

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, 2024
or

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from [] to []
Commission File Number: 001-38640



AudioEye, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or
organization)

20-2939845

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

**5210 East Williams Circle , Suite 750 ,
Tucson , Arizona**
(Address of principal executive offices)

85711

(Zip Code)

Registrant's telephone number, including area code: **866 - 331-5324**

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 \$0.00001 per share	AEYE	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 last 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, a smaller reporting company, or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

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

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

As of October 31, 2024, 12,178,130 shares of the registrant's common stock were issued and outstanding.

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PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

The financial information set forth below with respect to the consolidated financial statements as of September 30, 2024 and December 31, 2023 and for the three- and nine-month periods ended September 30, 2024 and 2023 is unaudited. This financial information, in the opinion of our management, includes all adjustments consisting of normal recurring entries necessary for the fair presentation of such data. The results of operations for the three- and nine-month periods ended September 30, 2024 are not necessarily indicative of results to be expected for any subsequent period. Our fiscal year end is December 31. The Company presents its unaudited consolidated financial statements, notes, and other financial information rounded to the nearest thousand United States Dollars ("U.S. Dollar"), except for per share data.

AUDIOEYE, INC.
CONSOLIDATED BALANCE SHEETS
(unaudited)

(in thousands, except per share data)	September 30, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash	\$ 5,478	\$ 9,236
Accounts receivable, net of allowance for doubtful accounts of \$ 451 and \$ 496 , respectively	4,876	4,828
Prepaid expenses and other current assets	<u>1,042</u>	712
Total current assets	11,396	14,776
Property and equipment, net of accumulated depreciation of \$ 283 and \$ 251 , respectively	228	218
Right of use assets	430	611
Intangible assets, net of accumulated amortization of \$ 9,056 and \$ 7,423 , respectively	10,593	5,783
Goodwill	6,615	4,001
Other	128	106
Total assets	<u>\$ 29,390</u>	<u>\$ 25,495</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	\$ 3,481	\$ 2,339
Note payable	2,348	—
Operating lease liabilities	194	312
Finance lease liabilities	—	7
Deferred revenue	7,587	6,472
Contingent consideration	<u>—</u>	2,399
Total current liabilities	<u>13,610</u>	11,529
Long term liabilities:		
Term loan, net	6,796	6,727
Operating lease liabilities	269	417
Deferred revenue	8	10
Contingent consideration, long term	1,250	—
Other	<u>105</u>	105
Total liabilities	<u>22,038</u>	18,788
Stockholders' equity:		
Preferred stock, \$ 0.00001 par value, 10,000 shares authorized		
Common stock, \$ 0.00001 par value, 50,000 shares authorized, 12,034 and 11,711 shares issued and outstanding as of September 30, 2024 and December 31, 2023, respectively	1	1
Additional paid-in capital	101,609	96,182
Accumulated deficit	<u>(94,258)</u>	<u>(89,476)</u>
Total stockholders' equity	<u>7,352</u>	6,707
Total liabilities and stockholders' equity	<u>\$ 29,390</u>	<u>\$ 25,495</u>

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

(in thousands, except per share data)	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 8,925	\$ 7,838	\$ 25,478	\$ 23,446
Cost of revenue	1,823	1,788	5,348	5,277
Gross profit	7,102	6,050	20,130	18,169
Operating expenses:				
Selling and marketing	3,148	2,891	9,122	9,387
Research and development	1,151	1,955	3,694	5,734
General and administrative	3,794	2,594	9,433	8,520
Total operating expenses	8,093	7,440	22,249	23,641
Operating loss	(991)	(1,390)	(2,119)	(5,472)
Interest income (expense), net	(211)	35	(647)	133
Net loss	\$ (1,202)	\$ (1,355)	\$ (2,766)	\$ (5,339)
Net loss per common share-basic and diluted	\$ (0.10)	\$ (0.11)	\$ (0.23)	\$ (0.46)
Weighted average common shares outstanding-basic and diluted	11,960	11,822	11,791	11,733

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2024 AND 2023
(unaudited)

(in thousands)	Common stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount	\$	\$	\$
Balance, December 31, 2023	11,711	\$ 1	\$ 96,182	\$ (89,476)	\$ 6,707
Common stock issued upon settlement of restricted stock units	235	—	—	—	—
Issuance of common stock for services	7	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(25)	—	(160)	—	(160)
Common stock repurchased for retirement	(266)	—	—	(1,686)	(1,686)
Stock-based compensation	—	—	883	—	883
Net loss	—	—	—	(829)	(829)
Balance, March 31, 2024	11,662	\$ 1	\$ 96,905	\$ (91,991)	\$ 4,915
Issuance of common stock for cash, net of transaction expenses	40	—	563	—	563
Common stock issued upon exercise of options on a cashless basis	17	—	—	—	—
Common stock issued upon settlement of restricted stock units	141	—	—	—	—
Issuance of common stock for services	5	—	—	—	—
Common stock issued pursuant to employee stock purchase plan	4	—	53	—	53
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(28)	—	(584)	—	(584)
Common stock repurchased for retirement	(33)	—	—	(330)	(330)
Stock-based compensation	—	—	975	—	975
Net loss	—	—	—	(735)	(735)
Balance, June 30, 2024	11,808	\$ 1	\$ 97,912	\$ (93,056)	\$ 4,857
Issuance of common stock for cash, net of transaction expenses	123	—	2,910	—	2,910
Common stock issued upon exercise of options on a cashless basis	1	—	—	—	—
Common stock issued upon settlement of restricted stock units	117	—	—	—	—
Issuance of common stock for services	4	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(19)	—	(403)	—	(403)
Stock-based compensation	—	—	1,190	—	1,190
Net loss	—	—	—	(1,202)	(1,202)
Balance, September 30, 2024	<u>12,034</u>	<u>\$ 1</u>	<u>\$ 101,609</u>	<u>\$ (94,258)</u>	<u>\$ 7,352</u>

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(in thousands)	Common stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance, December 31, 2022	11,551	\$ 1	\$ 93,070	\$ (82,482)	\$ 10,589
Common stock issued upon settlement of restricted stock units	192	—	—	—	—
Issuance of common stock for services	10	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(56)	—	(258)	—	(258)
Stock-based compensation	—	—	1,118	—	1,118
Net loss	—	—	—	(2,011)	(2,011)
Balance, March 31, 2023	11,697	\$ 1	\$ 93,930	\$ (84,493)	\$ 9,438
Common stock issued upon settlement of restricted stock units	108	—	—	—	—
Issuance of common stock for services	14	—	—	—	—
Common stock issued pursuant to employee stock purchase plan	9	—	36	—	36
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(31)	—	(188)	—	(188)
Stock-based compensation	—	—	1,031	—	1,031
Net loss	—	—	—	(1,973)	(1,973)
Balance, June 30, 2023	11,797	\$ 1	\$ 94,809	\$ (86,466)	\$ 8,344
Common stock issued upon settlement of restricted stock units	94	—	—	—	—
Issuance of common stock for services	8	—	—	—	—
Surrender of stock to cover tax liability on settlement of employee stock-based awards	(23)	—	(112)	—	(112)
Stock-based compensation	—	—	886	—	886
Net loss	—	—	—	(1,355)	(1,355)
Balance, September 30, 2023	11,876	\$ 1	\$ 95,583	\$ (87,821)	\$ 7,763

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)

