

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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

OR

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

For the transition period from _____ to _____
Commission File Number: 001-40902

Paragon 28, Inc.

(Exact name of registrant as specified in its charter)

Delaware	27-3170186
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
14445 Grasslands Drive	80112
Englewood, CO	(Zip Code)
(Address of principal executive offices)	
Registrant's telephone number, including area code: (720) 912-1332	

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

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, \$0.01 par value per share	FNA	The New York Stock Exchange

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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input 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, there were 82,701,207 shares of the registrant's common stock, \$0.01 par value per share, outstanding.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Quarterly Report on Form 10-Q, including statements regarding our strategy, future financial condition, future operations, projected costs, prospects, plans, objectives of management and expected market growth, are forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "aim," "anticipate," "assume," "believe," "contemplate," "continue," "could," "design," "due," "estimate," "expect," "goal," "intend," "may," "objective," "plan," "positioned," "potential," "predict," "seek," "should," "target," "will," "would" and other similar expressions that are predictions of or indicate future events and future trends, or the negative of these terms or other comparable terminology. All statements other than statements of historical fact contained in this Quarterly Report, including without limitation statements regarding our business model and strategic plans for our products, technologies and business, including our implementation thereof, the impact on our business, financial condition and results of operations from macroeconomic conditions, the timing of and our ability to obtain and maintain regulatory approvals, our commercialization efforts, our acquisitions, including resulting synergies and future milestone payouts, marketing and manufacturing capabilities and strategy, our expectations about the commercial success and market acceptance of our products, the sufficiency of our cash, cash equivalents and marketable securities, and the plans and objectives of management for future operations and capital expenditures are forward-looking statements.

The forward-looking statements in this Quarterly Report are only predictions and are based largely on our current expectations and projections about future events and trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements speak only as of the date of this Quarterly Report and are subject to a number of known and unknown risks, uncertainties, and assumptions, including those described under the sections in this Quarterly Report entitled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this Quarterly Report. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this Quarterly Report may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely upon these forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, performance, or achievements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise. We intend the forward-looking statements contained in this Quarterly Report to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)
(unaudited)

	September 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash	\$ 34,949	\$ 38,468
Trade receivables	33,615	37,687
Inventories, net	94,380	60,948
Income taxes receivable	1,022	615
Other current assets	4,826	4,658
Total current assets	168,792	142,376
Property and equipment, net	73,530	61,938
Intangible assets, net	21,802	22,387
Goodwill	25,465	25,465
Deferred income taxes	132	148
Other assets	3,634	1,795
Total assets	<u>\$ 293,355</u>	<u>\$ 254,109</u>
LIABILITIES & STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 27,395	\$ 14,939
Accrued expenses	24,966	26,807
Accrued legal settlement	—	22,000
Other current liabilities	1,893	3,844
Current maturities of long-term debt	640	728
Income taxes payable	—	184
Total current liabilities	54,894	68,502
Long-term liabilities:		
Long-term debt net, less current maturities	42,288	42,182
Other long-term liabilities	1,467	1,628
Deferred income taxes	327	342
Income taxes payable	635	527
Total liabilities	99,611	113,181
Commitments and contingencies (Note 11)		
Stockholders' equity:		
Common stock, \$0.01 par value, 300,000,000 shares authorized; 83,469,426 and 78,684,107 shares issued, and 82,555,907 and 77,770,588 shares outstanding as of September 30, 2023 and December 31, 2022, respectively	824	776
Additional paid in capital	296,018	213,956
Accumulated deficit	(96,071)	(67,789)
Accumulated other comprehensive loss	(1,045)	(33)
Treasury stock, at cost; 913,519 shares as of September 30, 2023 and December 31, 2022	(5,982)	(5,982)
Total stockholders' equity	193,744	140,928
Total liabilities & stockholders' equity	<u>\$ 293,355</u>	<u>\$ 254,109</u>

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

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30, 2023	2022	Nine Months Ended September 30, 2023	2022
Net revenue	\$ 52,783	\$ 46,006	\$ 155,828	\$ 129,875
Cost of goods sold	10,394	8,491	28,158	22,920
Gross profit	42,389	37,515	127,670	106,955
Operating expenses:				
Research and development costs	7,244	6,337	21,976	18,100
Selling, general, and administrative	44,126	39,667	131,773	114,857
Total operating expenses	51,370	46,004	153,749	132,957
Operating loss	(8,981)	(8,489)	(26,079)	(26,002)
Other income (expense):				
Other income, net	1,660	59	1,014	610
Interest expense, net	(1,119)	(1,093)	(3,127)	(2,865)
Total other income (expense)	541	(1,034)	(2,113)	(2,255)
Loss before income taxes	(8,440)	(9,523)	(28,192)	(28,257)
Income tax (benefit) expense	(108)	201	90	306
Net loss	<u>\$ (8,332)</u>	<u>\$ (9,724)</u>	<u>\$ (28,282)</u>	<u>\$ (28,563)</u>
Foreign currency translation adjustment	(630)	(588)	(1,012)	(1,505)
Comprehensive loss	<u>\$ (8,962)</u>	<u>\$ (10,312)</u>	<u>\$ (29,294)</u>	<u>\$ (30,068)</u>
Weighted average number of shares of common stock outstanding:				
Basic	<u>82,548,892</u>	<u>76,850,949</u>	<u>81,878,814</u>	<u>76,595,118</u>
Diluted	<u>82,548,892</u>	<u>76,850,949</u>	<u>81,878,814</u>	<u>76,595,118</u>
Net loss per share attributable to common stockholders:				
Basic	<u>\$ (0.10)</u>	<u>(0.13)</u>	<u>\$ (0.35)</u>	<u>\$ (0.37)</u>
Diluted	<u>\$ (0.10)</u>	<u>(0.13)</u>	<u>\$ (0.35)</u>	<u>\$ (0.37)</u>

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

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except for number of shares)
(unaudited)

	Common Stock			Additional Paid-in- Capital	Accumulated Deficit	Accumulated Other Comprehensive		Treasury	Total Stockholders' Equity
	Shares	Amount	Capital			Loss	Stock		
For the Three Months Ended September 30, 2023									
Balance, June 30, 2023	82,536,046	\$ 824	\$ 292,350	\$ (87,739)	\$ (415)	\$ (5,982)	\$ 199,038		
Net loss	—	—	—	(8,332)	—	—	—		(8,332)
Options exercised	19,861	—	70	—	—	—	—		70
Foreign currency translation	—	—	—	—	(630)	—	—		(630)
Employee stock purchase plan	—	—	86	—	—	—	—		86
Stock-based compensation	—	—	3,512	—	—	—	—		3,512
Balance, September 30, 2023	82,555,907	\$ 824	\$ 296,018	\$ (96,071)	\$ (1,045)	\$ (5,982)	\$ 193,744		
For the Nine Months Ended September 30, 2023									
Balance December 31, 2022	77,770,588	\$ 776	\$ 213,956	\$ (67,789)	\$ (33)	\$ (5,982)	\$ 140,928		
Net loss	—	—	—	(28,282)	—	—	—		(28,282)
Issuance of common stock, net of issuance costs of \$827	4,312,500	43	68,410	—	—	—	—		68,453
Options exercised	435,673	5	2,530	—	—	—	—		2,535
Foreign currency translation	—	—	—	—	(1,012)	—	—		(1,012)
Employee stock purchase plan	37,146	—	828	—	—	—	—		828
Stock-based compensation	—	—	10,294	—	—	—	—		10,294
Balance, September 30, 2023	82,555,907	\$ 824	\$ 296,018	\$ (96,071)	\$ (1,045)	\$ (5,982)	\$ 193,744		

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

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except for number of shares)
(unaudited)

	Common Stock					Accumulated Other Comprehensive Loss		Treasury Stock		Total Stockholders' Equity
For the Three Months Ended September 30, 2022	Shares	Amount	Additional Paid-in-Capital		Accumulated Deficit					
Balance, June 30, 2022	76,537,568	\$ 764	\$ 202,367		\$ (19,302)	\$ (909)	\$ (5,982)		\$ 176,938	
Net loss	—	—	—		(9,724)	—	—	—	—	(9,724)
Options exercised	539,203	5	2,055		—	—	—	—	—	2,060
Foreign currency translation	—	—	—		—	(588)	—	—	—	(588)
Employee stock purchase plan	—	—	100		—	—	—	—	—	100
Stock-based compensation	—	—	2,587		—	—	—	—	—	2,587
Balance, September 30, 2022	77,076,771	\$ 769	\$ 207,109		\$ (29,026)	\$ (1,497)	\$ (5,982)		\$ 171,373	
For the Nine Months Ended September 30, 2022										
Balance December 31, 2021	76,447,287	\$ 763	\$ 197,868		\$ (463)	\$ 8	\$ (5,982)		\$ 192,194	
Net loss	—	—	—		(28,563)	—	—	—	—	(28,563)
Common stock repurchase	—	—	(266)		—	—	—	—	—	(266)
Options exercised	629,484	6	2,355		—	—	—	—	—	2,361
Foreign currency translation	—	—	—		—	(1,505)	—	—	—	(1,505)
Employee stock purchase plan	—	—	100		—	—	—	—	—	100
Stock-based compensation	—	—	7,052		—	—	—	—	—	7,052
Balance, September 30, 2022	77,076,771	\$ 769	\$ 207,109		\$ (29,026)	\$ (1,497)	\$ (5,982)		\$ 171,373	

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

PARAGON 28, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities		
Net loss	\$ (28,282)	\$ (28,563)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	10,602	9,624
Allowance for doubtful accounts	147	—
Provision for excess and obsolete inventories	2,053	(91)
Stock-based compensation	10,294	7,052
Other	(1,428)	(1,295)
Changes in other assets and liabilities, net of acquisitions:		
Accounts receivable	3,706	(10,227)
Inventories	(35,558)	(15,316)
Accounts payable	12,468	951
Accrued expenses	3,718	176
Accrued legal settlement	(22,000)	—
Income tax receivable/payable	(533)	297
Other assets and liabilities	(2,704)	1,442
Net cash used in operating activities	(47,517)	(35,950)
Cash flows from investing activities		
Purchase of office building	—	(18,300)
Purchases of property and equipment	(21,893)	(15,637)
Proceeds from sale of property and equipment	795	642
Purchases of intangible assets	(933)	(1,720)
Acquisition of Disior, net of cash received	—	(18,504)
Net cash used in investing activities	(22,031)	(53,519)
Cash flows from financing activities		
Proceeds from draw on term loan	—	20,000
Proceeds from issuance of long-term debt	—	16,000
Payments on long-term debt	(568)	(367)
Payments of debt issuance costs	—	(420)
Proceeds from issuance of common stock, net of issuance costs	68,453	—
Proceeds from exercise of stock options	2,535	2,224
Proceeds from employee stock purchase plan	560	—
Payments on earnout liability	(5,500)	(500)
Net cash provided by financing activities	65,480	36,937
Effect of exchange rate changes on cash	549	(495)
Net decrease in cash	(3,519)	(53,027)
Cash at beginning of period	38,468	109,352
Cash at end of period	<u>\$ 34,949</u>	<u>\$ 56,325</u>
Supplemental disclosures of cash flow information:		
Restricted cash (Note 5)	1,000	—
Cash paid for income taxes	610	788
Cash paid for interest	3,342	2,111
Purchase of property and equipment included in accounts payable	4,842	2,363

