change in Control" means either:

- (a) the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:
  - (i) any person (or group of persons acting together) becomes the owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding voting securities other than by virtue of a merger, consolidation or similar transaction; provided, however, that a Change in Control under this clause (i) shall not occur solely as a result of any redemption, repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding;
  - (ii) any person (or group of persons acting together) acquires (or has acquired within any 12-month period ending on the date of the most recent acquisition by such person or group) ownership, directly or indirectly, of securities of the Company representing more than 30% of the combined voting power of the Company's then outstanding voting securities other than by virtue of a merger, consolidation or similar transaction;
  - (iii) the consummation of a merger, consolidation or similar transaction involving (directly or indirectly) the Company if, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of any direct or indirect parent of the surviving entity in such merger, consolidation or similar transaction; or
  - (iv) the acquisition by a person (or a group of persons acting together) during the 12-month period ending on the date of the most recent acquisition by such person or group of assets from the Company that have a total gross fair market value equal to or exceeding 40% of the total gross fair market value of all of the assets of the Company immediately before such acquisition or acquisitions.

Notwithstanding the foregoing, no transaction or series of related transactions shall constitute a Change in Control of the Company unless such transaction or series of related transactions qualify as a change in ownership of the Company, a change in effective control of the Company or a change in ownership of a substantial portion of the Company's assets as each of these terms are defined in Treasury Regulation Section 1.409A-3(i)(5).

**Section 2.08** "COBRA" means the provisions regarding healthcare continuation coverage set forth in Section 601 et seq. of ERISA and Section 4980B of the Code.

**Section 2.09** "COBRA Premium" means the monthly cost of providing healthcare continuation coverage for a qualified beneficiary under COBRA, as adjusted from time to time.

**Section 2.10** "Code" means the Internal Revenue Code of 1986, as amended.

**Section 2.11** "Committee" means the compensation committee of the Board.

**Section 2.12** "Company" means electroCore, Inc., its wholly-owned subsidiaries and its successors and assigns.

**Section 2.13** Reserved.

**Section 2.14** "Eligible Participant" means a Participant who satisfies the eligibility conditions set forth in Section 3.01 for receiving Severance Benefits under this Policy.

**Section 2.15** "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

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**Section 2.16** “Excess Parachute Tax” means the taxes, if any, imposed under Section 4999 of the Code on a Participant with respect to all or a portion of his Total Parachute Payments as a result of a Change in ownership or effective control of the Company (within the meaning of Section 280G of the Code).

**Section 2.17** “Good Reason” means:

- (a) Any material reduction in the Participant's Base Compensation prior to a Change in Control; provided, however, that a reduction in the Participant's Annual Base Compensation under this paragraph (a) shall not constitute Good Reason if the Company reduces the Annual Base Compensation of all Participants on a substantially equivalent basis;
- (b) any material reduction in the Participant's Base Annual Compensation during the period commencing on or after a Change in Control and ending on the second anniversary of a Change in Control;
- (c) any material diminution in the Participant's authority, duties, offices, title or responsibilities; or
- (d) a transfer of Participant's principal place of employment to a location that is more than 30 miles from the Participant's then current principal place of employment.

A Participant will not have Good Reason to terminate his employment and receive Severance Benefits under this Policy unless the Participant provides the Administrator with written notice of the circumstances he believes constitutes Good Reason within 30 days after the occurrence of such circumstances, or, if later, within 30 days after the Participant in the exercise of ordinary care first becomes aware of any such circumstances. If the Participant does not provide such written notice within this time period, he may not assert those circumstances as a basis for any Termination of Employment for Good Reason. If Company does not cure any claimed event of Good Reason within 30 days after receipt of such written notice from the Participant, the Participant may terminate his employment for Good Reason within 60 days after the expiration of such cure period. If the Participant terminates his employment prior to the expiration of the 30-day cure period or more than 60 days after the expiration of such cure period, the Participant will not be treated as having terminated his employment for Good Reason.