(in thousands)	Nine months ended September 30,	
	2024	2023
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (2,766)	\$ (5,339)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,764	1,670
Loss on disposal or impairment of long-lived assets	5	220
Stock-based compensation expense	3,048	3,035
Amortization of deferred commissions	27	49
Amortization of debt discount and issuance costs	70	—
Amortization of right-of-use assets	181	278
Change in fair value of contingent consideration	(12)	200
Provision for accounts receivable	150	49
Changes in operating assets and liabilities:		
Accounts receivable	202	960
Prepaid expenses and other assets	(365)	(25)
Accounts payable and accruals	92	(408)
Operating lease liability	(266)	(376)
Deferred revenue	36	(828)
Net cash provided by (used in) operating activities	2,166	(515)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of equipment	(88)	(142)
Software development costs	(1,379)	(1,481)
Patent costs	(13)	(31)
Payment for acquisition	(3,123)	—
Net cash used in investing activities	(4,603)	(1,654)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from common stock offering, net of transaction costs	3,473	—
Proceeds from employee stock purchase plan	53	36
Payments related to settlement of employee shared-based awards	(1,147)	(558)
Settlement of contingent consideration	(1,677)	(908)
Repurchase of common stock	(2,016)	—
Repayments of finance leases	(7)	(31)
Net cash used in financing activities	(1,321)	(1,461)
Net decrease in cash	(3,758)	(3,630)
Cash-beginning of period	9,236	6,904
Cash-end of period	<u>\$ 5,478</u>	<u>\$ 3,274</u>

See Notes to Unaudited Consolidated Financial Statements

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2024
(Unaudited)

NOTE 1 — BASIS OF PRESENTATION

The accompanying unaudited interim consolidated financial statements of AudioEye, Inc. and its wholly-owned subsidiary, ADA Site Compliance, LLC ("we", "our" or the "Company"), have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP" or "GAAP") and the rules of the Securities and Exchange Commission (the "SEC"), and should be read in conjunction with the audited consolidated financial statements and notes thereto contained in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (the "2023 Form 10-K"), as filed with the SEC on March 7, 2024.

In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of financial position and the results of operations for the interim periods presented have been reflected herein. The results of operations for the interim periods are not necessarily indicative of the results to be expected for the full year. Certain information and disclosures normally contained in the audited consolidated financial statements as reported in the Company's Annual Report on Form 10-K have been condensed or omitted in accordance with the SEC's rules and regulations for interim reporting.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Our significant accounting policies are presented in "Note 2 – Significant Accounting Policies" in the 2023 Form 10-K. Users of financial information for interim periods are encouraged to refer to the footnotes to the consolidated financial statements contained in the 2023 Form 10-K when reviewing interim financial results.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, expenses, and the related disclosures at the date of the consolidated financial statements and during the reporting period. On an ongoing basis, management evaluates its estimates and judgments, including those related to stock-based compensation, allowance for doubtful accounts, intangible assets, and contingent consideration. Actual results may differ from these estimates.

Revenue Recognition

We derive our revenue primarily from the sale of internally developed software by a software-as-a-service ("SaaS") delivery model, as well as from professional services, through our direct sales force or through third-party resellers. Our SaaS fees include support and maintenance.

We recognize revenue in accordance with Accounting Standards Codification ("ASC") 606, *Revenue from Contracts with Customers* ("ASC 606"). The core principle of ASC 606 is that an entity recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services.

We determine revenue recognition through the following five steps:

- Identify the contract with the customer;
- Identify the performance obligations in the contract;
- Determine the transaction price;
- Allocate the transaction price to the performance obligations in the contract; and
- Recognize revenue when, or as, the performance obligations are satisfied.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Performance obligations are the unit of accounting for revenue recognition and generally represent the distinct goods or services that are promised to the customer. If we determine that we have not satisfied a performance obligation, we will defer recognition of the revenue until the performance obligation is deemed to be satisfied. SaaS agreements are generally non-cancelable, although clients typically have the right to terminate their contracts for cause if we fail to perform material obligations.

Our SaaS revenue is comprised of fixed subscription fees from customer accounts on our platform related to our software products. Our support revenue is comprised of subscription fees for customers for periodic auditing, human-assisted technological remediations, legal support, and other professional support services. SaaS and support (also referred to as "subscription") revenue is recognized on a ratable basis over the contractual subscription term of the arrangement beginning on the date that our service is made available to the customer. Certain SaaS and support fees are invoiced in advance on an annual, semi-annual, or quarterly basis. Any funds received for services not provided yet are held in deferred revenue and are recorded as revenue when the related performance obligations have been satisfied.

Non-subscription revenue consists primarily of PDF remediation and one-time website and mobile application reporting services, and is recognized upon delivery. Consideration payable under PDF remediation arrangements is based on usage. Consideration payable under non-subscription website and mobile application reporting services arrangements is based on fixed fees.

The following table presents our revenues disaggregated by sales channel:

(in thousands)	<u>Nine months ended September 30,</u>	
	2024	2023
Partner and Marketplace	\$ 14,930	\$ 13,365
Enterprise	10,548	10,081
Total revenues	\$ 25,478	\$ 23,446

The Company records accounts receivable for amounts invoiced to customers for which the Company has an unconditional right to consideration as provided under the contractual arrangement. Deferred revenue includes payments received in advance of performance under the contract and is reported on an individual contract basis at the end of each reporting period. Deferred revenue is classified as current or noncurrent based on the timing of when we expect to recognize revenue.

The table below summarizes our deferred revenue as of September 30, 2024 and December 31, 2023:

(in thousands)	<u>September 30,</u>	
	2024	2023
Deferred revenue - current	\$ 7,587	\$ 6,472
Deferred revenue - noncurrent	8	10
Total deferred revenue	\$ 7,595	\$ 6,482

In the nine-month period ended September 30, 2024, we recognized \$ 6,042,000, or 93%, in revenue from deferred revenue outstanding as of December 31, 2023.

In the three and nine months ended September 30, 2024, we had one customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 15% and 16%, respectively, of our total revenue. In the three and nine months ended September 30, 2023, we had one customer which accounted for approximately 17% and 16%, respectively, of our total revenue.

One major customer represented 16% of total accounts receivable as of each of September 30, 2024 and December 31, 2023.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Deferred Costs (Contract Acquisition Costs)

We capitalize initial and renewal sales commissions in the period the commission is earned, which generally occurs when a customer contract is obtained, and amortize deferred commission costs on a straight-line basis over the expected period of benefit, which we have deemed to be the contract term. As a practical expedient, we expense sales commissions as incurred when the amortization period of related deferred commission costs would have been one year or less.

The table below summarizes the deferred commission costs as of September 30, 2024 and December 31, 2023, which are included in Prepaid expenses and other current assets on our consolidated balance sheets:

(in thousands)	September 30, 2024	December 31, 2023
Deferred costs – current	\$ 19	\$ 20
Deferred costs - noncurrent	50	2
Total deferred costs	\$ 69	\$ 22

Amortization expense associated with sales commissions was included in Selling and marketing expenses on the consolidated statements of operations and totaled \$ 11,000 and \$ 27,000 for the three- and nine-month periods ended September 30, 2024, respectively, and \$ 13,000 and \$ 49,000 for the three- and nine-month periods ended September 30, 2023, respectively.

Business Combinations

The assets acquired, liabilities assumed and any contingent consideration in business combinations are recorded at their estimated fair value on the acquisition date with subsequent changes recognized in earnings. These estimates are inherently uncertain and are subject to refinement. Management develops estimates based on assumptions as a part of the purchase price allocation process to value the assets acquired and liabilities assumed as of the business combination date. As a result, the Company may recognize adjustments to provisional amounts of assets acquired or liabilities assumed in earnings in the reporting period in which the adjustments are determined.