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

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)
(unaudited)

NOTE 1. BUSINESS AND BASIS OF PRESENTATION

Business

Paragon 28, Inc. (collectively with its subsidiaries, "we," "us," "our," "P28" or the "Company") develops, distributes, and sells medical devices in the foot and ankle segment of the orthopedic implant marketplace. Our approach to product development is procedurally focused, resulting in a full range of procedure-specific foot and ankle products designed specifically for foot and ankle anatomy. Our products and product families include plates and plating systems, screws, staples, and nails aimed to address all major foot and ankle procedures including fracture fixation, forefoot or hallux valgus - which includes bunion and hammertoe, ankle, flatfoot or progressive collapsing foot deformity ("PCDF"), charcot foot and orthobiologics. P28 is a United States ("U.S.") based company incorporated in the State of Delaware, with headquarters in Englewood, Colorado. Our sales representatives and distributors are located globally with the majority concentrated in the U.S., Australia, South Africa, and the United Kingdom.

Basis of Presentation and Consolidation

The accompanying Condensed Consolidated Financial Statements include the accounts of Paragon 28, Inc. and its subsidiaries, all of which are wholly-owned. The accompanying Condensed Consolidated Financial Statements have been prepared in conformity with accounting principles generally accepted in the U.S. ("U.S. GAAP") and pursuant to the rules and regulations of the U.S. Securities and Exchange Commission ("SEC") for interim financial information. Accordingly, they do not include all of the information required by U.S. GAAP for complete financial statements. The interim Condensed Consolidated Financial Statements reflect all adjustments that are of a normal recurring nature and that are considered necessary for a fair representation of the results for the periods presented and should be read in conjunction with the audited Consolidated Financial Statements and notes thereto for the year ended December 31, 2022, which include a complete set of footnote disclosures. The audited Consolidated Financial Statements and notes thereto for the year ended December 31, 2022, are included in the Company's Annual filing on Form 10-K filed with the SEC on March 2, 2023. The results for interim periods are not necessarily indicative of the results that may be expected for a full fiscal year or for any other future period. All intercompany balances and transactions have been eliminated in consolidation.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Use of Estimates

The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Because future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. Any changes in these estimates will be reflected in the Company's Condensed Consolidated Financial Statements. Significant items subject to such estimates and assumptions include the determination of the collectability of trade receivables, inventory obsolescence, impairment of long-lived assets, recoverability of goodwill and intangible assets, contingent earn-out liabilities, income taxes and stock-based compensation.

Foreign Currency Translation

The Condensed Consolidated Financial Statements are presented in U.S. dollars. The Company's non-U.S. subsidiaries have a functional currency (i.e., the currency in which operational activities are primarily conducted) that is other than the U.S. dollar, generally the currency of the country in which such subsidiaries are domiciled. Such subsidiaries' assets and liabilities are translated into U.S. dollars at quarter-end exchange rates, while revenue and expenses are translated at average exchange rates during the quarter based on the daily closing exchange rates. Adjustments that result from translating amounts from a subsidiary's functional currency to U.S. dollars are reported in Accumulated Other Comprehensive Loss, net of tax.

Significant Accounting Policies

There have been no changes in the Company's significant accounting policies as disclosed in Note 2 to our audited Consolidated Financial Statements included in our 2022 Annual Report on Form 10-K.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
 (in thousands, except share and per share data)
 (unaudited)

Recently Adopted Accounting Pronouncements

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"), which requires entities to estimate all expected credit losses for certain types of financial instruments, including trade receivables, held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. The updated guidance also expands the disclosure requirements to enable users of financial statements to understand the entity's assumptions, models and methods for estimating expected credit losses over the entire contractual term of the instrument from the date of initial recognition of that instrument. ASU 2016-13, as subsequently amended for various technical issues, is effective for emerging growth companies following private company adoption dates for fiscal years, and for interim periods within those fiscal years, beginning after December 15, 2022, with early adoption permitted. The Company adopted ASU 2016-13 effective January 1, 2023. The adoption of this guidance did not have a significant impact on the Company's Condensed Consolidated Financial Statements and related disclosures.

In December 2019, the FASB issued ASU 2019-12, Income Taxes (Topic 740) ("ASU 2019-12"), which is part of the FASB's overall simplification initiative to reduce the costs and complexity of applying accounting standards while maintaining or improving the usefulness of the information provided to users of financial statements. ASU 2019-12 simplifies accounting guidance for intra-period allocations, deferred tax liabilities, year-to-date losses in interim periods, franchise taxes, step-up in tax basis of goodwill, separate entity financial statements, and interim recognition of tax laws or rate changes. ASU 2019-12 is effective for emerging growth companies following private company adoption dates in fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022, with early adoption permitted. The Company adopted ASU 2019-12 effective January 1, 2023. The adoption of this guidance did not have a significant impact on the Company's Condensed Consolidated Financial Statements and related disclosures.

NOTE 3. BUSINESS COMBINATION

Disior Acquisition

On January 10, 2022 ("Disior Acquisition Date"), the Company entered into a Securities Purchase Agreement ("SPA") with Disior LTD. ("Disior") and acquired 100% of the outstanding equity of Disior (the "Disior Acquisition").

The aggregate purchase price of the Disior Acquisition was approximately \$26,246 inclusive of an earn-out provision with a fair value of \$6,550 and certain net working capital adjustments and deferred payments totaling a net payable of \$222. The SPA provided for potential earn-out consideration to the seller in connection with the achievement of certain milestones with various expiration dates through the second anniversary of the Disior Acquisition Date. The earn-out has a maximum payment not to exceed \$8,000 in the aggregate. If an individual milestone is not met by the specified milestone expiration date, the earn-out related to that specific milestone will not be paid. The acquisition was primarily funded by a \$20,000 draw on the Company's term loan from Midcap.

The Company has accounted for the acquisition of Disior under ASC Topic 805, Business Combinations ("ASC 805"). Disior's results of operations are included in the Condensed Consolidated Financial Statements beginning after January 10, 2022, the Disior Acquisition Date.

The following table summarizes the purchase price:

Consideration paid	
Cash consideration	\$ 19,696
Contingent consideration	6,550
Total consideration	<u>\$ 26,246</u>

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
 (in thousands, except share and per share data)
 (unaudited)

The following table summarizes the fair values of the assets acquired and liabilities assumed as of the Disior Acquisition Date:

Assets acquired:	
Cash and cash equivalents	\$ 1,192
Other current assets	410
Intangible assets	6,800
Goodwill	19,136
Total assets acquired	27,538
Liabilities assumed:	
Accruals and other current liabilities	615
Deferred tax liabilities, net	677
Total liabilities assumed	1,292
Net assets acquired	<u><u>\$ 26,246</u></u>

Identified intangible assets consist of tradenames and developed technology. The fair value of each were determined with the assistance of an external valuation specialist using a combination of the income, market, cost approach, and relief from royalty rate method, in accordance with ASC 805. The purchase consideration was allocated to the identifiable net assets acquired based on estimated fair values at the date of the acquisition. The excess of the fair value of the purchase consideration over the fair value of the identifiable assets and liabilities, if any, was recorded as goodwill. The goodwill is attributable to the expected synergies with the Company's existing operations. The useful life on intangible assets was determined by management to be in line with the Company's policy on intangible assets. Both determinations are outlined in the table below:

	Fair Value
Developed technology	\$ 6,400
Tradenames	400
Total intangible assets	<u><u>\$ 6,800</u></u>

The entire amount of the purchase price allocated to goodwill will not be deductible for income tax purposes under the Finnish Income Tax Act.

NOTE 4. GOODWILL AND INTANGIBLE ASSETS

Goodwill

As of September 30, 2023, and December 31, 2022, goodwill was \$25,465.

Intangibles

Intangible assets as of September 30, 2023, are as follows:

	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks and tradenames, indefinite-lived	\$ 971	\$ —	\$ 971
Patents, definite-lived	7,534	2,578	4,956
Customer relationships	1,733	496	1,237
Developed technology	17,690	3,059	14,631
Other intangibles	30	23	7
Total intangible assets, net	<u><u>\$ 27,958</u></u>	<u><u>\$ 6,156</u></u>	<u><u>\$ 21,802</u></u>

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
 (in thousands, except share and per share data)
 (unaudited)

Intangible assets as of December 31, 2022, are as follows:

	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trademarks, indefinite-lived	\$ 901	\$ —	\$ 901
Patents, definite-lived	6,671	2,370	4,301
Customer relationships	1,733	279	1,454
Developed technology	17,690	1,973	15,717
Other intangibles	30	16	14
Total intangible assets, net	\$ 27,025	\$ 4,638	\$ 22,387

Amortization expense is included in Selling, general, and administrative expenses and was \$509 and \$440 for the three months ended September 30, 2023 and 2022, respectively. Amortization expense for the nine months ended September 30, 2023 and 2022 totaled \$1,519 and \$2,290, respectively.

Expected future amortization expense is as follows:

2023 (Remaining)	\$ 505
2024	1,965
2025	1,924
2026	1,924
2027	1,924

No impairment charges related to intangibles and goodwill were recorded for the three and nine months ended September 30, 2023 and 2022.

NOTE 5. FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company measures certain financial assets and liabilities at fair value. There is a fair value hierarchy which prioritizes inputs used in measuring fair value into three broad levels:

Level 1 - Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2- Includes other inputs that are directly or indirectly observable in the marketplace, such as quoted market prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

Level 3 - Unobservable inputs which are supported by little or no market activity.

The Company's significant financial assets and liabilities measured at fair value as of September 30, 2023 were as follows:

	Level 1	Level 2	Level 3	Total
Financial Assets:				
Interest rate swap	\$ —	2,024	—	\$ 2,024
Financial Liabilities:				
Contingent consideration	\$ —	—	1,770	\$ 1,770

The Company's Level 2 asset pertains to an interest rate swap associated with the Company's Zions Facility, used to manage interest rate risk related to variable rate borrowings and manage exposure to the variability of cash flows. The interest rate swap is not designated for hedge accounting and is measured utilizing inputs observable in active markets. For the three and nine months ended September 30, 2023, the \$2,024 change in fair value of the Company's interest rate swap is recorded in Other assets on the Condensed Consolidated Balance Sheet and Other income (expense) within the Condensed Consolidated Statement of Operations and Comprehensive Loss.