**Section 2.18** “Involuntary Termination of Employment” means a Participant's Termination of Employment (i) by the Company for any reason other than for Cause or (ii) by the Participant for Good Reason. Notwithstanding the foregoing, however, an Involuntary Termination of Employment shall not include a termination of a Participant's employment due to:

- (a) the Participant's death, total and permanent disability or his voluntary resignation or retirement (other than for Good Reason); or
- (b) the sale or other disposition of any subsidiary, division or business unit of the Company or the outsourcing of any operations of the Company if the Participant receives a written offer of comparable employment from the purchaser of such subsidiary, division or business unit or from the entity that acquires the outsourced operations or from any direct or indirect parent, subsidiary or affiliate of such purchaser or entity (a “Successor Employer”) whether or not the Participant accepts such offer of comparable employment.

An offer of employment from a Successor Employer will not be considered to be an offer of “comparable employment” for purposes of (b) unless all of the following conditions are satisfied: (i) the Participant is offered Base Annual Compensation in an amount equal to or exceeding 100% of the Participant's Base Annual Compensation immediately prior to the consummation of such transaction, (ii) the Participant is offered employment by the Successor Employer at a principal place of employment that is located not more than 30 miles from the Participant's principal place of employment with the Company immediately prior to the consummation of such transaction and (iii) the Successor Employer offers the Participant employment in a position that is not expected to result in a material diminution in the authority, duties or responsibilities the Participant held immediately prior to his Termination of Employment, regardless of his title or position with the Successor Employer.

**Section 2.19** “Participant” means the CEO, and each other member of the Company's senior management team who is designated (by name or by job title or description) as a Participant hereunder by the Committee.

**Section 2.20** “Release” means a general release of a Participant's claims against the Company, its subsidiaries, affiliates, predecessors, and successor, and their respective agents, officers, directors, employees and stockholders in a form provided by the Administrator in good faith.

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**Section 2.21** “Restrictive Covenants Agreement” means the Employee Confidentiality and Assignment Agreement or similar agreement imposing employment covenants on the Participant in favor of the Company.

**Section 2.22** “Severance Benefits” means the Severance Pay and other benefits payable to an Eligible Participant pursuant to Article IV of this Policy.

**Section 2.23** “Severance Pay” means the cash payments made to an Eligible Participant pursuant to Section 4.01 of this Policy.

**Section 2.24** “Severance Period” means the period commencing on the first day following an Eligible Participant's Involuntary Termination of Employment and continuing for a period equal to:

(a) If the Eligible Participant's Involuntary Termination of Employment occurs prior to a Change in Control or on or after the second anniversary of a Change in Control, the number of months set forth in the applicable table below based on the Eligible Participant's employment position at the time of his Involuntary Termination of Employment or his employment position immediately prior to any change in his employment position that results in the Participant's Termination of Employment for Good Reason:

Employment Position	Severance Period
CEO	12 months
All Other Participants:	6 months

(b) If an Eligible Participant's Involuntary Termination of Employment occurs on or after a Change in Control and prior to the second anniversary of such Change in Control, the number of months set forth in the applicable table below based on the Eligible Participant's employment position at the time of his Involuntary Termination of Employment or his position immediately prior to any change in his employment position that results in his Termination of Employment for Good Reason:

Employment Position	Severance Period
CEO:	18 months
All Other Participants:	12 months

**Section 2.25** Termination of Employment or words to similar effect means the Participant's separation from service (as defined in regulations under Section 409A of the Code) with the Company (and each entity that together with the Company is required to be treated as a single service recipient for purposes of determining whether a separation from service has occurred for purposes of Section 409A of the Code).

**Section 2.26** Total Parachute Payments shall mean any payment or benefit in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) paid or provided to or for the benefit of a Participant (whether paid or provided pursuant to this Policy or otherwise) which is conditioned on a Change in ownership or effective control of the Company (within the meaning of Section 280G of the Code) and would subject the Eligible Participant in whole or in part to an Excess Parachute Tax.