Acquisition-related expenses primarily consist of legal, accounting, and other advisory fees associated and are recorded in the period in which they are incurred.

Debt Discount and Debt Issuance Costs

Costs related to the issuance of debt due to the lender (debt discount) or to third parties (debt issuance costs) are capitalized and amortized to interest expense based on the effective interest method over the term of the related debt. Debt discount and debt issuance costs are presented on the Company's consolidated balance sheets as a direct deduction from the carrying amount of our term loan.

Employee Stock Purchase Plan

In May 2022, the stockholders of the Company approved the Company's Employee Stock Purchase Plan (the "ESPP"), which provides for the issuance of up to 500,000 shares of common stock. Eligible employees may elect to have a percentage of eligible compensation withheld to purchase shares of our common stock at the end of each purchase period. The Company expects each purchase period to be the six month periods ending on June 30 or December 31 of each calendar year. The purchase price per share is expected to equal 85 % of the fair market value of our common stock on the last trading day of the purchase period. Under the ESPP, a participant may not be granted rights to purchase more than \$ 25,000 worth of common stock for each calendar year and no participant may purchase more than 1,500 shares of our common stock (or such other number as the Compensation Committee may designate) on any one purchase date. As of September 30, 2024, 18,960 shares had been issued under the ESPP and 481,040 shares remained available under the plan.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Stock-Based Compensation

The Company periodically issues options, restricted stock units ("RSUs"), and shares of its common stock as compensation for services received from its employees, directors, and consultants. The fair value of the award is measured on the grant date. The fair value amount is then recognized as expense over the requisite vesting period during which services are required to be provided in exchange for the award. We recognize forfeitures as they occur. Stock-based compensation expense is recorded in the same expense classifications in the consolidated statements of operations as if such amounts were paid in cash.

The fair value of options awards is measured on the grant date using a Black-Scholes option pricing model, which includes assumptions that are subjective and are generally derived from external data (such as risk-free rate of interest) and historical data (such as volatility factor and expected term).

We estimate the fair value of restricted stock unit awards with time- or performance-based vesting using the value of our common stock on the grant date. We estimate the fair value of market-based restricted stock unit awards as of the grant date using the Monte Carlo simulation model.

We expense the compensation cost associated with time-based options and RSUs as the restriction period lapses, which is typically a one- to three-year service period with the Company. Compensation expense related to performance-based RSUs is recognized on a straight-line basis over the requisite service period, provided that it is probable that performance conditions will be achieved, with probability assessed on a quarterly basis and any changes in expectations recognized as an adjustment to earnings in the period of the change. Compensation cost is not recognized for service- and performance-based awards that do not vest because service or performance conditions are not satisfied, and any previously recognized compensation cost is reversed. Compensation costs related to awards with market conditions are recognized on a straight-line basis over the requisite service period regardless of whether the market condition is satisfied and is not reversed provided that the requisite service period derived from the Monte-Carlo simulation has been completed. If vesting occurs prior to the end of the requisite service period, expense is accelerated and fully recognized through the vesting date.

The following table summarizes the stock-based compensation expense recorded for the three and nine months ended September 30, 2024 and 2023:

(in thousands)	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Options	\$ —	\$ 20	\$ 5	\$ 136
RSUs	1,077	826	2,743	2,713
Unrestricted shares of common stock	113	40	291	180
Employee stock purchase plan	—	—	9	6
Total	\$ 1,190	\$ 886	\$ 3,048	\$ 3,035

As of September 30, 2024, the unrecognized stock-based compensation expense related to outstanding RSUs totaled \$ 4,925,000 , which may be recognized through July 2027, subject to achievement of service, performance, and market conditions.

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2024
(Unaudited)

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**Earnings (Loss) Per Share ("EPS")**

Basic EPS is calculated by dividing net income (loss) available to common stockholders by the weighted average number of shares of the Company's common stock outstanding during the period. Diluted EPS is calculated based on the net income (loss) available to common stockholders and the weighted average number of shares of common stock outstanding during the period, adjusted for the effects of all potential dilutive common stock issuances related to options and restricted stock units. The dilutive effect of our stock-based awards is computed using the treasury stock method, which assumes all stock-based awards are exercised and the hypothetical proceeds from exercise are used to purchase common stock at the average market price during the period. The incremental shares (i.e., the difference between shares assumed to be issued versus purchased), to the extent they would have been dilutive, are included in the denominator of the diluted EPS calculation. However, when a net loss exists, no potential common stock equivalents are included in the computation of the diluted per-share amount because the computation would result in an anti-dilutive per-share amount.

Potentially dilutive securities outstanding as of September 30, 2024 and 2023, which were excluded from the computation of basic and diluted net loss per share for the periods then ended, are as follows:

(in thousands)	September 30,	
	2024	2023
Options	76	115
Restricted stock units	1,402	1,840
Total	1,478	1,955

The following table summarizes the stock option and RSUs activity for the nine months ended September 30, 2024:

	Options	RSUs
Outstanding at December 31, 2023	112,279	1,707,258
Granted	—	291,402
Exercised/Settled	(29,092)	(493,280)
Forfeited/Expired	(6,740)	(103,867)
Outstanding at September 30, 2024	76,447	1,401,513
Vested at September 30, 2024	76,447	396,861
Unvested at September 30, 2024	—	1,004,652

Stock Repurchases

In the fourth quarter of 2023, the Board of Directors of the Company approved a program to repurchase up to \$ 5 million of its outstanding shares of common stock through December 31, 2025. In 2023, we used \$ 1.12 million of the program to repurchase shares. In the nine months ended September 30, 2024, we used \$ 2.02 million of the program to repurchase shares. As of September 30, 2024, we had \$ 1.86 million remaining for the repurchase of shares.

Shares repurchased by the Company are immediately retired. The Company made an accounting policy election to charge the excess of repurchase price over par value entirely to retained earnings.

Recent Accounting Pronouncements

In December 2023, the Financial Accounting Standards Board ("FASB") issued ASU 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, which requires public entities, on an annual basis, to provide disclosure of specific categories in the rate reconciliation, as well as disclosure of income taxes paid disaggregated by jurisdiction. The ASU is effective for annual periods beginning after December 15, 2024, with early adoption permitted. We plan to adopt ASU 2023-09 in our fiscal year 2025

AUDIOEYE, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
September 30, 2024
(Unaudited)

annual financial statements. The adoption of this ASU will not affect the Company's consolidated results of operations, financial position or cash flows.

NOTE 3 — ACQUISITIONS

ADA Site Compliance, LLC

On September 27, 2024, we entered into a Membership Interest Purchase Agreement and acquired all the outstanding equity interests of ADA Site Compliance, LLC ("ADA Site Compliance"), a Delaware limited liability company which provides audits and best practices to help organizations create websites that are accessible and compliant to Web Content Accessibility Guidelines ("WCAG") standards. The aggregate consideration for the purchase of ADA Site Compliance was approximately \$ 7.0 million (at fair value), consisting of \$ 3.4 million cash payment at closing, \$ 2.35 million in unsecured promissory notes payable to the sellers within 60 days following the closing (collectively, the "Note Payable"), and an estimated \$ 1.25 million in aggregate contingent consideration to be paid in cash in the second quarter of 2026 if and to the extent certain earn-outs are satisfied. Actual aggregate cash consideration is based on satisfaction of the earn-out conditions related to certain annual recurring revenue ("ARR") and non-recurring revenue ("NRR") targets measured as of December 31, 2025 and may differ from estimated contingent consideration at acquisition.