The Company's Level 3 instruments consist of contingent consideration. The following table provides a reconciliation of the Level 3 earn-out liabilities for the nine months ended September 30, 2023:

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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Balance, December 31, 2022	\$ 3,640
Achieved milestones reclassified to accrued expenses	(2,500)
Change in fair value of earn-out liabilities	630
Balance, September 30, 2023	<u>\$ 1,770</u>

The current portion of contingent earn-out liability is included in Other-current liabilities and the non-current portion is included in Other long-term liabilities on the Condensed Consolidated Balance Sheets. As of September 30, 2023, the current portion was \$1,444 and the non-current portion was \$326. During the three and nine months ended September 30, 2023, we reassessed the estimate of the earn-out liabilities which resulted in a net increase of \$310 and \$630, recorded in Other expense within the Condensed Consolidated Statement of Operations and Comprehensive Loss for the three and nine months ended September 30, 2023, respectively.

As of December 31, 2022, three project milestones associated with the Disior acquisition and two project milestones associated with the Additive Orthopaedics acquisition were included in Accrued expenses on the Consolidated Balance Sheet totaling \$5,000 and \$1,500, respectively. During the nine months ended September 30, 2023, \$500 was paid in cash for one of the Additive Orthopaedics milestones and \$5,000 was paid in cash for the Disior milestones. As of September 30, 2023, the remaining \$1,000 related to the Additive Orthopaedics milestone was included in Accrued expenses on the Condensed Consolidated Balance Sheet. The total \$1,000 accrual is included as restricted cash within the Condensed Consolidated Statement of Cash Flows for the nine months ended September 30, 2023. During the second quarter of 2023, the Company completed the fourth project milestone related to the Disior acquisition totaling \$2,000 and during the third quarter of 2023 completed another project milestone associated with the Additive Orthopaedics acquisition totaling \$500, both of which are also included in Accrued expenses on the Condensed Consolidated Balance Sheet as of September 30, 2023. For additional information on the Additive Orthopaedics acquisition refer to Note 3 to our Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

NOTE 6. DEBT

Long-term debt as of September 30, 2023, and December 31, 2022, consists of the following:

	September 30, 2023	December 31, 2022
MidCap Term Loan	\$ 30,000	\$ 30,000
Zions Term Loan	15,093	15,573
Bank of Ireland Note Payable	—	86
	45,093	45,659
Less: deferred issuance costs	(2,165)	(2,749)
Total debt, net of issuance costs	42,928	42,910
Less: current portion	(640)	(728)
Long-term debt, net, less current maturities	\$ 42,288	\$ 42,182

MidCap Credit Agreements

On May 6, 2021, the Company entered into a credit agreement with MidCap Financial Trust to provide a total of \$70,000 including up to a \$30,000 revolving loan ("MidCap Revolving Loan") and up to a \$40,000 term loan ("MidCap Term Loan"), secured by substantially all the Company's assets ("MidCap Credit Agreements"). The MidCap Term Loan was comprised of two tranches, the first of which provided a commitment amount of \$10,000, and the second a commitment of \$30,000. The MidCap Term Loan and Midcap Revolving Loan bore a variable interest rate of LIBOR plus 6% and LIBOR plus 3%, respectively, and mature on the earlier of May 1, 2026, or a change in control event (the "Termination Date"). The entire principal balances of the MidCap Revolving Loan and MidCap Term Loan are due on the Termination Date. Interest payments are payable monthly with optional principal prepayments allowed under the MidCap Credit Agreements. The Midcap Credit Agreements required us to maintain minimum net product sales and minimum consolidated EBITDA, (each term as defined in the Midcap Credit Agreements), for the preceding twelve month period.

On November 9, 2022, the Company entered into an amendment to the MidCap Credit Agreements. The amendment to the Midcap Revolving Loan provides up to \$50,000 in total borrowing capacity. The MidCap amendments modified the MidCap Credit Agreements to include provisions related to the transition from the LIBOR Interest Rate plus Applicable Margin to the SOFR Interest Rate plus Applicable Margin, maintaining the Applicable Margin of 6% under the MidCap Term Loan and increasing the Applicable Margin from 3% to 3.75% under the Midcap Revolving Loan. In addition, the MidCap amendments amended certain covenants, terms and provisions in the Midcap Credit Agreements to, among other things, modify the covenant levels for the Minimum Net Product Sales financial covenant and to remove the Minimum Consolidated EBITDA financial covenant. As of September 30, 2023, the Company was in compliance with all financial covenants under the amended Midcap Credit Agreements. Total debt issuance costs associated with the

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MidCap Credit Agreements were \$1,942. Amortization expense associated with such debt issuance costs totaled \$183 and \$552 for the three and nine months ended September 30, 2023, respectively, and \$165 and \$409 for the three and nine months ended September 30, 2022, respectively, and is included in Interest expense on the Condensed Consolidated Statements of Operations and Comprehensive Loss.

On November 2, 2023, the Company paid all outstanding amounts owed under the MidCap Credit Agreements utilizing a portion of the proceeds from the Ares Credit Facilities, and concurrently terminated the Midcap Credit Facilities under the MidCap Credit Agreements. For additional information about the Ares Credit Facilities, refer to Note 14.

Zions Term Loan Facility

On March 24, 2022, the Company entered into a secured term loan facility (the "Zions Facility") with Zions Bancorporation, N.A., dba Vectra Bank Colorado, in the principal amount of \$16,000. The loans under the Zions Facility (i) bear interest at a variable rate per annum equal to the sum of (a) a one-month Term SOFR based rate, plus (b) 1.75%, adjusted on a monthly basis and (ii) mature on March 24, 2037. The Company is the fixed rate payor on an interest rate swap contract that effectively fixes the SOFR-based index utilized to determine the interest rate charged on the Zions Facility at 4.25% until maturity. Principal and interest payments are payable monthly, with optional prepayments allowed without premium or penalty.

Effective as of November 10, 2022, the Company entered into the First Amendment to the Zions Facility. The amendment to the Zions Facility amends the financial covenants to require the Company to maintain (i) the Liquidity Ratio, if the Cash Flow as of the last day of any quarter measured on a trailing three month basis is less than or equal to \$0, and (ii) the Fixed Charge Coverage Ratio which will be calculated as of the last day of each quarter on a trailing four quarter basis, as well as a certain level of Liquidity, if the Cash Flow is greater than \$0. In addition, a Net Revenue Growth covenant was added which will be calculated as of the last day of each quarter on a year-over-year basis. As of September 30, 2023, the Company was in compliance with all financial covenants under the amended Zions Facility. Total debt issuance costs associated with the Zions Facility were \$223. Amortization expense associated with such debt issuance costs totaled \$4 and \$12 for the three and nine months ended September 30, 2023, and is included in Interest expense on the Consolidated Statements of Operations and Comprehensive Loss, respectively and totaled \$4 and \$9 for the three and nine months ended September 30, 2022.

NOTE 7. STOCKHOLDERS' EQUITY

Under its Amended and Restated Certificate of Incorporation, the Company has a total of 310,000,000 shares of capital stock authorized for issuance, consisting of 300,000,000 shares of common stock, par value of \$0.01 per share, and 10,000,000 shares of convertible preferred stock, par value of \$0.01 per share.

Common Stock

On January 30, 2023, the Company completed an underwritten public offering ("the Offering") of 6,500,000 shares of its common stock at an offering price of \$17.00 per share, which consisted of 3,750,000 shares of common stock issued and sold by the Company and 2,750,000 shares of common stock sold by certain selling securityholders. On February 17, 2023, the underwriters exercised in full their option to purchase an additional 562,500 shares and 412,500 shares of common stock from the Company and the selling securityholders, respectively.

The Company received aggregate net proceeds from the Offering of approximately \$68,453 after deducting underwriting discounts and commissions and offering expenses payable by the Company. The selling securityholders received aggregate net proceeds from the Offering of approximately \$50,700 after deducting underwriting discounts and commissions. The Company did not receive any of the proceeds from the sale of shares of Common Stock by the selling securityholders.

Treasury Stock

The Company did not purchase any of its common stock during the nine months ended September 30, 2023 and 2022. All previously repurchased shares were recorded in Treasury stock at cost.

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NOTE 8. LOSS PER SHARE

Basic net loss per share is computed by dividing net loss attributable to common stockholders (the numerator) by the weighted average number of common stock outstanding for the period (the denominator). Diluted net income per share of common stock attributable to common stockholders is computed by dividing net income by the weighted average number of shares of common stock outstanding during the period adjusted for the dilutive effects of common stock equivalents using the treasury stock method or the method based on the nature of such securities. In periods when losses from operations are reported, the weighted-average number of shares of common stock outstanding excludes common stock equivalents because their inclusion would be anti-dilutive. The computation of net loss per share for the three and nine months ended September 30, 2023 and 2022, respectively was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net loss	\$ (8,332)	\$ (9,724)	\$ (28,282)	\$ (28,563)
Weighted-average common stock outstanding:				
Basic	82,548,892	76,850,949	81,878,814	76,595,118
Diluted	82,548,892	76,850,949	81,878,814	76,595,118
Loss per share:				
Basic	\$ (0.10)	\$ (0.13)	\$ (0.35)	\$ (0.37)
Diluted	<u>\$ (0.10)</u>	<u>\$ (0.13)</u>	<u>\$ (0.35)</u>	<u>\$ (0.37)</u>

The following outstanding potentially dilutive securities were excluded from the calculation of diluted net loss per share attributable to common stockholders because their impact would have been antidilutive for the period presented:

	As of September 30,	
	2023	2022
Stock options	6,119,477	7,304,770
Restricted stock units	1,392,087	144,547

NOTE 9. STOCK-BASED COMPENSATION

Employee Stock Purchase Plan

The Company's Employee Stock Purchase Plan ("ESPP") provides participating employees with the opportunity to purchase the Company's common stock at 85% of the market price at the lesser of the date the purchase right is granted or exercisable. Eligible employees can contribute up to 15% of their gross base earnings for purchases under the ESPP through regular payroll deductions, limited to \$25,000 worth of the Company's shares of common stock for each calendar year in which the purchase right is outstanding. The Company currently holds offerings consisting of six month periods commencing on January 1st and July 1st of each calendar year, with a single purchase date at the end of the purchase period on June 30th and December 31st of each calendar year.