### ARTICLE III.

#### ELIGIBILITY FOR SEVERANCE BENEFITS

**Section 3.01** Eligibility for Severance Benefits. A Participant will become an Eligible Participant who is entitled to receive Severance Benefits under this Policy if such Participant:

- (a) incurs an Involuntary Termination of Employment;
- (b) timely executes a Release within 60 days following such Involuntary Termination of Employment (or within such shorter time frame as may be specified in the Release provided by the Administrator), and
- (c) does not revoke such Release within the applicable revocation period provided under applicable law for revocation of a release of employment-based claims (including, without limitation, the release of claims under the Age Discrimination in Employment Act).

A Participant who does not return a signed copy of the Release to the Company within the time frame specified above or who revokes a signed Release within the applicable revocation period, will not be eligible to receive any Severance Benefits under this Policy. The Company will provide a Participant who has an Involuntary Termination of Employment with an executable form of Release no later than five business days after the Participant's Involuntary Termination of Employment.

### ARTICLE IV.

#### SEVERANCE BENEFITS

An Eligible Participant who satisfies the eligibility requirements set forth in Section 3.01 will receive Severance Pay and other Severance Benefits as provided in this Article IV, in addition to the payment of any Accrued Obligations to which the Eligible Participant is entitled.

**Section 4.01** Severance Pay.

- (a) Normal Severance. Except as provided in (b) below,

(i) **CEO.** If the Eligible Participant is the CEO at the time of the Eligible Participant's Involuntary Termination of Employment or immediately prior to any change in the Eligible Participant's employment position that results in a Termination of Employment for Good Reason, the Eligible Participant will be paid an amount equal to one-year's Base Compensation as defined in Section 2.03(a), payable in installments over his Severance Period as defined in Section 2.24(a) in accordance with the Company's regular payroll schedule; provided, however, that no installment will be paid unless and until the Participant has satisfied all of the eligibility conditions in Section 3.01.

(ii) **All Other Participants.** An Eligible Participant who is not described in Section 4.01(a)(i) shall continue to be paid his Base Compensation as defined in Section 2.03(b) during such Eligible Participant's Severance Period as defined in Section 2.24(a) in accordance with the Company's regular payroll schedule; provided, however, that no amount will be paid unless and until the Participant has satisfied all of the eligibility conditions in Section 3.01.

(b) **Change in Control Severance.** If an Eligible Participant's Involuntary Termination of Employment occurs on or after a Change in Control and prior to the second anniversary of such Change in Control, such Eligible Participant will be paid a one-time lump sum in cash equal to such Eligible Participant's Base Compensation (as defined in Section 2.03(a) or (b), as applicable) for one year times the applicable severance multiple specified in the table below based on the Eligible Participant's employment position at the time of such Involuntary Termination of Employment or such Eligible Participant's employment position immediately prior to any change in employment position that results in his Termination of Employment for Good Reason:

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Employment Position	Severance Multiple
CEO:	1.5
All Other Participants:	1.0

Such lump sum payment will be paid as soon as practicable after the Participant has satisfied all of the eligibility conditions in Section 3.01.

**Section 4.02 Medical, Dental and Vision Coverage.** If an Eligible Participant is entitled to file, and does timely file, an election to continue any health benefits for himself, his spouse and his eligible dependents, if any, under a medical, dental and/or vision benefit program maintained by the Company in accordance with the provisions of COBRA, the Company shall promptly reimburse the Eligible Participant for the monthly COBRA Premiums paid by the Eligible Participant for such COBRA coverage until the earlier of (i) the expiration of the Eligible Participant's continuation coverage under COBRA or (ii) the end of the Participant's Severance Period. Notwithstanding the foregoing, an Eligible Participant shall not receive any reimbursement of COBRA Premiums unless and until all of the eligibility conditions in Section 3.01 have been satisfied. The Eligible Participant is responsible for the payment of all applicable COBRA Premiums.

**Section 4.03 Acceleration of Vesting of Equity.** If a Participant's Involuntary Termination of Employment occurs on or after a Change in Control and prior to the second anniversary of a Change in Control, all outstanding forms of equity-based compensation granted to such Participant that remains outstanding immediately prior to the Participant's Involuntary Termination of Employment shall vest and become exercisable upon satisfaction of all of the eligibility conditions in Section 3.01, and the period of time during which the Eligible Participant may exercise outstanding stock options or outstanding stock appreciation rights shall be extended until the earlier of (a) 150 days following the Participant's Termination of Employment (or, if later, the period of time set forth in the applicable award agreement for exercising such stock options or stock appreciation rights) or (b) the original expiration date for such stock options. Such equity awards shall otherwise settle in accordance with their terms and conditions.