We accounted for the acquisition of ADA Site Compliance as a business combination in accordance with FASB ASC 805, "Business Combinations" ("ASC 805"). Accordingly, under the acquisition method of accounting, the preliminary purchase price was allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values as of the acquisition date as follows:

(in thousands)	Balance at September 27, 2024
Assets purchased:	
Cash	\$ 284
Accounts receivable	400
Other assets	15
Customer relationships (1)	5,100
Goodwill (2)	2,614
Total assets purchased	8,413
Liabilities assumed:	
Accounts payable and accrued liabilities	331
Deferred revenue	1,077
Total liabilities assumed	1,408
Net assets acquired	7,005
Consideration:	
Cash paid	3,407
Note payable (3)	2,348
Contingent consideration liability (4)	1,250
Total consideration	\$ 7,005

(1) Represents an acquired intangible asset that will be amortized on a straight-line basis over its estimated useful life of 8 years .

(2) Goodwill represents the excess of purchase price over the estimated fair value of net tangible and intangible assets acquired.

(3) Represents the fair value of the Note Payable in the aggregate principal amount of \$ 2,400,000 . See Note 5 – Debt for additional information.

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(4) The fair value of the contingent consideration liability under the earn-out was determined using the Monte-Carlo simulation. The key assumptions used in the Monte-Carlo simulation were as follows: ARR and NRR metrics for the earn-out period, NRR discount rate of 7.5 %, ARR discount rate of 6.5 %, expected NRR volatility of 12.5 %, expected ARR volatility of 7.5 %, risk-free rate of 3.9 %, buyer specific counterparty credit risk of 14.25 %, and discount period of 1.62 years.

The preliminary purchase price allocations to assets acquired and liabilities assumed are subject to adjustments as information is obtained about facts and circumstances that existed at the acquisition date including, but not limited to, certain customary post-closing adjustments such as the finalization of working capital. The final fair value determination of the assets acquired and liabilities assumed will be completed prior to one year from the acquisition date, consistent with ASC 805.

In the three and nine months ended September 30, 2024, the Company incurred \$ 394,000 of transaction costs related to the acquisition of ADA Site Compliance, which is included on our Consolidated Statement of Operations within General and administrative expenses.

Pro Forma Financials

The following unaudited pro forma results of operations for the three and nine months ended September 30, 2024 and 2023 assumes ADA Site Compliance had been acquired on January 1, 2023.

The pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the results of operations that would have been realized if the acquisition had been completed on January 1, 2023, nor does it purport to project the results of operations of the combined Company in future periods. The pro forma financial information does not give effect to any anticipated integration costs savings or expenses related to the acquired company.

(in thousands)	Pro Forma Combined Financials (unaudited)			
	Three months ended September 30,		Nine months ended September 30,	
	2024	2023	2024	2023
Revenue	\$ 9,471	\$ 8,408	\$ 27,127	\$ 24,981
Net loss attributed to common shareholders	(660)	(1,264)	(1,994)	(5,110)

For purposes of the pro forma disclosures above, results for the three and nine months ended September 30, 2024 exclude \$ 394,000 in acquisition expense.

Bureau of Internet Accessibility Inc.

On March 9, 2022, we entered into a Stock Purchase Agreement to acquire all the outstanding equity interests of Bureau of Internet Accessibility Inc. ("BOIA"), a Delaware corporation which provides web accessibility services including audits, training, remediation and implementation support. The aggregate consideration for the purchase of BOIA was approximately \$ 7.5 million (at fair value), consisting of \$ 5.1 million cash payment at closing, \$ 0.2 million cash received in the third quarter of 2022 resulting from net working capital adjustments, and an estimated \$ 2.6 million in aggregate contingent consideration paid in cash following the one- and two-year anniversary of the closing date. Actual aggregate cash consideration was based on BOIA's revenues for 2022 and 2023. In the first quarter of 2023, we made a \$ 974,000 cash payment towards the contingent consideration liability. In the second quarter of 2024, we made a \$ 2,387,000 cash payment to settle the contingent consideration associated with the BOIA acquisition in full.

We accounted for the acquisition of BOIA as business combination in accordance with ASC 805. Accordingly, under the acquisition method of accounting, we allocated the purchase price to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values, and recognized goodwill for the excess of purchase price over the estimated fair value of net tangible and intangible assets acquired.

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Acquired intangible assets are amortized on a straight-line basis over their estimated useful lives of 2 to 7 years. In the nine months ended September 30, 2024 and 2023, amortization expense associated with acquired intangible assets totaled \$ 522,000 and \$ 536,000, respectively.

For the nine months ended September 30, 2024 and 2023, we recorded \$ 12,000 and \$(200,000), respectively, in income (expense) related to the change in the fair value of contingent consideration, which is included in General and administrative in the accompanying Consolidated Statements of Operations.

NOTE 4 — LEASE LIABILITIES AND RIGHT OF USE ASSETS

We determine whether an arrangement is a lease at inception. Right-of-use assets represent our right to use an underlying asset for the lease term, and lease liabilities represent our obligation to make lease payments arising from the lease.

Finance Leases

The Company had finance leases to purchase computer equipment that expired in the second quarter of 2024. The amortization expense of the leased equipment was included in depreciation expense. As of September 30, 2024 and December 31, 2023, the Company's outstanding finance lease obligations totaled zero and \$ 7,000, respectively. The effective interest rate of the finance leases was estimated at 6.0 % based on the implicit rate in the lease agreements.

Operating Leases

Operating lease right-of-use assets and liabilities are recognized at commencement date based on the present value of lease payments over the expected lease term. Since our lease arrangements do not provide an implicit rate, we use our estimated incremental borrowing rate for the expected remaining lease term at commencement date in determining the present value of future lease payments. Operating lease expense is recognized on a straight-line basis over the lease term.

The Company has operating leases for office space in Tucson, Arizona, and New York, New York. The lease for the principal office located in Tucson consists of 627 square feet and ends in October 2025. The lease for the New York office, which consists of approximately 5,000 square feet, commenced in January 2022 and will expire in December 2026.

In the second quarter of 2024, the Company entered into an agreement to sublease office space in Miami Beach, Florida, on a month-to-month basis. In addition, the Company entered into membership agreements to occupy shared office space in Lehi, Utah, Tucson, Arizona, Portland, Oregon, and Seattle, Washington. Because these agreements do not qualify as a lease under ASC 842, we expense the related rent and membership fees as they are incurred.

In the first quarter of 2023, we closed our Marietta, Georgia office. As a result of abandoning the office space prior to its lease expiration in August 2024, we wrote off the associated right-of-use asset in full and recognized a \$ 146,000 loss on impairment, which is included in General and administrative in the accompanying Consolidated Statement of Operations. As of September 30, 2024, the lease liability related to the Marietta, GA office was zero.

The Company made operating lease payments in the amount of \$ 305,000 and \$ 396,000 during the nine months ended September 30, 2024 and 2023, respectively.