The Company issued 37,146 and 17,060 shares upon exercise of purchase rights during the nine months ended September 30, 2023 and 2022, respectively. The Company recognizes compensation expense on a straight-line basis over the service period. During the three months ended September 30, 2023 and 2022, the Company recognized \$86 and \$100, respectively, of compensation expense related to the ESPP. During the nine months ended September 30, 2023 and 2022, the Company recognized \$268 and \$100, respectively, of compensation expense related to the ESPP.

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Stock Options

The following table summarizes the Company's stock option plan and the activity for the nine months ended September 30, 2023:

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)
Outstanding, December 31, 2022	6,538,536	\$ 10.02	7.36
Granted	225,000	18.33	
Exercised or released	(379,705)	6.68	
Forfeited or expired	(264,354)	14.80	
Outstanding, September 30, 2023	6,119,477	\$ 10.32	6.89
Exercisable, September 30, 2023	4,232,008	\$ 8.22	6.34
Vested and expected to vest at September 30, 2023	6,112,107	\$ 10.31	6.89

During the three months ended September 30, 2023 and 2022, the Company recognized \$1,724 and \$2,254, respectively, of compensation expense related to stock options. During the nine months ended September 30, 2023 and 2022, the Company recognized \$5,320 and \$6,351, respectively of compensation expense related to stock options. Stock-based compensation expenses are recorded in Selling, general and administrative expenses in the Condensed Consolidated Statements of Operations and Comprehensive Loss.

Restricted Stock Units

The following table summarizes the Company's restricted stock units activity for the nine months ended September 30, 2023.

	Restricted Stock Units	Weighted-Average Fair Value
Outstanding, December 31, 2022	964,054	\$ 17.74
Granted	630,618	17.82
Vested	(55,968)	16.97
Forfeited or expired	(146,617)	17.81
Outstanding, September 30, 2023	1,392,087	\$ 17.80
Vested and expected to vest at September 30, 2023	1,378,740	\$ 17.80

During the three and nine months ended September 30, 2023, the Company recognized \$1,788 and \$4,974, respectively, of compensation expense related to RSUs. During the three and nine months ended September 30, 2022, the Company recognized \$332 and \$701, respectively of compensation expense related to RSUs. Stock-based compensation expenses are recorded in Selling, general and administrative expenses in the Condensed Consolidated Statements of Operations and Comprehensive Loss.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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NOTE 10. INCOME TAXES

The effective tax rates for the nine months ended September 30, 2023 and 2022 are as follows:

	Nine Months Ended September 30, 2023	2022
Effective tax rate	(0.322 %)	(1.057 %)

For the three months ended September 30, 2023 and 2022, the Company recorded a tax benefit of \$108 and tax expense of \$201, respectively. For nine months ended September 30, 2023 and 2022, the Company recorded tax expense of \$90 and \$306, respectively.

The Company's 2023 and 2022 income tax expense and rates differed from the amount of income tax determined by applying the U.S. Federal income tax rate to pre-tax income primarily as a result of the U.S., Finland, Germany, United Kingdom and Italy jurisdictions that have a full valuation allowance recorded on deferred tax assets. In addition, the tax rate is lower than the U.S. statutory federal tax rate as a result of foreign earnings that are taxed at lower tax rates.

The Company continues to monitor the realization of its deferred tax assets and assesses the need for a valuation allowance. The Company analyzes available positive and negative evidence to determine if a valuation allowance is needed based on the weight of the evidence. This objectively verifiable evidence includes the current and prior two years' profit and loss positions after considering pre-tax book income plus or minus permanent adjustments as well as other positive and negative evidence available. This process requires management to make estimates, assumptions, and judgments that are uncertain in nature. The Company has established a valuation allowance with respect to deferred tax assets in the U.S., Finland, Germany, United Kingdom and Italy and continues to monitor and assess potential valuation allowances in all its jurisdictions.

NOTE 11. COMMITMENTS AND CONTIGENCIES

Legal Proceedings

The Company is involved in various lawsuits, claims, inquiries, and other regulatory and compliance matters, most of which are routine to the nature of our business. When it is probable that a loss will be incurred and where a range of the loss can be reasonably estimated, the best estimate within the range is accrued. When the best estimate within the range cannot be determined, the low end of the range is accrued. The ultimate resolution of these claims could affect future results of operations should the exposure be materially different from the estimates or should liabilities be incurred that were not previously accrued. Potential insurance reimbursements are not offset against potential liabilities. As of September 30 2023, the Company is not involved in any legal proceedings that could have a material adverse effect on its condensed consolidated financial position.

NOTE 12. RELATED PARTY TRANSACTIONS

The Company has a license agreement dated July 1, 2017, for certain intellectual property with an entity that is affiliated with one of the directors of the Company, under which the Company pays a royalty of four percent (4%) of net revenue related to the licensed intellectual property for the 15 years following the date of first sale, including a minimum annual payment of \$250. The term of the agreement is 20 years, and automatically renews for five-year periods thereafter. Payments to the entity under this license agreement totaled \$32 and \$28 for the three months ended September 30, 2023 and 2022, respectively. Payments to the entity under this license agreement totaled \$233 and \$221 for the nine months ended September 30, 2023 and 2022, respectively. Amounts payable to this entity as of September 30, 2023, and December 31, 2022, were \$128 and \$164, respectively.

The Company paid professional services fees to a related party totaling \$123 and \$0 for the three months ended September 30, 2023 and 2022, respectively, and such fees are included in Selling, general, and administrative expense in the Condensed Consolidated Statements of Operations and Comprehensive Loss. The Company paid professional services fees to a related party totaling \$238 and \$266 for the nine months ended September 30, 2023 and 2022, respectively. Amounts payable as of September 30, 2023 and December 31, 2022 to this related party were \$66 and \$0, respectively.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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NOTE 13. SEGMENT AND GEOGRAPHIC INFORMATION

The following table represents total net revenue by geographic area, based on the location of the customer for the three and nine months ended September 30, 2023 and 2022, respectively.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
United States	\$ 44,548	\$ 39,960	\$ 131,793	\$ 112,781
International	8,235	6,046	24,035	17,094
Total net revenue	\$ 52,783	\$ 46,006	\$ 155,828	\$ 129,875

No individual country with net revenue originating outside of the United States accounted for more than 10% of consolidated net revenue for three and nine months ended September 30, 2023 and 2022.

The following table represents total non-current assets, excluding deferred taxes, by geographic area as of September 30, 2023 and December 31, 2022, respectively.

	September 30, 2023	December 31, 2022
United States	\$ 90,373	\$ 79,458
Finland	25,170	25,581
Other International	8,888	6,546
Total assets	\$ 124,431	\$ 111,585

NOTE 14. SUBSEQUENT EVENTS

On November 2, 2023, the Company and its wholly-owned subsidiary, Paragon Advanced Technologies, Inc. ("Paragon Advanced Technologies" and, together with the Company, the "Borrowers"), entered into a new credit agreement (the "Ares Credit Agreement") with Ares Capital Corporation, as administrative agent and collateral agent, and ACF FINCO I LP, as revolving agent (together, "Ares Capital"), and the lenders party thereto, to provide senior secured credit facilities to the Borrowers in an aggregate principal amount of \$150,000, inclusive of a revolving credit facility of up to \$50,000 (the "Ares Revolving Loan") and a term loan facility of up to \$100,000 (the "Ares Term Loan"). The obligations under the Ares Credit Agreement are guaranteed by each of the Borrowers' current and future domestic subsidiaries, and secured by liens on substantially all of the Borrowers' and guarantors' present and after-acquired assets, in each case, subject to certain customary exceptions. In connection with the closing of the Ares Credit Agreement, the Company drew down \$25,000 and \$75,000 on the Ares Revolving Loan and Ares Term Loan, respectively. The Ares Revolving Loan and Ares Term Loan bear interest at variable rates of Term SOFR plus 4% and Term SOFR plus 6.75%, respectively, subject in the case of the Ares Term Loan to certain step-downs and adjustments as set forth in the Ares Credit Agreement, and mature on the earlier of (i) November 2, 2028 and (ii) with respect to the Ares Revolving Loan, 6 months prior to the maturity date of any other indebtedness in a principal or stated amount in excess of \$12,500. The Ares Credit Agreement contains a financial covenant requiring us to maintain certain minimum revenue levels.

In connection with the entry into the Ares Credit Agreement, the Company terminated the commitments and satisfied all outstanding obligations under the MidCap Credit Agreements. Refer to Note 6 for additional information.

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

You should read the following discussion and analysis of our financial condition and results of operations together with our condensed consolidated financial statements and related notes thereto included in Part I-Item 1 of this Quarterly Report on Form 10-Q. This discussion and other parts of this report contain forward-looking statements that involve risks and uncertainties, such as statements of our plans, objectives, expectations and intentions that are based on the beliefs of our management, as well as assumptions made by, and information currently available to, our management. Our actual results could differ materially from those discussed in these forward-looking statements. See "Special Note Regarding Forward-Looking Statements" in this Quarterly Report on Form 10-Q.

Overview

We are a leading medical device company exclusively focused on the foot and ankle orthopedic market and we are dedicated to improving patient lives. Our innovative orthopedic solutions, procedural approaches and instrumentation cover a wide range of foot and ankle ailments including fracture fixation, forefoot or hallux valgus - which includes bunion and hammertoe, ankle, flatfoot or progressive collapsing foot deformity (PCFD), charcot foot and orthobiologics. To treat these painful, debilitating or even life-threatening conditions, we provide a comprehensive portfolio of solutions that includes surgical implants and disposables, as well as surgical instrumentation. Our broad suite of surgical solutions comprises 75 product systems, including approximately 9,200 SKUs to help fit the specific needs of each patient and procedure. We design each of our products with both the patient and surgeon in mind, with the goal of improving outcomes, reducing ailment recurrence and complication rates, and making the procedures simpler, consistent and reproducible. We believe our passion, expertise, and exclusive focus in the foot and ankle market has allowed us to better understand the needs of our patients and physicians, which has enabled us to create innovations and enhanced solutions that disrupt and transform the foot and ankle market. As a result, we have experienced significant growth and momentum in our business.

Our broad commercial footprint spans across all 50 United States and 22 other countries. In the United States we primarily sell to hospitals and ambulatory surgery centers through a network of primarily independent sales representatives, the majority of whom are exclusive. Outside the United States we primarily sell to hospitals and ambulatory surgery centers through a network of sales representatives and stocking distributors. We plan to efficiently grow our sales organization and network to expand into new territories in the United States. We are also highly focused on expanding our global network by expanding our sales footprint in existing and select new international markets based on our assessment of size and opportunity.