**Section 4.04 Bonus Payments.** An Eligible Participant shall receive:

- the accrued but unpaid annual incentive bonus, if any, earned by the Eligible Participant for the year ended prior to his Termination of Employment payable at the same time such annual bonuses for such year are paid to other members of the senior management team; and
- the Eligible Participant's annual incentive bonus, if any, for the year in which the Eligible Participant's Termination of Employment occurred based on actual performance and pro-rated for the period of employment during such year through the Eligible Participant's Termination of Employment; provided that no such pro-rated bonus shall be payable unless the Eligible Participant's period of employment during such year exceeds six months. Such prorated bonus will be paid at the same time annual incentive bonuses for such year are paid to other members of the senior management team.

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**Section 4.05 Compliance with Section 409A of the Code.** The Severance Benefits provided under this Policy are, to the fullest extent possible, intended to be exempt from the requirements of Section 409A of the Code and to the extent that any Severance Benefits provided hereunder are not exempt from Section 409A of the Code, they are intended to comply with the requirements of Section 409A of the Code and the regulations thereunder, and this Policy shall be construed accordingly. Notwithstanding any provision in this Policy to the contrary, if at the time of an Eligible Participant's Termination of Employment, the Administrator determines that the Eligible Participant is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code and applicable regulations thereunder, then, to the extent that such Severance Benefits constitute deferred compensation within the meaning of Section 409A of the Code and applicable regulations issued thereunder, payment or provision of such Severance Benefits shall be suspended and shall not be paid or provided to the Eligible Participant until the date that occurs on the earlier of (i) the first day of the seventh month following the Eligible Participant's Termination of Employment or

(ii) the Eligible Participant's death. The payments suspended pursuant to this Section 4.05 will be paid to the Eligible Participant as soon as practicable after the period of suspension ends. Notwithstanding any provision in this Policy to the contrary, if any Severance Benefits are to be paid or provided in installments, each such installment shall constitute a separate payment for purposes of Section 409A of the Code and the regulations thereunder.

**Section 4.06Excess Parachute Tax.** Notwithstanding any other provisions of this Policy or any plan, arrangement or agreement maintained by the Company, if a Participant receives or is entitled to receive any Total Parachute Payments under the terms of this Policy or otherwise that would subject the Participant to an Excess Parachute Tax as a result of a change in ownership or effective control of the Company (within the meaning of Section 280G of the Code), the portion of the Total Parachute Payments payable to the Participant (whether under this Policy or otherwise) shall be reduced to the extent necessary to prevent the imposition of the Excess Parachute Tax but only if the amount determined under (a) below exceeds the amount determined under (b) below, where:

- (a) is the net after-tax amount of the Total Parachute Payments remaining after (i) reducing the Total Parachute Payments to the extent necessary to prevent the imposition of the Excess Parachute Tax and (ii) deducting the net amount of Federal, state, and local income and payroll taxes payable by the Participant with respect such reduced Total Parachute Payments computed at the Participant's highest marginal tax rates; and
- (b) is the net after-tax amount of the Total Parachute Payments (without any reduction to prevent imposition of the Excess Parachute Tax) but after deducting the net amount of Federal, state, and local income and payroll taxes payable by the Participant with respect to such Total Parachute Payments computed at the Participant's highest marginal tax rates and further reduced by the amount of the Excess Parachute Tax that would be imposed on the Participant with respect to such Total Parachute Payments.

Such reduction shall first be applied to the accelerated vesting of any equity-based compensation, starting with stock options and stock appreciation rights that have the highest exercise or strike price, followed by any equity-based compensation that does not constitute nonqualified deferred compensation within the meaning of Section 409A of the Code and next followed by any Severance Pay under this Policy that is not considered to be deferred compensation within the meaning of Section 409A of the Code and lastly to any Severance Pay that is considered to be deferred compensation within the meaning of Section 409A of the Code (starting with the installment payments that are payable latest in time).