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NOTE 4 — LEASE LIABILITIES AND RIGHT OF USE ASSETS (continued)

The following summarizes the total lease liabilities and remaining future minimum lease payments at September 30, 2024 (in thousands):

Year ending December 31,	<u>Operating Leases</u>
2024 (3 months remaining)	\$ 53
2025	219
2026	225
Total minimum lease payments	497
Less: present value discount	(34)
Total lease liabilities	463
Current portion of lease liabilities	194
Long term portion of lease liabilities	\$ 269

The following summarizes expenses associated with our finance and operating leases for the nine months ended September 30, 2024 and 2023:

(in thousands)	<u>Nine months ended September 30,</u>	
	<u>2024</u>	<u>2023</u>
Finance lease expenses:		
Depreciation expense	\$ 6	\$ 26
Interest on lease liabilities	—	1
Total Finance lease expense	6	27
Operating lease expense	221	388
Short-term lease and related expenses	318	204
Total lease expenses	\$ 545	\$ 619

The following table provides information about the remaining lease terms and discount rates applied as of September 30, 2024 and 2023:

	<u>September 30,</u>	
	<u>2024</u>	<u>2023</u>
Weighted average remaining lease term (years)		
Operating Leases	2.25	2.70
Finance Leases	—	0.57
Weighted average discount rate (%)		
Operating Leases	6.00	6.00
Finance Leases	—	6.00

NOTE 5 — DEBT

Term Loan

On November 30, 2023, the Company entered into a Loan and Security Agreement (the “Loan Agreement”) with SG Credit Partners, Inc., a Delaware corporation (the “Lender”). The Loan Agreement provides for a \$ 7.0 million term loan, which is due and payable on the maturity date of November 30, 2026. The interest rate is 6.25 % in excess of the base rate, which is defined as the greater of the prime rate and 7.00 % per annum. Interest is payable in cash on a monthly basis.

The Company paid a commitment fee equal to \$ 105,000 on the closing date and is required to pay an exit fee equal to \$ 105,000 upon the earlier of repayment in full of the obligations, the maturity date and the occurrence of a liquidity event. The commitment and exit fees payable to the lender were recorded as debt discount. The exit fee was included within long term liabilities on our consolidated

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balance sheet as of September 30, 2024. The Company also incurred \$ 71,000 in third-party expenses in connection with the term loan, which were recorded as debt issuance costs. Debt discount and debt issuance costs are presented as a direct deduction from the carrying amount of our term loan and are amortized to interest expense over the term of the loan using the effective interest method. In the nine months ended September 30, 2024, amortization of debt discount and debt issuance costs totaled \$ 52,000 and \$ 18,000 , respectively.

On September 27, 2024, concurrently with the acquisition of ADA Site Compliance, we entered into a First Amendment to the Loan Agreement. Pursuant to the First Amendment, the Loan Agreement was amended to allow the Company to (a) make earn-out payments in accordance with the terms and conditions of the purchase agreement for ADA Site Compliance, so long as no event of default has occurred and is continuing immediately prior to such payment or would exist immediately after making such payment and we have liquidity of at least \$ 3.0 million after making such payment, and (b)make payments on the Note Payable, so long as no event of default has occurred and is continuing immediately prior to such payment or would exist immediately after making such payment and we have liquidity of at least \$ 3.0 million after making such payment.

The Loan Agreement secured by substantially all of our assets and contains certain customary financial covenants, including the requirements that the Company maintain (i) minimum liquidity of \$ 2.0 million, subject to a higher minimum liquidity requirement in order to make certain payments; and (ii) minimum monthly recurring revenue levels measured on a trailing three month average basis as of the last day of each calendar month. The minimum monthly recurring revenue levels commence at \$ 2.3 million and increase for each month after the month ending November 30, 2024 to the greater of \$ 2.3 million and 105 % of Borrowers' monthly recurring revenue for the applicable month in the prior year. The Company was in compliance with all applicable covenants at September 30, 2024.

As of September 30, 2024, the outstanding principal balance of our term loan totaled \$ 7,000,000 and accrued interest thereon totaled \$ 85,000 .

Note Payable

On September 27, 2024, in connection with the acquisition of ADA Site Compliance, the Company issued the Note Payable, unsecured non-interest bearing promissory notes in the aggregate principal amount of \$ 2,400,000 . The Note Payable matures sixty days from the issuance date and may be prepaid without penalty. As of September 30, 2024, the outstanding principal balance of the Note Payable included on our consolidated balance sheets totaled \$ 2,348,000 .

NOTE 6 — COMMITMENTS AND CONTINGENCIES

Litigation

We may become involved in various routine disputes and allegations incidental to our business operations. While it is not possible to determine the ultimate disposition of these matters, management believes that the resolution of any such matters, should they arise, is not likely to have a material adverse effect on our financial position or results of operations.

NOTE 7 — SUBSEQUENT EVENTS

We have evaluated subsequent events occurring after September 30, 2024, and based on our evaluation we did not identify any events that would have required recognition or disclosure in these consolidated financial statements.

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

The following Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A, should be read in conjunction with our consolidated financial statements and related notes in Part I, Item 1 of this report.

As used in this quarterly report, the terms "we," "us," "our" and similar references refer to AudioEye, Inc., unless otherwise indicated.

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws, including Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In some cases, you may be able to identify forward-looking statements by terms such as "may," "should," "will," "forecasts," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "projects," "potential" or "continue," the negative of these terms and other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements, and are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions and speak only as of the date on which they are made.

Because these forward-looking statements involve known and unknown risks and uncertainties, there are important factors that could cause actual results, events or developments to differ materially from those expressed or implied by these forward-looking statements, including our plans, objectives, expectations and intentions and other factors discussed in "Part I, Item 1A. Risk Factors" contained in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q. Risk factors that could cause actual results to differ from those contained in the forward-looking statements include but are not limited to risks related to:

- the uncertain market acceptance of our existing and future products;
- our need for, and the availability of, additional capital in the future to fund our operations and the development of new products;
- the success, timing and financial consequences of new strategic relationships or licensing agreements we may enter into;
- rapid changes in Internet-based applications that may affect the utility and commercial viability of our products;
- the timing and magnitude of expenditures we may incur in connection with our ongoing product development activities;
- judicial applications of accessibility laws to the internet;
- the level of competition from our existing competitors and from new competitors in our marketplace; and
- the regulatory environment for our products and services.

Readers of this report are cautioned not to rely on these forward-looking statements, since there can be no assurance that these forward-looking statements will prove to be accurate. Forward-looking statements speak only as of the date they are made, and we expressly disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any further disclosures we make on related subjects in our subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. This cautionary note is applicable to all forward-looking statements contained in this report.

AudioEye Solutions

At its core, AudioEye's offering provides an always-on testing, remediation, and monitoring solution that continually improves conformance with Web Content Accessibility Guidelines ("WCAG"). This in turn helps businesses and organizations comply with WCAG standards as well as applicable U.S. and foreign accessibility laws. Our technology is capable of immediately identifying and fixing most of the common accessibility errors and addresses a wide range of disabilities including dyslexia, color blindness, epilepsy and more. AudioEye also offers additional solutions to provide for enhanced compliance and accessibility, including periodic auditing, human assisted technological remediations and legal support services. Our solutions may be purchased through a subscription service on a month-to-month basis or with one or multi-year terms. We also offer PDF remediation services and mobile application and audit reporting services to help our customers with their digital accessibility needs.

Intellectual Property

Our intellectual property is primarily comprised of copyrights, trademarks, trade secrets, issued patents and pending patent applications. We have a patent portfolio comprised of twenty-three (23) issued patents in the United States and three (3) pending US patent applications. The commercial value of these patents is unknown.