We currently leverage multiple third-party manufacturing relationships to ensure low cost production while maintaining a capital efficient business model. We have multiple sources of supply for many of our surgical solutions' critical components. Nearly all of our supply agreements do not have minimum manufacturing or purchase obligations. As such, we generally do not have any obligation to buy any given quantity of products, and our suppliers generally have no obligation to sell to us or to manufacture for us any given quantity of our products or components for our products. In most cases, we have redundant manufacturing capabilities for each of our products. We have not experienced any significant difficulty obtaining our products or components for our products necessary to meet demand, and we have only experienced limited instances where our suppliers had difficulty supplying products by the requested delivery date. We believe manufacturing capacity is sufficient to meet market demand for our products for the foreseeable future.

Net revenue increased from \$46.0 million for the three months ended September 30, 2022, to \$52.8 million for the three months ended September 30, 2023, an increase of 15%, and from \$129.9 million for the nine months ended September 30, 2022, to \$155.8 million for the nine months ended September 30, 2023, an increase of 20%.

Net loss decreased from \$9.7 million for the three months ended September 30, 2022, to \$8.3 million for the three months ended September 30, 2023, and from \$28.6 million for the nine months ended September 30, 2022, to \$28.3 million for the nine months ended September 30, 2023.

Adjusted EBITDA improved from negative \$2.7 million for the three months ended September 30, 2022, to negative \$1.2 million for the three months ended September 30, 2023, and from negative \$9.2 million for the nine months ended September 30, 2022, to negative \$5.3 million for the nine months ended September 30, 2023. Adjusted EBITDA is not a financial measure under U.S. generally accepted accounting principles (GAAP). See "Non-GAAP Financial Measures" for an explanation of how we compute this non-GAAP financial measure and for the reconciliation to the most directly comparable GAAP financial measure.

As of December 31, 2022, and September 30, 2023, we had cash of \$38.5 million and \$34.9 million and an accumulated deficit of \$67.8 million and \$96.1 million, respectively.

Emerging Growth Company

As an emerging growth company under the JOBS Act we are eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. We have elected to avail ourselves of this exemption and, therefore, while we are an emerging growth company, we will not be subject to new or revised accounting standards at the same time that they become applicable to other public companies that are not emerging growth companies. As a result, our financial statements and interim financial statements may not be comparable to companies that comply with new or revised accounting pronouncements. However, we will no longer qualify as an emerging growth company as of December 31, 2023 and will no longer be able to take advantage of the extended transition period. Therefore, as of December 31, 2023, we will be required to adopt new or revised accounting standards when they are applicable to public companies that are not emerging growth companies.

Non-GAAP Financial Measures

Use of Non-GAAP Financial Measures and Their Limitations

In addition to our results and measures of performance determined in accordance with U.S. GAAP, we believe that certain non-GAAP financial measures are useful in evaluating and comparing our financial and operational performance over multiple periods, identifying trends affecting our business, formulating business plans and making strategic decisions.

Adjusted EBITDA is a key performance measure that our management uses to assess our financial performance and is also used for internal planning and forecasting purposes.

We believe that Adjusted EBITDA, together with a reconciliation to net loss, helps identify underlying trends in our business and helps investors make comparisons between our company and other companies that may have different capital structures, tax rates, or different forms of employee compensation. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results, enhancing the overall understanding of our past performance and future prospects, and allowing for greater transparency with respect to a key financial metric used by our management in its financial and operational decision-making. Our use of Adjusted EBITDA has limitations as an analytical tool, and you should not consider these measures in isolation or as a substitute for analysis of our financial results as reported under U.S. GAAP. Some of these potential limitations include:

- other companies, including companies in our industry which have similar business arrangements, may report Adjusted EBITDA, or similarly titled measures but calculate them differently, which reduces their usefulness as comparative measures;
- although depreciation and amortization expenses are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditures for such replacements or for new capital expenditure requirements;
- Adjusted EBITDA also does not reflect changes in, or cash requirements for, our working capital needs or the potentially dilutive impact of stock-based compensation; and
- Adjusted EBITDA does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on our debt that we may incur.

Because of these and other limitations, you should consider our non-GAAP measures only as supplemental to other GAAP-based financial measures. For a full reconciliation of Adjusted EBITDA to the most comparable GAAP financial measure, see "Reconciliation Between GAAP and Non-GAAP Measure."

Reconciliation Between GAAP and Non-GAAP Measure

We define Adjusted EBITDA as earnings (loss) before interest expense, income tax expense (benefit), depreciation and amortization, stock-based compensation expense, employee stock purchase plan expense, non-recurring expenses and certain other non-cash expenses. For a full reconciliation of Adjusted EBITDA for the three and nine months ended September 30, 2023 and 2022 to the most comparable GAAP financial measure, refer to the presentation below.

	Three Months Ended September 30, 2023		Nine Months Ended September 30, 2023	
	2022	2023	2023	2022
	(in thousands)			
Net loss	\$ (8,332)	\$ (9,724)	\$ (28,282)	\$ (28,563)
Interest expense, net	1,119	1,093	3,127	2,865
Income tax (benefit) expense	(108)	201	90	306
Depreciation and amortization expense	4,188	3,058	10,602	9,624
Stock based compensation expense	3,512	2,587	10,294	7,052
Employee stock purchase plan expense	86	100	268	100
Change in fair value ⁽¹⁾	(1,714)	(35)	(1,394)	(575)
Adjusted EBITDA	<u>\$ (1,249)</u>	<u>\$ (2,720)</u>	<u>\$ (5,295)</u>	<u>\$ (9,191)</u>

⁽¹⁾ Represents non-cash change in the fair value of earnout liability and interest rate swap contract for the three and nine months ended September 30, 2023 and 2022.

Components of Our Results of Operations

Net Revenue

We derive our revenue from the sale of our foot and ankle orthopedic solutions, primarily implants. We also record as revenue any amounts billed to customers for shipping costs and record as cost of goods sold the actual shipping costs. We have elected to exclude from the measurement of the transaction price all taxes, such as sales, use, value-added, assessed by government authorities and collected from a customer. Therefore, revenue is recognized net of such taxes. In addition, we record revenue net of estimated losses for bad debt. No single customer accounted for 10% or more of our net revenue in the three and nine months ended September 30, 2023 and 2022. We expect our net revenue to increase in the foreseeable future as we expand our sales territories, add new customers and increase the utilization of our products by our existing customers, though net revenue may fluctuate from quarter to quarter due to a variety of factors, including availability of reimbursement, the size and success of our sales force, the number of hospitals and physicians who are aware of and use our products and seasonality.

Cost of Goods Sold

Cost of goods sold consists primarily of finished products purchased from third-party suppliers, shipping costs, excess and obsolete inventory adjustments and royalties. Implants are manufactured to our specifications primarily by third-party suppliers in the United States. Cost of goods sold is recognized at the time the implant is used in surgery and the related revenue is recognized. Prior to use in surgery, the cost of our implants is recorded as inventories, net in our condensed consolidated balance sheets. Cost of goods sold is expected to increase due primarily to increased sales volume.

We calculate gross profit as net revenue less cost of goods sold, and gross margin as gross profit divided by net revenue. We expect our gross profit to increase in the foreseeable future as our net revenue grows, though our gross profit and gross margin have been and will continue to be affected by a variety of factors, primarily average selling prices, third-party manufacturing costs, change in mix of customers, excess and obsolete inventory adjustments, royalties and seasonality of our business. Our gross margin is higher for products we sell in the United States versus internationally due to higher average selling prices. We expect our gross margin to fluctuate from period to period, however, based upon the factors described above and seasonality.

Operating Expenses

Research and Development

Research and development expense is comprised of engineering costs and research programs related to new product and sustaining product development activities, clinical studies and trials expenses, quality and regulatory expenses, and salaries, bonuses and benefits related to research and development functions. We maintain a procedurally focused approach to product development and have projects underway to add new systems across multiple foot and ankle indications and to add additional functionality to our existing systems. We expect our research and development expenses to increase as we hire additional personnel to develop new product offerings and product enhancements.

Selling, General, and Administrative

Selling, general, and administrative expenses consist primarily of commissions paid to U.S. sales representatives, salaries, bonuses, and benefits related to selling, marketing, and general and administrative functions, and stock-based compensation. In addition, selling, general, and administrative expenses consist of the costs associated with marketing initiatives, physician and sales force medical education programs, surgical instrument depreciation, travel expenses, professional services fees (including legal, finance, audit and tax fees), insurance costs, facility expenses and other general corporate expenses.

We expect selling, general, and administrative expenses to continue to increase in the foreseeable future as we continue to grow our business, though it may fluctuate from quarter to quarter. We also expect our administrative expenses, including stock-based compensation expense, to increase as we increase our headcount and expand our facilities and business processes to support our operations as a public company. Our selling, general and administrative expenses may fluctuate from period to period due to the seasonality of our business and as we continue to add direct sales territory managers in new territories.

Other Income (Expense)

Other Income (Expense), net

Other income (expense) consists primarily of changes in fair value related to earn-out liabilities and our interest rate swap contract.

Interest Expense, net

Interest expense consists of interest incurred, amortization of financing costs and interest income earned during the reported periods.

Results of Operations

For the Three Months Ended September 30, 2023 and 2022

The following table summarizes our results of operations for the periods presented:

	Three Months Ended September 30,		Change (in thousands)
	2023	2022	
Net revenue	\$ 52,783	\$ 46,006	\$ 6,777 15%
Cost of goods sold	10,394	8,491	1,903 22%
Gross profit	42,389	37,515	4,874 13%
Operating expenses:			
Research and development costs	7,244	6,337	907 14%
Selling, general, administrative	44,126	39,667	4,459 11%
Total operating expenses	51,370	46,004	5,366 12%
Operating loss	(8,981)	(8,489)	(492) (6)%
Other income (expense):			
Other income, net	1,660	59	1,601 *
Interest expense, net	(1,119)	(1,093)	(26) (2)%
Total other income (expense)	541	(1,034)	1,575 *
Income tax (benefit) expense	(108)	201	(309) *
Net loss	<u>\$ (8,332)</u>	<u>\$ (9,724)</u>	<u>\$ 1,392</u> 14%

* Not meaningful

The following table represents total net revenue by geographic area, based on the location of the customer for the three months ended September 30, 2023 and 2022, respectively.

	Three Months Ended September 30,	
	2023	2022
	(in thousands)	
United States	\$ 44,548	\$ 39,960
International	8,235	6,046
Total net revenue	\$ 52,783	\$ 46,006

Net Revenue. Net revenue increased \$6.8 million, or 15%, from \$46.0 million during the three months ended September 30, 2022, to \$52.8 million during the corresponding period in 2023. U.S. net revenue was \$44.6 million for three months ended September 30, 2023, representing growth of 11% compared to the prior year. U.S. net revenue growth was primarily the result of sales force expansion and new product launches. International revenue for the three months ended September 30, 2023, was \$8.2 million, representing growth of 36% compared to the prior year. International revenue growth was driven primarily by our operations in the United Kingdom and Australia, as well as recent new markets entered including Canada, Germany and Spain.