**Section 4.07Death of an Eligible Participant.** If an Eligible Participant dies after having satisfied all of the eligibility conditions set forth in Section 3.01 and before the end of the Severance Period, any remaining Severance Pay will continue to be paid to the beneficiary designated by the Participant to the Company, in writing. If a Participant has not designated a beneficiary (or if the beneficiary does not survive the Participant), the remaining Severance Pay, if any, will be paid to the Eligible Participant's estate.

**Section 4.08Violation of Post-Employment Obligations and Covenants.** Notwithstanding any provision in this Policy to the contrary, if any Eligible Participant breaches the terms of Restricted Covenant Agreement with the Company, such Eligible Employee shall immediately forfeit any and all rights he may have to any unpaid Severance Benefits hereunder and such Eligible Participant shall return to the Company any Severance Benefits previously received by the Eligible Participant.

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## ARTICLE V. POLICY ADMINISTRATION

This Policy shall be administered by the Administrator. The Administrator shall have the discretionary authority to determine eligibility for Severance Benefits under the Policy and to construe the terms of the Policy, including the making of factual determinations. Benefits under the Policy shall be paid or provided only if the Administrator determines that Participant is entitled to such benefits under the terms of this Policy. The decisions of the Administrator shall be final and conclusive with respect to all questions concerning administration of the Policy. The Administrator may delegate all or a portion of its duties under this Policy to the CEO; provided, however, that the Committee's express approval is required for the payment of any compensation or benefits as a result of any Participant's Termination of Employment that are not Accrued Obligations or otherwise authorized under this Policy and further provided that the Administrator shall not delegate any duties to the CEO in connection with his own Termination of Employment. The actions of the CEO with respect to his delegated duties shall be treated as if such actions were taken by the Administrator.

## ARTICLE VI. CLAIMS PROCEDURE; ARBITRATION

**Section 6.01Filing a Claim.** No formal claim for benefits shall be required for Severance Benefits to be paid or provided under this Policy. The Administrator will inform any Participant who incurs an Involuntary Termination of Employment that such Participant will be eligible for Severance Benefits under this Policy if the Participant satisfies the conditions set forth in Section 3.01. However, any individual who believes he is eligible for Severance Benefits under this Policy that have not been provided (a "Claimant") may submit a written claim ("Claim") for Severance Benefits to the Administrator. A Claimant shall have no right to seek review of a denial of Severance Benefits, or to bring any action in any court to enforce a Claim, prior to filing a Claim and exhausting his administrative remedies under this Article VI. When a Claim has been filed properly, the Administrator shall evaluate it and shall notify the Claimant of the approval or the denial of the Claim within 90 days after the Administrator receives such Claim unless special circumstances require an extension of time for processing the Claim. If such an extension of time for processing is required, the Administrator shall furnish the Claimant with written notice of the extension prior to the termination of the initial 90-day period. The notice of extension will specify the special circumstances requiring an extension and the date by which a final decision will be reached. The extension may not exceed 180 days after the date on which the Claim was filed. The Administrator shall provide the Claimant with a written notice advising the Claimant as to whether the Claim is granted or denied, in whole or in part. If a Claim is denied, in whole or in part, the notice will contain (a) the specific reasons for the denial, (b)

references to pertinent provisions of the Policy upon which the denial is based, (c) a description of any additional material or information, if any, that is necessary to perfect the Claim and an explanation of why such material or information is necessary, and (d) the Claimant's right to seek review of the denial.