We plan to continue to invest in research and development and expand our portfolio of proprietary intellectual property.

Our Annual Report filed on Form 10-K for the year ended December 31, 2023 as filed with the SEC on March 7, 2024 provides additional information about our business and operations.

Legal and Regulatory Framework Update

On April 24, 2024, the U.S. Department of Justice ("DOJ") published a rule to add specific requirements about web and mobile application accessibility under Title II of the ADA that would apply to state and local governments. On May 9, 2024, the U.S. Department of Health and Human Services ("HHS") published a rule to add, among other things, specific requirements about web and mobile application accessibility under Section 504 of the Rehabilitation Act that would apply to recipients of Federal financial assistance.

Executive Overview

AudioEye is an industry-leading digital accessibility platform delivering Americans with Disabilities Act ("ADA") and WCAG compliance at scale. Our solutions advance accessibility with patented technology that reduces barriers, expands access for individuals with disabilities, and enhances the user experience for a broader audience. In the three and nine months ended September 30, 2024, we continued to focus on product innovation, expanding revenue and managing expenses.

We have two sales channels to deliver our product, the Partner and Marketplace channel and the Enterprise channel. AudioEye continues to focus on recurring revenue growth in both channels, while still offering our website and mobile application reporting services and PDF remediation services that provide non-recurring revenue.

For the nine months ended September 30, 2024, total revenue increased by 9% over the prior year comparable period. As of September 30, 2024, Annual Recurring Revenue ("ARR") was approximately \$36.2 million, which represented an increase of 19% year-over-year. Refer to Other Key Operating Metrics below for details on how we calculate ARR.

As of September 30, 2024, AudioEye had approximately 126,000 customers, an 18% increase from 107,000 customers at September 30, 2023. The increase in customer count is attributed to both our Partner and Marketplace and Enterprise channels.

In the nine months ended September 30, 2024, revenue from our Partner and Marketplace channel grew 12% over the prior year comparable period. This channel represented about 58% of ARR at the end of September 2024. In nine months ended September 30, 2024, total Enterprise channel revenue grew 5% over the prior year comparable period. The Enterprise channel represented about 42% of ARR at the end of September 2024.

We had one customer (including the customer's affiliates reflecting multiple contracts and a partnership with the Company) which accounted for approximately 16% of our total revenue in each of the nine months ended September 30, 2024 and 2023.

The Company continued to invest in research and development in the third quarter of 2024. Total research and development cost, as defined under Research and Development Expenses section in the Results of Operations below, was 20% of total revenue in the nine months ended September 30, 2024. Total research and development cost decreased from the prior year comparable period primarily due to the completion of significant initiatives in research and development.

In the nine months ended September 30, 2024, selling and marketing expense decreased from the prior year comparable period. This decrease was mainly driven by efficiencies in selling and marketing. The increase in general and administrative expenses in the nine months ended September 30, 2024 was due primarily to transaction costs incurred in connection with the acquisition of ADA Site Compliance, as well as an increase in litigation expenses.

We provide further commentary on our Results of Operation below.

Results of Operations

Our unaudited consolidated financial statements are stated in United States Dollars and are prepared in accordance with United States Generally Accepted Accounting Principles ("U.S. GAAP" or "GAAP"). The discussion of the results of our operations compares the three and nine months ended September 30, 2024 with the three and nine months ended September 30, 2023.

Our results of operations in these interim periods are not necessarily indicative of the results which may be expected for any subsequent period. Due to rounding, numbers presented throughout this document may not add up precisely to the totals provided and percentages may not precisely reflect the absolute figures.

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
Revenue	\$ 8,925	\$ 7,838	\$ 1,087	14 %
Cost of revenue	(1,823)	(1,788)	(35)	2 %
Gross profit	7,102	6,050	1,052	17 %
Operating expenses:				
Selling and marketing	3,148	2,891	257	9 %
Research and development	1,151	1,955	(804)	(41)%
General and administrative	3,794	2,594	1,200	46 %
Total operating expenses	8,093	7,440	653	9 %
Operating loss	(991)	(1,390)	399	(29)%
Interest income (expense), net	(211)	35	(246)	(703)%
Net loss	\$ (1,202)	\$ (1,355)	\$ 153	(11)%

(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
Revenue	\$ 25,478	\$ 23,446	\$ 2,032	9 %
Cost of revenue	(5,348)	(5,277)	(71)	1 %
Gross profit	20,130	18,169	1,961	11 %
Operating expenses:				
Selling and marketing	9,122	9,387	(265)	(3)%
Research and development	3,694	5,734	(2,040)	(36)%
General and administrative	9,433	8,520	913	11 %
Total operating expenses	22,249	23,641	(1,392)	(6)%
Operating loss	(2,119)	(5,472)	3,353	(61)%
Interest income (expense), net	(647)	133	(780)	(586)%
Net loss	\$ (2,766)	\$ (5,339)	\$ 2,573	(48)%

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Revenue

The following tables present our revenues disaggregated by sales channel:

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
Partner and Marketplace	\$ 5,226	\$ 4,605	\$ 621	13 %
Enterprise	3,699	3,233	466	14 %
Total revenues	\$ 8,925	\$ 7,838	\$ 1,087	14 %

(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
Partner and Marketplace	\$ 14,930	\$ 13,365	\$ 1,565	12 %
Enterprise	10,548	10,081	467	5 %
Total revenues	\$ 25,478	\$ 23,446	\$ 2,032	9 %

Partner and Marketplace channel consists of our CMS partners, platform & agency partners, authorized resellers and the Marketplace. This channel serves small & medium sized businesses that are on a partner or reseller's web-hosting platform or that purchase our solutions from our Marketplace.

Enterprise channel consists of our larger customers and organizations, including those with non-platform custom websites, who generally engage directly with AudioEye sales personnel for custom pricing and solutions. This channel also includes federal, state and local government agencies and revenue attributable to ADA Site Compliance, which was acquired in September 2024.

For the three and nine months ended September 30, 2024, total revenue increased by 14% and 9%, respectively, over the prior year comparable periods. The increase in Partner and Marketplace channel revenue for the three and nine months ended September 30, 2024 was primarily due to continued expansion with existing partners. The increase in Enterprise channel revenue for the three and nine months ended September 30, 2024 was driven primarily by an increase in Enterprise customers.

Cost of Revenue and Gross Profit

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
Revenue	\$ 8,925	\$ 7,838	\$ 1,087	14 %
Cost of Revenue	(1,823)	(1,788)	(35)	2 %
Gross profit	\$ 7,102	\$ 6,050	\$ 1,052	17 %

(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
Revenue	\$ 25,478	\$ 23,446	\$ 2,032	9 %
Cost of Revenue	(5,348)	(5,277)	(71)	1 %
Gross profit	\$ 20,130	\$ 18,169	\$ 1,961	11 %

Cost of revenue consists primarily of compensation and related benefits costs for our customer experience team, as well as a portion of our technology operations team that supports the delivery of our services, fees paid to our managed hosting and other third-party service providers, amortization of capitalized software development costs and patent costs, and allocated overhead costs.

For the three and nine months ended September 30, 2024, cost of revenue remained consistent with the prior year comparable periods.

For the three and nine months ended September 30, 2024, gross profit increased by 17% and 11%, respectively, over the prior year comparable periods. The increase in gross profit was a result of increased revenue.