Cost of Goods Sold and Gross Profit Margin. Cost of goods sold increased \$1.9 million, or 22%, from \$8.5 million during the three months ended September 30, 2022, to \$10.4 million during the corresponding period in 2023, primarily due to increased variable costs from higher net revenue and higher inventory excess and obsolescence expense. Gross profit margin for the three months ended September 30, 2023, decreased to 80.3%, compared to 81.5% in the same period of 2022.

Research and Development Expenses. Research and development expenses increased \$0.9 million, or 14%, from \$6.3 million during the three months ended September 30, 2022 to \$7.2 million as compared to the corresponding period in 2023. The increase in research and development expenses was primarily due to additional investments in new product development, international regulatory affairs, clinical studies and our quality management system.

Selling, General, and Administrative Expenses. Selling, general and administrative expenses increased \$4.5 million, or 11%, from \$39.7 million during the three months ended September 30, 2022, to \$44.1 million during the corresponding period in 2023. The increase in selling, general, and administrative expenses was primarily driven by investments in sales and marketing, including commercial team expansion both in the U.S. and in our international markets, increased variable sales representative commission expense related to U.S. net revenue growth and increased U.S. marketing and medical education programs.

Other Income, net. Other income increased \$1.6 million, from \$0.1 million during the three months ended September 30, 2022, to \$1.7 million during the three months ended September 30, 2023. The increase in other income is primarily related to the change in fair value of earn-out liabilities and interest rate swap.

Interest Expense, net. Interest expense was \$1.1 million during both the three months ended September 30, 2023, and the three months ended September 30, 2022. While interest rates increased, interest expense remained flat primarily due to an offsetting increase in interest income.

For the Nine Months Ended September 30, 2023 and 2022

The following table summarizes our results of operations for the period presented below:

	Nine Months Ended September 30,		Change (in thousands)
	2023	2022	
Net revenue	\$ 155,828	\$ 129,875	\$ 25,953 20%
Cost of goods sold	28,158	22,920	5,238 23%
Gross profit	127,670	106,955	20,715 19%
Operating expenses:			
Research and development costs	21,976	18,100	3,876 21%
Selling, general, administrative	131,773	114,857	16,916 15%
Total operating expenses	153,749	132,957	20,792 16%
Operating loss	(26,079)	(26,002)	(77) 0%
Other income (expense):			
Other income, net	1,014	610	404 *
Interest expense, net	(3,127)	(2,865)	(262) (9)%
Total other expense	(2,113)	(2,255)	142 *
Income tax expense	90	306	(216) *
Net loss	<u>\$ (28,282)</u>	<u>\$ (28,563)</u>	<u>\$ 281</u> 1%

* Not meaningful

The following table represents total net revenue by geographic area, based on the location of the customer for the nine months ended September 30, 2023 and 2022, respectively.

	Nine Months Ended September 30,	
	2023	2022
United States	\$ 131,793	\$ 112,781
International	24,035	17,094
Total net revenue	<u>\$ 155,828</u>	<u>\$ 129,875</u>

Net Revenue. Net revenue increased \$26.0 million, or 20%, from \$129.9 million during the nine months ended September 30, 2022, to \$155.8 million during the corresponding period in 2023. Strengthening of the U.S. dollar reduced net revenue growth for the nine months ended September 30, 2023, by 0.6% as compared to the prior year. U.S. net revenue was \$131.8 million for the nine months ended September 30, 2023, representing growth of 17% compared to the prior year. U.S. net revenue growth was primarily the result of sales force expansion and new product launches. International revenue for the nine months ended September 30, 2023, was \$24.0 million, representing growth of 41% compared to the prior year. Strengthening of the U.S. dollar reduced international net revenue growth for the nine months ended September 30, 2023, by approximately 4.7% as compared to the prior year. International revenue growth was driven primarily by our operations in the United Kingdom, Australia and Spain.

Cost of Goods Sold and Gross Profit Margin. Cost of goods sold increased \$5.2 million, or 23%, from \$22.9 million during the nine months ended September 30, 2022, to \$28.2 million during the corresponding period in 2023, primarily due to increased variable costs from higher net revenue combined with higher inventory excess and obsolescence expense and an increase in outbound freight costs. Gross profit margin for the nine months ended September 30, 2023 decreased to 81.9%, compared to 82.4% in the same period of 2022.

Research and Development Expenses. Research and development expenses increased \$3.9 million, or 21%, from \$18.1 million during the nine months ended September 30, 2022, to \$22.0 million as compared to the corresponding period in 2023. The increase in research and development expenses was primarily due to additional investments in new product development, international regulatory affairs, clinical studies and our quality management system.

Selling, General, and Administrative Expenses. Selling, general and administrative expenses increased \$16.9 million, or 15%, from \$114.9 million during the nine months ended September 30, 2022 to \$131.8 million during the corresponding period in 2023. The increase in selling, general, and administrative expenses was primarily driven by investments in sales and marketing, including commercial team expansion both in the U.S. and in our international markets, increased variable sales representative commission expense related to U.S. net revenue growth and increased U.S. marketing and medical education programs.

Other Income, net. Other income increased \$0.4 million, from \$0.6 million during the nine months ended September 30, 2022, to \$1.0 million during the nine months ended September 30, 2023. The increase in other income is primarily related to the change in fair value of earn-out liabilities and interest rate swap.

Interest Expense, net. Interest expense increased to \$3.1 million for the nine months ended September 30, 2023, from \$2.9 million for the nine months ended September 30, 2022, primarily due to higher levels of outstanding debt and higher interest rates on our outstanding debt, offset partially by higher interest income.

Liquidity and Capital Resources

Our primary sources of capital from inception through September 30, 2023, have been from cash flows from operations, private placements of securities, proceeds from our public offerings and the incurrence of indebtedness. On January 30, 2023, we completed the Offering of 6,500,000 shares of our common stock at an offering price of \$17.00 per share, which consisted of 3,750,000 shares of common stock issued and sold by us and 2,750,000 shares of common stock sold by certain selling securityholders. On February 17, 2023, the underwriters exercised in full their option to purchase an additional 562,500 shares and 412,500 shares of common stock from us and the selling securityholders, respectively. We received aggregate net proceeds from the Offering of approximately \$68.5 million, after deducting underwriting discounts and commissions and offering expenses payable by us. We did not receive any of the proceeds from the sale of shares of common stock by the selling securityholders.

As of September 30, 2023, and December 31, 2022, we had cash of \$34.9 million and \$38.5 million, and an accumulated deficit of \$96.1 million and \$67.8 million, respectively. We maintain cash balances with financial institutions in excess of insured limits.

As of September 30, 2023, we had \$30.0 million principal amount outstanding and \$10.0 million borrowing capacity under our term loan with Midcap Financial Trust as well as \$0 outstanding and \$50.0 million borrowing capacity under our revolving loan with Midcap Trust (collectively, the "Midcap Credit Agreements"). As of September 30, 2023, we also had \$15.1 million outstanding under our secured term loan facility with Zions Bancorporation, N.A., dba Vectra Bank Colorado (the "Zion Facility"). For additional information about the Midcap Credit Agreements and our secured term with the Zion Facility, refer to Note 6.

On November 2, 2023, we entered into the Ares Credit Agreement with Ares Capital, and the lenders party thereto, to provide a total of \$150.0 million, inclusive of a revolving credit facility of up to \$50.0 million and a term loan facility of up to \$100.0 million. In connection with the closing of the Ares Credit Agreement, the Company drew down \$25.0 million and \$75.0 million on the Ares Revolving Loan and Ares Term Loan, respectively. The Company utilized a portion of the proceeds obtained from Ares Capital to satisfy all outstanding obligations under the MidCap Credit Facilities and concurrently terminated the MidCap Credit Agreements. For additional information about the Ares Credit Agreement, refer to Note 14.

We believe that our existing cash, additional available borrowing capacity and expected revenues will be sufficient to meet our capital requirements and fund our operations for the next 12 months. Our primary short-term needs for capital for our planned operations, which are subject to change, include:

- expanding our research and development initiatives to improve our existing products and develop new products and solutions; and
- continued commercialization efforts and expansion of our sales and marketing infrastructure and programs to drive anticipated sales growth in the United States and elsewhere;

We have based our short-term capital needs and planned operating requirements on assumptions that may prove to be incorrect and we may use all our available capital resources sooner than we expect. Although not anticipated at this time, we may require additional financing to fund our operations and planned growth. We may also seek additional financing opportunistically. We may seek to raise any additional capital by entering into partnerships or through public or private equity offerings or debt financings, credit or loan facilities or a combination of one or more of these funding sources. Additional funds may not be available to us on acceptable terms or at all. If we fail to obtain necessary capital when needed on acceptable terms, or at all, we could be forced to delay, limit, reduce or terminate our product development programs, commercialization efforts or other operations. If we raise additional funds by issuing equity securities, our stockholders will suffer dilution and the terms of any financing may adversely affect the rights of our stockholders. In addition, as a condition to providing additional funds to us, future investors may demand, and may be granted, rights superior to those

of existing stockholders. If we raise additional capital through collaborations agreements, licensing arrangements or marketing and distribution arrangements, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product or grant licenses that may not be favorable to us. Debt financing, if available, may involve restrictive covenants limiting our flexibility in conducting future business activities, and, in the event of insolvency, debt holders would be repaid before holders of our equity securities received any distribution of our corporate assets. In addition, market conditions impacting financial institutions could impact our ability to access some or all of our cash, cash equivalents and marketable securities, and we may be unable to obtain alternative funding when and as needed on acceptable terms, if at all.

Cash Flows

The following table sets forth the primary sources and uses of cash for the periods presented below:

	Nine Months Ended September 30,			Change	
	2023	2022	Amount		%
	(in thousands)				
Net cash (used in) provided by:					
Operating activities	\$ (47,517)	\$ (35,950)	\$ (11,567)		(32)%
Investing activities	(22,031)	(53,519)	31,488		59%
Financing activities	65,480	36,937	28,543		77%
Effect of exchange rate changes on cash	549	(495)	1,044		*
Net decrease in cash	<u>\$ (3,519)</u>	<u>\$ (53,027)</u>	<u>\$ 49,508</u>		<u>93%</u>

* Not meaningful

Net Cash Used in Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2023, was \$47.5 million, consisting of a \$28.3 million net loss, inventory increases of \$35.6 million and final legal settlement payments of \$22.0 million, offset partially by non-cash expenses of \$21.7 million, including \$10.6 million of depreciation and amortization and \$10.3 million of stock-based compensation expense, and other working capital improvements of \$16.7 comprised primarily of a \$3.7 million decrease in accounts receivable and a \$12.5 million increase in accounts payable.