**Section 6.02**Review of Claim Denial. If a Claim is denied, in whole or in part, the Claimant may shall have the right to (a) request that the Committee review the denial, (b) review pertinent documents, and (c) submit issues and comments in writing, provided that the Claimant files a written request for review with the Committee within 60 days after the date on which the Claimant received written notification of the denial. Within 60 days after a request for review is received, the Committee shall review the Claim and advise the Claimant in writing of the Committee's decision on review. If special circumstances require an extension of time for processing the review, the Committee shall provide the Claimant with written notice within the initial 60-day review period specifying the reasons for the extension and when such review shall be completed. The extension of the review period may not exceed 120 days after the date on which the request for review was filed. The Committee shall notify the Claimant of its decision on review in writing, which will include specific reasons for the decision and reference to the provisions of the Policy upon which the decision is based. A decision on review shall be final and binding on all persons for all purposes. A Claimant or other individual shall not be entitled to bring any legal action or arbitration unless such person has exhausted such person's rights under Section 6.01 and this Section 6.02 by timely submitting a Claim and requesting a review of a decision with respect to such Claim.

**Section 6.03**Arbitration. If a Claimant has exhausted his or her administrative remedies under Section 6.02 relating to any Claim under this Policy, then the Claimant may demand that any remaining disputed matters under this Policy (a "Dispute") be settled by final and binding arbitration by sending written notice of such election to the Administrator clearly marked "Arbitration Demand" and such Dispute shall be arbitrated in accordance with the terms and conditions of this Section 6.03. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm or to enforce the terms of a Participant's Restrictive Covenants Agreement.

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The Dispute shall be resolved by a single arbitrator in an arbitration administered by the American Arbitration Association ("AAA") in accordance with its Employment Arbitration Rules in effect at the time of the arbitration hearing and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The decision of the arbitrator shall be final and binding on the parties, and specific performance giving effect to the decision of the arbitrator may be ordered by any court of competent jurisdiction. Nothing contained herein shall operate to prevent either party from asserting any counterclaims in any arbitration commenced in accordance with this Agreement.

The arbitration shall be filed with the AAA office located in the State of New Jersey. The decision of the arbitrator, which shall be in writing and state the findings, the facts and conclusions of law upon which the decision is based, shall be final and binding upon the parties, who shall forthwith comply after receipt thereof. Judgment upon the award rendered by the arbitrator may be entered by any competent court. Each party submits itself to the jurisdiction of any such court, but only for the entry and enforcement to judgment with respect to the decision of the arbitrator hereunder.

Except as otherwise provided by law, the parties shall bear their own costs in preparing for and participating in the resolution of any Dispute pursuant to this Section 6.03, and the costs of the arbitrator(s) shall be equally divided between the parties.

The provisions of this Section 6.03 shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any Dispute arising in connection with this Agreement. Any party commencing a lawsuit in violation of this Section 6.03 shall pay the costs of the other party, including, without limitation, reasonable attorney's fees and defense costs.

## ARTICLE VII.

### AMENDMENT AND TERMINATION

The Board or the Committee reserves the right to amend this Policy from time to time or to terminate the Policy; provided, however, that no such amendment or termination shall reduce the amount of Severance Benefits payable to any Eligible Participant who had an Involuntary Termination of Employment on or before the date of such amendment is executed or this Policy is terminated. Moreover, this Policy may not be amended or terminated at any time on or after the date Change in Control occurs and prior to the second anniversary of such Change in Control if such amendment or termination will have a material adverse affect on any Participant's eligibility for Severance Pay or Severance Benefits or the amount of Severance Benefits provided under this Policy or under any plan, policy, program, arrangement or agreement that replaces this Policy. This Policy may not be amended, modified or terminated in a manner that would subject any Participant to taxation of his Severance Benefits under Section 409A(a)(1) of the Code.

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## ARTICLE VIII.

### MISCELLANEOUS

**Section 8.01**Accrued Obligations. Notwithstanding any provision in this Policy to the contrary, a Participant who has a Termination of Employment shall receive all of the Accrued Obligations to which such Participant is entitled in accordance with the Company's customary payroll practices and/or the terms of any applicable plan, program, policy or arrangement maintained by the Company without regard to whether the Participant is or may become entitled to any Severance Pay or Severance Benefits under this Policy and the payment of such Accrued Obligations shall not be conditioned upon the Participant's execution of a Release.

**Section 8.02**Successors and Assigns. The obligations of the Company under this Policy shall be assumed by its successors and assigns.