Selling and Marketing Expenses

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
Selling and marketing	\$ 3,148	\$ 2,891	\$ 257	9 %
(in thousands)				
(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
Selling and marketing	\$ 9,122	\$ 9,387	\$ (265)	(3)%

Selling and marketing expenses consist primarily of compensation and benefits related to our sales and marketing staff, as well as third-party advertising and marketing expenses.

For the three months ended September 30, 2024, selling and marketing expenses increased by 9% over the prior year comparable period. The increase in selling and marketing expenses resulted primarily from higher third-party marketing and stock compensation expense. For the nine months ended September 30, 2024, selling and marketing expenses decreased by 3% over the prior year comparable period. This decrease resulted primarily from a reduction in online media and third-party marketing expenses.

Research and Development Expenses

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
Research and development expense	\$ 1,151	\$ 1,955	\$ (804)	(41)%
Plus: Capitalized research and development cost	432	482	(50)	(10)%
Total research and development cost	\$ 1,583	\$ 2,437	\$ (854)	(35)%
(in thousands)				
(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
Research and development expense	\$ 3,694	\$ 5,734	\$ (2,040)	(36)%
Plus: Capitalized research and development cost	1,379	1,481	(102)	(7)%
Total research and development cost	\$ 5,073	\$ 7,215	\$ (2,142)	(30)%

Research and development ("R&D") expenses consist primarily of compensation and related benefits, independent contractor costs, and an allocated portion of general overhead costs related to our employees involved in research and development activities. Total research and development cost includes the amount of research and development expense reported within operating expenses as well as development cost that was capitalized during the fiscal period.

For the three and nine months ended September 30, 2024, research and development expense decreased by 41% and 36%, respectively, from the prior year comparable periods. These decreases were driven by lower personnel cost associated with a realignment in our product and development teams following the completion of significant initiatives in R&D. For the three and nine months ended September 30, 2024, capitalized research and development cost decreased by 10% and 7%, respectively, over the prior year comparable periods. These decreases to capitalized research cost were the result of engineering personnel spending less time on product development than in the prior year comparable periods. For the three and nine months ended September 30, 2024, total research and development cost, which includes both R&D expenses and capitalized R&D costs, decreased by 35% and 30%, respectively, from the prior year comparable periods.

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General and Administrative Expenses

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
General and administrative	\$ 3,794	\$ 2,594	\$ 1,200	46 %
(in thousands)				
(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
General and administrative	\$ 9,433	\$ 8,520	\$ 913	11 %

General and administrative expenses consist primarily of compensation and benefits related to our executives, directors and corporate support functions, general corporate expenses including legal fees, occupancy and transaction costs.

For the three and nine months ended September 30, 2024, general and administrative expenses increased by 46% and 11%, respectively, over the prior year comparable periods. The increases in general and administrative expenses were due primarily to transaction costs incurred in connection with the acquisition of ADA Site Compliance, as well as an increase in litigation expenses. For the three and nine months ended September 30, 2024, litigation expenses totaled \$840,000 and \$1,339,000, respectively.

Interest Income (Expense)

(in thousands)	Three months ended September 30,		Change	
	2024	2023	\$	%
Interest income (expense), net	\$ (211)	\$ 35	\$ (246)	(703)%
(in thousands)				
(in thousands)	Nine months ended September 30,		Change	
	2024	2023	\$	%
Interest income (expense), net	\$ (647)	\$ 133	\$ (780)	(586)%

For the three and nine months ended September 30, 2024, interest expense, net consisted primarily of interest on our term loan borrowed in the fourth quarter of 2023, which was partially offset by interest income from investment in money market funds. For the three and nine months ended September 30, 2023, interest income, net consisted primarily of income from investment in money market funds.

Other Key Operating Metrics

We consider annual recurring revenue ("ARR") as a key operating metric and a key indicator of our overall business. We also use ARR as one of the primary methods for planning and forecasting overall expectations and for evaluating, on at least a quarterly and annual basis, actual results against such expectations.

We define ARR as the sum of (i) for our Enterprise channel, the total of the annualized recurring fee at the date of determination under each active contract, plus (ii) for our Partner and Marketplace channel, the annual or monthly recurring fee for all active customers at the date of determination, in each case, assuming no changes to the subscription, multiplied by 12 if applicable. Recurring fees are defined as revenues expected to be generated from services typically offered as a subscription service or annual service offering such as our automation and platform, periodic auditing, human-assisted technological fixes, legal support and professional service offerings and other services that reoccur on a multi-year contract. This determination includes both annual and monthly contracts for recurring products. Some of our contracts are terminable prior to the expected term, which may impact future ARR. ARR excludes non-recurring fees, which are defined as revenue expected to be generated from services typically not offered as a subscription service or annual service offering such as our PDF remediation services business, one-time mobile application reports, and other miscellaneous services that are offered as non-subscription services or are expected to be one-time in nature. As of September 30, 2024, ARR was \$36.2 million, which represents an increase of 19% year-over-year, driven by growth in both our Partner and Marketplace channel and Enterprise channel.

Liquidity and Capital Resources

Working Capital

(in thousands)	September 30, 2024	December 31, 2023
Current assets	\$ 11,396	\$ 14,776
Current liabilities	(13,610)	(11,529)
Working capital	\$ (2,214)	\$ 3,247

As of September 30, 2024, we had \$5,478,000 in cash and working capital of (\$2,214,000). The \$5.5 million decrease in working capital in the nine months ended September 30, 2024 was primarily due to the acquisition of ADA Site Compliance, for which we made an initial payment of \$3.1 million, net of cash received, and recognized \$2.3 million in noncurrent note payable.

In November 2023, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$5 million of our common stock through December 31, 2025. The stock repurchase program may be suspended or discontinued at any time and does not commit the Company to repurchase any dollar amount or particular number of shares of stock. Shares repurchased under the program are subsequently retired and restored to the status of authorized but unissued shares of common stock. In the nine months ended September 30, 2024, we paid \$2.02 million in cash to repurchase 299,371 shares of our common stock. As of September 30, 2024, we had \$1.86 million remaining for the repurchase of shares.

In the second quarter of 2024, the Company initiated an At The Market offering ("ATM offering"), under which the Company may offer and sell shares of its common stock having an aggregate offering price of up to \$7.0 million from time to time. As of September 30, 2024, we had issued 162,524 shares of our common stock and raised \$3,473,000, net of transaction expenses, under the ATM offering.

In the second quarter of 2024, we made a \$2.4 million cash payment to settle the contingent consideration associated with the BOIA acquisition in full.

As of September 30, 2024, we had \$7.0 million in noncurrent term loan which matures on November 30, 2026. As of September 30, 2024, we had Note Payable in the aggregate principal amount of \$2.4 million, which matures on November 26, 2024.

As of September 30, 2024, we had no off-balance sheet arrangements, and we believe that the Company has sufficient liquidity to continue as a going concern through the next twelve months.

While the Company has been successful in raising capital, there is no assurance that it will be successful at raising additional capital in the future. Additionally, if the Company's plans are not achieved and/or if significant unanticipated events occur, the Company may have to further modify its business plan, which may require us to raise additional capital or reduce expenses.

Cash Flows

(in thousands)	Nine months ended September 30,	
	2024	2023
Net cash provided by (used in) operating activities	\$ 2,166	\$ (515)
Net cash used in investing activities	(4,603)	(1,654)
Net cash used in financing activities	(1,321)	(1,461)
Net decrease in cash	\$ (3,758)	\$ (3,630)

For the nine months ended September 30, 2024, in relation to the prior year comparable period, cash provided by operating activities increased primarily due to increased revenue, cost efficiencies associated with lower personnel expense following a realignment in our product and development teams, as well as lower online media and third-party marketing expenses.