Net cash used in operating activities for the nine months ended September 30, 2022, was \$36.0 million, consisting primarily of net loss of \$28.6 million plus non-cash expenses of \$15.3 million, which primarily consisted of \$9.6 million of depreciation and amortization and \$7.1 million of stock-based compensation expense, and increased working capital of \$22.7 million, including \$15.3 million of inventory purchases, a \$10.2 million increase in accounts receivable and other working capital decreases of \$2.9 million.

Net Cash Used in Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2023, was \$22.0 million, consisting primarily of surgical instrumentation purchases plus other purchases of property, plant and equipment.

Net cash used in investing activities for the nine months ended September 30, 2022, was \$53.5 million, consisting primarily of our purchase of Disior for \$18.5 million (financed by a \$20.0 million draw on the Company's term loan), the purchase of our Denver headquarters building for \$18.3 million (financed in part by a \$16.0 million mortgage loan), surgical instrumentation purchases for \$8.4 million, capital spend associated with the launch of SAP of \$3.4 million and capitalization of certain patent costs.

Net Cash Provided by Financing Activities

Net cash provided by financing activities for the nine months ended September 30, 2023, was \$65.5 million, consisting of \$68.5 million of proceeds from the issuance of common stock, net of issuance costs related to the Offering on January 30, 2023, and \$2.5 million of proceeds from the exercise of stock options, partially offset by \$5.5 million in payments related to the completion of certain milestones associated with the Disior and Additive Orthopaedics Acquisitions.

Net cash provided by financing activities for the nine months ended September 30, 2022, was \$36.9 million, consisting of \$36.0 million proceeds from long-term debt, including a \$20.0 million draw on the Company's Midcap Term Loan to finance the Disior acquisition and a \$16.0 million loan to finance the purchase of the Company's Denver headquarters.

Critical Accounting Estimates

Management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and assumptions for the reported amounts of assets, liabilities, revenue, expenses and related disclosures. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions and any such differences may be material.

During the nine months ended September 30, 2023, there were no material changes to our critical accounting policies or in the methodology used for estimates from those described in "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022.

Recently Issued Accounting Pronouncements

See Note 2 to our condensed consolidated financial statements included in this quarterly report for recently adopted pronouncements as of the date of this report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Risk

The primary objectives of our investment activities are to preserve principal and provide liquidity. In the normal course of business, we are exposed to market risk related to fluctuating interest rates. The Company has both fixed and variable rate debt to manage the impact of these fluctuations. Accordingly, the Company is the fixed rate payor on an interest rate swap contract. Based on our overall interest rate exposure as of September 30, 2023, we do not believe a hypothetical 10 percent change in interest rates on our variable rate indebtedness would have a material effect on our results of operations.

Foreign Currency Risk

Our business is primarily conducted in U.S. dollars. Any transactions that may be conducted in foreign currencies are not expected to have a material effect on our results of operations, financial position or cash flows. As we expand internationally our results of operations and cash flows may become increasingly subject to fluctuations due to changes in foreign currency exchange rates.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, have evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were not effective at the reasonable assurance level.

During the quarter ended September 30, 2023, we identified an interest rate swap agreement associated with our Zions Facility, entered into during the quarter ended March 31, 2022, that had not been appropriately evaluated for accounting and disclosure considerations. This resulted in an immaterial error related to the recognition and disclosure of the interest rate swap in prior reporting periods, which is an indication that a material weakness existed within our internal controls for those prior periods. The immaterial error and disclosure considerations were corrected in this Quarterly Report on Form 10-Q for the period ended September 30, 2023.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. This control deficiency did not result in a material misstatement of our prior period condensed consolidated annual or interim financial statements. We have determined that amending previously filed reports to correct the immaterial error is not required. However, the control deficiency could have resulted in material misstatements that may not have been prevented or detected. We have implemented enhanced internal controls that helped to identify this deficiency; however, those controls have not yet operated for a sufficient period of time to conclude the matter has been fully remediated.

Changes in Internal Control over Financial Reporting

Other than the changes made to remediate the matter above, there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(e) under the Exchange Act) during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

In designing and evaluating our disclosure controls and procedures, management recognizes that there are inherent limitations in the effectiveness of any control system, including the potential for human error and the possible circumvention or overriding of controls and procedures. No matter how well designed and operated, an effective control system can provide only reasonable, not absolute, assurance that the control objectives of the system are adequately met. Accordingly, the management of the Company, including its Chief Executive Officer and Chief Financial Officer, does not expect that the control system can prevent or detect all error or fraud. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

We may in the ordinary course of business face various claims brought by third parties and we may, from time to time, make claims or take legal actions to assert our rights, including intellectual property rights as well as claims relating to employment matters and the safety or efficacy of our products. Any of these claims could cause us to incur substantial costs and, while we generally believe that we have adequate insurance to cover many different types of liabilities, our insurance carriers may deny coverage, may be inadequately capitalized to pay on valid claims, or our policy limits may be inadequate to fully satisfy any associated costs, damage awards or settlements. If this were to happen, the payment of any such awards could have a material adverse effect on our operations, cash flows and financial position. Additionally, any such claims, whether or not successful, could damage our reputation and business. We were not involved in any legal proceedings as of September 30, 2023, that could have a material adverse effect on our condensed consolidated financial position.

Item 1A. Risk Factors.

For a discussion of our potential risks and uncertainties, see the information in "Part I, Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2022. Other than the risk factors set forth below, there have been no material changes to the risk factors disclosed in our Annual Report on Form 10-K for the year ended December 31, 2022. Additional risk factors not presently known to us or that we currently deem immaterial may also impair our business or results of operations. We may disclose changes to such factors or disclose additional factors from time to time in our future filings with the SEC.

The terms of our loan agreements require us to meet certain operating and financial covenants and place restrictions on our operating and financial flexibility. If we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

Under the terms of our credit agreements with Ares Capital and Zions Bancorporation discussed in more detail in Notes 6 and 14 to our condensed consolidated financial statements included in this quarterly report, we are subject to certain affirmative and negative covenants limiting our and our subsidiaries' ability to incur certain additional indebtedness, create certain liens, liquidate or dissolve, amend organizational documents or certain other material contracts, enter into a change of control transaction and make certain distributions and investments without our lenders' consent. Additionally, the Ares Credit Agreement requires that we maintain certain minimum revenue levels tested on a quarterly basis, for the proceeding twelve-month period, commencing with the fiscal quarter ending December 31, 2023. Our lenders may also declare us in default for certain types of events such as non-payment of debts when due, inaccurate representations and warranties, failure to comply with covenants and obligations, or with terms certain other of material indebtedness, certain material judgments, bankruptcy and insolvency, impairment of liens, a change of control and/or a material adverse effect. Upon such events, our lenders could declare an event of default, which would give them the right to declare all borrowings outstanding, together with accrued and unpaid interest and fees, to be immediately due and payable. In addition, our lenders would have the right to proceed against the assets we provided as collateral under the loan agreements. For example, under our loan agreements, the lenders would have the right to enforce liens and security interests over substantially all of our assets (excluding intellectual property) in the event of certain specified defaults. If the debt under any of our loan agreements is accelerated, we may not have sufficient cash or be able to sell sufficient assets to repay our debts or may have to curtail our growth plans, which would harm our business and financial condition.

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.

During the three months ended September 30, 2023, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

Item 6. Exhibits.

The following exhibits are included within or incorporated herein by reference.

Exhibit Number	Description	Form	Incorporated by Reference			Filed Herewith
			Exhibit	Date Filed	File Number	
3.1	Amended and Restated Certificate of Incorporation of Paragon 28, Inc.	8-K	3.1	10/19/2021	001-40902	
3.1.1	Certificate of Amendment to Amended and Restated Certificate of Incorporation of Paragon 28, Inc.	8-K	3.1.1	05/19/2023	001-40902	
3.2	Second Amended and Restated By laws Form of Common Stock Certificate	8-K	3.2	05/19/2023	001-40902	
4.1	Form of Common Stock Certificate	S-1/A	4.2	10/08/2021	333-259789	
4.2	Amended and Restated Investors' Rights Agreement, dated as of July 28, 2020, by and between Paragon 28, Inc. and the investors party thereto.	S-1	4.3	9/24/2021	333-259789	
10.1+	Employment Agreement, effective as of July 27, 2023, by and between Paragon 28, Inc. and Robert McCormack.					X
31.1	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.					X
31.2	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.					X
32.1*	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.					X
32.2*	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.					X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.					
101.SCH	Inline XBRL Taxonomy Extension Schema Document					
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)					

+ Indicates management contract or compensatory plan.

* The certifications attached as Exhibit 32.1 and 32.2 that accompany this Quarterly Report are deemed furnished and not filed with the U.S. Securities and Exchange Commission and are not to be incorporated by reference into any filing of Paragon 28, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report, irrespective of any general incorporation language contained in such filing.

SIGNATURES

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

PARAGON 28, INC.

Date: November 8, 2023

By: /s/ Albert DaCosta
Name: **Albert DaCosta**
Title: **Chief Executive Officer (Principal Executive Officer)**

Date: November 8, 2023

By: /s/ Stephen M. Deitsch
Name: **Stephen M. Deitsch**
Title: **Chief Financial Officer (Principal Financial Officer)**

PARAGON 28, INC.

EMPLOYMENT AGREEMENT

This Employment Agreement (the “**Agreement**”), entered into as of July 27, 2023, is between Paragon 28, Inc., a Delaware corporation (the “**Company**”) and Robert McCormack (“**Executive**” and, together with the Company, the “**Parties**”).

WHEREAS, the Company desires to assure itself of the services of Executive effective as of August 14, 2023 (such date Executive actually commences services, the “Effective Date”) by engaging Executive to perform services under the terms hereof; and

WHEREAS, Executive desires to provide services to the Company commencing on the Effective Date on the terms herein provided.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, including the respective covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Employment.

(a) General. The Company shall employ Executive and Executive shall enter in the employ of the Company, in each case, upon the terms and conditions provided herein effective as of the Effective Date.

(b) Position and Duties. Effective as of the Effective Date, Executive: (i) shall continue to serve as the Company’s General Counsel and Corporate Secretary, with responsibilities, duties, and authority usual and customary for such position, subject to direction by the Chief Executive Officer of the Company (the “**CEO**”); (ii) shall continue to report directly to the CEO or the CEO’s designee; and (iii) agrees promptly and faithfully to comply with all present and future policies, requirements, rules and regulations, and reasonable directions and requests, of the Company in connection with the Company’s business. At the Company’s request, Executive shall serve the Company and/or its subsidiaries and affiliates in such other capacities in addition to the foregoing as the Company shall designate, *provided* that such additional capacities are consistent with Executive’s position as the Company’s General Counsel and Corporate Secretary. In the event that Executive serves in any one or more of such additional capacities, Executive’s compensation shall not automatically be increased on account of such additional service.