**Section 8.03 Employment Rights.** The existence of this Policy shall not confer any legal or other rights upon any employee to continuation of employment. The Company and its subsidiaries reserve the right to terminate any employee with or without cause at any time, notwithstanding the provisions of this Policy.

**Section 8.04 Controlling Law.** The provisions of this Policy shall be governed, construed and administered in accordance with ERISA. To the extent that ERISA does not apply, the laws of the State of New Jersey shall be controlling, other than New Jersey law concerning conflicts of law.

**Section 8.05 Interests Not Transferable.** The interest of persons entitled to Severance Benefits under this Policy are not subject to their debts or other obligations and, except as provided in Sections 4.07 and 8.02 above and Section 8.11 below, as required by federal or state garnishment orders issued to the Plan or the Company, or as may be required by ERISA, may not be voluntarily or involuntarily sold, transferred, alienated, assigned or encumbered.

**Section 8.06 Representations Contrary to the Policy.** No officer or employee of the Company has the authority to alter, vary or modify the terms of the Policy or the Severance Benefits available to any Eligible Participant without the written consent of the Board or the Committee. No verbal or written representations contrary to the terms of the Policy and any duly authorized written consent of the Board or Committee shall be binding upon the Company.

**Section 8.07 Plan Funding.** No Participant or beneficiary thereof shall acquire by reason of this Policy any right in or title to any assets, funds, or property of the Company. Any Severance Benefits that become payable under this Policy are unfunded obligations of the Company and shall be paid from the Company's general assets. No employee, officer, director or agent of the Company guarantees in any manner the payment of Severance Benefits.

**Section 8.08 Headings.** The headings in this Plan are for convenience of reference and shall not be given substantive effect.

**Section 8.09 Gender.** Except when the context indicates to the contrary, when used in this Policy, masculine terms shall be deemed to include the feminine.

**Section 8.10 Severability.** If any provision of this Policy is held illegal or invalid for any reason, the other provisions of this Policy shall not be affected.

**Section 8.11 Tax Withholding.** Notwithstanding any other provision of this Policy, the Company may withhold from any and all Severance Benefits such United States federal, state or local or foreign taxes as may be required to be withheld pursuant to any applicable law or regulation.

**Section 8.12 Non-Exclusivity of Rights.** The terms of the Policy shall not prevent or limit the right of a Participant to receive any base annual salary, pension or welfare benefit, perquisite, bonus or other payment provided by the Company to the Participant, except for such rights as the Participant may have specifically waived in writing. Amounts that are vested benefits or which the Participant is otherwise entitled to receive under any benefit policy or program provided by the Company shall be payable in accordance with the terms of such policy or program.

**Section 8.13 Indemnification.** The CEO and the individuals serving on the Committee shall be indemnified to the fullest extent permitted by applicable law and the Company's Bylaws.

As initially adopted by the Compensation Committee

on June 21, 2018, and most recently amended and restated as of May 3, 2024

EXHIBIT 31.1

#### CERTIFICATION

I, Daniel S. Goldberger, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, 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)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

- (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **November 8, 2023** **May 8, 2024**

*/s/* Daniel S. Goldberger

Daniel S. Goldberger

Chief Executive Officer

(Principal Executive Officer)

**EXHIBIT 31.2**

**CERTIFICATION**

I, Brian M. Posner, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of electroCore, 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)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

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

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

Date: November 8, 2023 May 8, 2024

/s/ BRIAN M. POSNER

Brian M. Posner

Chief Financial Officer

(Principal Financial and Accounting Officer)

EXHIBIT 32.1

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

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc. (the "Company") for the period ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Daniel S. Goldberger, as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 8, 2023 May 8, 2024

/s/ Daniel S. Goldberger

Daniel S. Goldberger

Chief Executive Officer

(Principal Executive Officer)

EXHIBIT 32.2

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

In connection with the Quarterly Report on Form 10-Q of electroCore, Inc. (the "Company") for the period ended September 30, 2023 March 31, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Brian M. Posner, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 8, 2023 May 8, 2024

/s/ BRIAN M. POSNER

Brian M. Posner

Chief Financial Officer

(Principal Financial and Accounting Officer)

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