For the nine months ended September 30, 2024, in relation to the prior year comparable period, cash used in investing activities increased primarily due to the acquisition of ADA Site Compliance, for which we paid \$3.1 million, net of cash acquired.

For the nine months ended September 30, 2024, in relation to the prior year comparable period, cash used in financing activities decreased primarily due to capital raised under the ATM Offering initiated in the second quarter of 2024, under which we issued 162,524 shares of our common stock and raised \$3,473,000, net of transaction expenses. The decrease was partially offset by common stock repurchases totaling \$2.02 million, as well as higher payouts towards the contingent consideration in connection with the acquisition of BOIA. In the nine months ended September 30, 2024, payments towards this contingent consideration totaled \$2,387,000, of which \$1,677,000 and \$710,000 were classified as cash used in financing and operating activities, respectively. In the nine months ended September 30, 2023, payments towards this contingent consideration totaled \$974,000, of which \$908,000 and \$66,000 were classified as cash used in financing and operating activities, respectively.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with the accounting principles generally accepted in the United States. The preparation of consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported and disclosed in our consolidated financial statements and the accompanying notes. Actual results could differ materially from these estimates under different assumptions or conditions.

Our critical accounting estimates, as described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, relate to stock-based compensation and goodwill, intangible assets and contingent consideration recognized in connection with a business combination. There have been no material changes to our critical accounting policies and estimates as disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures that are designed to ensure that there is reasonable assurance that the information required to be disclosed in the Company's reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Principal Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure based on the definition of "disclosure controls and procedures" in Exchange Act Rules 13a-15(e) and 15d-15(e). In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, projections of any evaluation of effectiveness of our disclosure controls and procedures to future periods are subject to the risk that controls or procedures may become inadequate because of changes in conditions, or that the degree of compliance with the controls or procedures may deteriorate.

As of the end of the period covered by this report, an evaluation was performed under the supervision and with the participation of the Company's senior management, including the Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), of the effectiveness of the design and operation of the Company's disclosure controls and procedures to provide reasonable assurance of achieving the desired objectives of the disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of September 30, 2024.

Changes in Internal Controls over Financial Reporting

During the quarter ended September 30, 2024, there were no material changes in our internal control over financial reporting during the most recently completed fiscal quarter that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

Item 5. Other Information

Rule 10b5-1 Trading Plans

During the three months ended September 30, 2024, no director or executive officer adopted, modified or terminated a "10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement", as each term is defined in Item 408(a) of Regulation S-K.

PART II — OTHER INFORMATION**Item 1. Legal Proceedings**

We may become involved in various routine disputes and allegations incidental to our business operations. While it is not possible to determine the ultimate disposition of these matters, our management believes that the resolution of any such matters, should they arise, is not likely to have a material adverse effect on our financial position or results of operations.

Item 1A. Risk Factors

You should carefully consider the factors discussed in Part I, Item 1A "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2023 ("2023 Form 10-K"), which could materially affect our business, financial condition and results of operations. There have been no material changes to the risk factors set forth in the 2023 Form 10-K. The risks described in our 2023 Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.

Item 2. Issuer Purchases of Equity Securities

The following table sets forth information with respect to our repurchases of common stock during the three months ended September 30, 2024:

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares (or Approximate Dollar Value) that May Yet Be Purchased under the Plans or Programs (2)
July 1 - July 31:				
Employee transactions (1)	2,006	\$ 20.68	—	\$ —
August 1 - August 31:				
Employee transactions (1)	5,990	22.50	—	—
September 1 - September 30:				
Employee transactions (1)	10,704	21.71	—	—
Total:				
Employee transactions (1)	18,700	\$ 21.85	—	\$ —
Share repurchase program (2)	—	\$ —	—	\$ 1,860,000

(1) Includes shares surrendered by employees to satisfy tax withholding obligations in connection with the settlement of restricted stock units, exercise of stock options, or issuance of unrestricted shares of common stock.

(2) In November 2023, the Board of Directors adopted a share repurchase program authorizing the repurchase of up to \$5 million of our common stock through December 31, 2025. Shares repurchased under the program are subsequently retired. The average price paid per share includes any broker commissions.

Item 6. Exhibits

Incorporation by Reference					
Exhibit No.	Description	Form	Date of Filing	Exhibit No.	Filed Herewith
3.1	Restated Certificate of Incorporation of AudioEye, Inc., dated as of May 24, 2024	8-K	May 24, 2024	3.3	
3.2	By-Laws of AudioEye, Inc. (as amended as of May 22, 2024)	10-Q	July 29, 2024	3.3	
10.1	Membership Interest Purchase Agreement, by and among AudioEye, Inc., ADA Site Compliance, LLC, the Sellers listed on the signature pages thereto, and Scott Trachtenberg, in his capacity as Sellers' Representative, dated as of September 27, 2024, for the acquisition of ADA Site Compliance, LLC	8-K	September 30, 2024	10.1	
10.2	First Amendment, Consent and Joinder to Loan and Security Agreement, by and between AudioEye, Inc., ADA Site Compliance, LLC, and SG Credit Partners, Inc., dated as of September 27, 2024	8-K	September 30, 2024	10.2	
31.1	Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				X
31.2	Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				X
32.1	Certification of the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				X
101.INS	Inline XBRL Instance Document				
101.SCH	Inline XBRL Taxonomy Extension Schema Document				X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document				X
104	Cover Page Interactive Data File - The cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				

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.

AUDIOEYE, INC.

Date: November 7, 2024 _____ By: /s/ David Moradi _____

David Moradi
Principal Executive Officer

Date: November 7, 2024 _____ By: /s/ Kelly Georgevich _____

Kelly Georgevich
Principal Financial Officer

CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Moradi, Principal Executive Officer of AudioEye, Inc. (the "Registrant"), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended September 30, 2024 of AudioEye, Inc. (the "Quarterly Report");

2. Based on my knowledge, this Quarterly 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 Quarterly Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Quarterly 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 Quarterly Report;

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

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiary, is made known to us by others within those entities, particularly during the period in which this Quarterly 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 Quarterly Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Quarterly 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 7, 2024

By: /s/ David Moradi

Name: David Moradi

Title: Principal Executive Officer

CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kelly Georgevich, Principal Financial Officer of AudioEye, Inc. (the "Registrant"), certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended September 30, 2024 of AudioEye, Inc. (the "Quarterly Report");
2. Based on my knowledge, this Quarterly 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 Quarterly Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Quarterly 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 Quarterly Report;
4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiary, is made known to us by others within those entities, particularly during the period in which this Quarterly 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 Quarterly Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Quarterly 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 7, 2024

By: */s/ Kelly Georgevich*

Name: Kelly Georgevich

Title: Principal Financial Officer

CERTIFICATION UNDER SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing by AudioEye, Inc. (the “Registrant”) of its Quarterly Report on Form 10-Q for the period ended September 30, 2024 (the “Quarterly Report”) with the Securities and Exchange Commission, we, David Moradi and Kelly Georgevich, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(i) The Quarterly Report fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

A signed original of this written statement required by Section 906 has been provided to the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.

Date: November 7, 2024

By:/s/ *David Moradi*

Name: David Moradi

Title: Principal Executive Officer

Date: November 7, 2024

By:/s/ *Kelly Georgevich*

Name: Kelly Georgevich

Title: Principal Financial Officer