(c) Exclusivity. Except with the prior written approval of the CEO (which the CEO may grant or withhold in his or her sole and absolute discretion), Executive shall devote Executive’s best efforts and full working time, attention, and energies to the business of the Company, except during any paid vacation or other excused absence periods. Notwithstanding the foregoing, Executive may, without violating this Section 1(d), (i) as a passive investment, own publicly traded securities in such form or manner as will not require any services by Executive in the operation of the entities in which such securities are owned; (ii) engage in charitable and civic

activities; or (iii) engage in other personal passive investment activities, in each case, so long as such interests or activities do not materially interfere to the extent such activities do not, individually or in the aggregate, interfere with or otherwise prevent the performance of Executive's duties and responsibilities hereunder. Executive may also serve as a member of the board of directors or board of advisors of another organization provided (i) such organization is not a competitor of the Company; (ii) Executive receives prior written approval from the CEO; and (iii) such activities do not individually or in the aggregate interfere with the performance of Executive's duties under this Agreement, violate the Company's standards of conduct then in effect, or raise a conflict under the Company's conflict of interest policies. For the avoidance of doubt, the CEO has approved Executive's continued service with those organizations set forth on Exhibit A, such approval to continue until the earlier to occur of (a) the CEO's revocation of such approval in his or her sole and absolute discretion, or (b) such time as such service interferes with the performance of Executive's duties under this Agreement, violates the Company's standards of conflict or raises a conflict under the Company's conflict of interest policies.

(d) Location. The Company and Executive acknowledge and agree that Executive shall be based at the Company's offices located in the Englewood, California area, subject to such travel as may be necessary to fulfill Executive's responsibilities, including travel to the Company's other offices.

2.Terms. The period of Executive's employment under this Agreement shall commence on the Effective Date and shall continue until Executive's employment with the Company is terminated pursuant to Section 5. The phrase "**Term**" as used in this Agreement shall refer to the entire period of employment of Executive by the Company.

3. Compensation and Related Matters.

(a) Annual Base Salary. During the Term, Executive shall receive a base salary at the rate of \$440,000 per year (as may be increased from time to time, the "**Annual Base Salary**"), subject to withholdings and deductions and pro-rated for any partial employment during the Term, which shall be paid to Executive in accordance with the customary payroll practices and procedures of the Company. Such Annual Base Salary shall be reviewed by the CEO, and, as applicable, the Board of Directors of the Company (the "**Board**") and/or the Compensation Committee of the Board (the "**Committee**"), not less than annually.

(b) Annual Bonus. Executive shall be eligible to receive a discretionary annual bonus based on Executive's achievement of performance objectives established by the Company, such bonus to be targeted at 50% of Executive's Annual Base Salary (the "**Annual Bonus**"). Any Annual Bonus approved by the Board, the Committee and/or the CEO shall be paid at the same time annual bonuses are paid to other executives of the Company generally, subject to Executive's continuous employment through the date of approval. For calendar year 2023, Executive's earned Annual Bonus (if any) shall be pro-rated based on service from the Effective Date through year-end.

(c) Benefits. Executive shall be entitled to participate in such employee and executive benefit plans and programs as the Company may from time to time offer to provide to

its executives, subject to the terms and conditions of such plans. Notwithstanding the foregoing, nothing herein is intended, or shall be construed, to require the Company to institute or continue any particular plan or benefit.

(d)Business Expenses. The Company shall reimburse Executive for all reasonable, documented, out-of-pocket travel and other business expenses incurred by Executive in the performance of Executive's duties to the Company in accordance with the Company's applicable expense reimbursement policies and procedures as are in effect from time to time.

(e)Vacation. Executive will be entitled to paid vacation in accordance with the Company's vacation policy, as in effect from time to time.

4.Equity Awards. Following the Effective Date, it Executive shall be granted, subject to approval by the Board or the Committee, an award of restricted stock units (the "**RSUs**") covering a number of shares of the Company's common stock with an aggregate value of \$925,000, based on the thirty (30) day closing trading average of a share of Company common stock prior to the date of grant and rounded down the nearest whole share. The RSUs shall vest with respect to 25% of the RSUs on each anniversary of the date of grant, subject to Executive's continuing service with the Company through the applicable vesting date. Each RSU represents the right to receive a share of Company common stock upon vesting. The RSUs shall be subject to the terms and conditions of the Company's 2021 Incentive Award Plan and an individual equity award agreement to be entered into between Executive and the Company. For fiscal years following the Effective Date, you will be eligible for annual refresh equity awards as may be determined by the Board or the Committee along the same terms and conditions as other similarly situated employees of the Company (subject to your continued employment in good standing through the applicable date of grant).

5.Termination.

(a)At-Will Employment. The Company and Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law. This means that it is not for any specified period of time and, subject to any ramifications under Section 6 of this Agreement, can be terminated by Executive or by the Company at any time, with or without advance notice, and for any or no particular reason or cause. It also means that Executive's job duties, title, and responsibility and reporting level, work schedule, compensation, and benefits, as well as the Company's personnel policies and procedures, may be changed with prospective effect, with or without notice, at any time in the sole discretion of the Company (subject to any ramification such changes may have under Section 6 of this Agreement). This "at-will" nature of Executive's employment shall remain unchanged during Executive's tenure as an employee and may not be changed, except in an express writing signed by Executive and a duly-authorized officer of the Company. If Executive's employment terminates for any lawful reason, Executive shall not be entitled to any payments, benefits, damages, award, or compensation other than as provided in this Agreement.

(b)Notice of Termination. During the Term, any termination of Executive's employment by the Company or by Executive (other than by reason of death) shall be

communicated by written notice (a “**Notice of Termination**”) from one Party hereto to the other Party hereto (i) indicating the specific termination provision in this Agreement relied upon, if any, (ii) setting forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive’s employment under the provision so indicated, and (iii) specifying the Date of Termination (as defined below). The failure by the Company to set forth in the Notice of Termination all of the facts and circumstances which contribute to a showing of Cause (as defined below) shall not waive any right of the Company hereunder or preclude the Company from asserting such fact or circumstance in enforcing its rights hereunder.

(c) Date of Termination. For purposes of this Agreement, “**Date of Termination**” shall mean the date of the termination of Executive’s employment with the Company specified in a Notice of Termination.

(d) Deemed Resignation. Upon termination of Executive’s employment for any reason, Executive shall be deemed to have resigned from all offices and board memberships, if any, then held with the Company or any of its affiliates, and, at the Company’s request, Executive shall execute such documents as are necessary or desirable to effectuate such resignations.

(e) Executive’s Obligations upon Termination.

(i) Cooperation. Executive shall provide Executive’s reasonable cooperation in connection with any action or proceeding (or any appeal from any action or proceeding) which relates to events occurring during Executive’s employment hereunder; provided the Company shall indemnify and hold harmless Executive with respect to any such cooperation and reimburse Executive for Executive’s reasonable costs and expenses (including legal counsel selected by Executive and reasonably acceptable to the Company) and such cooperation shall not unreasonably burden Executive or unreasonably interfere with any subsequent employment that Executive may undertake.

(ii) Return of Company Property. Executive hereby acknowledges and agrees that all Company Property (as defined below) and equipment furnished to, or prepared by, Executive in the course of, or incident to, Executive’s employment, belongs to the Company and shall be promptly returned to the Company upon termination of Executive’s employment (and will not be kept in Executive’s possession or delivered to anyone else). For purposes of this Agreement, “**Company Property**” includes, without limitation, all books, manuals, records, reports, notes, contracts, lists, blueprints, and other documents, or materials, or copies thereof (including computer files), keys, building card keys, company credit cards, telephone calling cards, computer hardware and software, laptop computers, docking stations, cellular and portable telephone equipment, personal digital assistant (PDA) devices and all other proprietary information relating to the business of the Company or its subsidiaries or affiliates. Following termination, Executive shall not retain any written or other tangible material containing any proprietary information of the Company or its subsidiaries or affiliates.

6. Consequences of Termination.

(a) Payments of Accrued Obligations upon all Terminations of Employment. Upon a termination of Executive's employment for any reason, Executive (or Executive's estate or legal representative, as applicable) shall be entitled to receive, within 30 days after Executive's Date of Termination (or such earlier date as may be required by applicable law): (i) any portion of Executive's Annual Base Salary earned through Executive's Date of Termination not theretofore paid, (ii) any expenses owed to Executive under Section 3, (iii) any accrued but unused paid time-off owed to Executive, and (iv) any amount arising from Executive's participation in, or benefits under, any employee benefit plans, programs, or arrangements under Section 3, which amounts shall be payable in accordance with the terms and conditions of such employee benefit plans, programs, or arrangements. Except as otherwise set forth in Sections 6(b) and (c), the payments and benefits described in this Section 6(a) shall be the only payments and benefits payable in the event of Executive's termination of employment for any reason.

(b) Severance Payments upon Covered Termination Outside a Change in Control Period. If, during the Term, Executive experiences a Covered Termination outside a Change in Control Period (each, as defined below), then in addition to the payments and benefits described in Section 6(a), the Company shall, subject to Executive's delivery to the Company of a waiver and release of claims agreement substantially in the form of Exhibit B hereto, but updated to the extent deemed by the Company to be necessary to reflect any such changes to applicable law (the "**Release**") that becomes effective and irrevocable in accordance with Section 11(d) and Executive's continued compliance with Section 8(a) below, provide Executive with the following:

(i) The Company shall pay to Executive an amount in cash equal to twelve (12) months of Executive's then-existing Annual Base Salary, payable, less applicable withholdings and deductions in the form of salary continuation in regular installments over the twelve (12)-month period following the Date of Termination (the "**Non-CiC Severance Period**") in accordance with the Company's normal payroll practices with the first of such installments to commence on the first regular payroll date following the date the Release becomes effective and irrevocable or as otherwise provided in Section 11(d) below.

(ii) During the Non-CiC Severance Period or, if earlier, the date on which Executive becomes eligible for comparable replacement coverage under a subsequent employer's group health plan (in any case, the "**Non-CiC COBRA Period**"), subject to Executive's valid election to continue healthcare coverage under Section 4980B of the Internal Revenue Code of 1986, as amended (the "**Code**") and the regulations thereunder, the Company shall, in its sole discretion, either (A) continue to provide to Executive and Executive's dependents, or (B) reimburse Executive and Executive's dependents for coverage under its group health plan (if any), in each case, at the same levels and costs in effect on the Date of Termination (excluding, for purposes of calculating cost, an employee's ability to pay premiums with pre-tax dollars); *provided, however,* that if (1) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the continuation coverage period to be, exempt from the application of Section 409A under Treasury Regulation Section 1.409A-1(a)(5), (2) the Company is otherwise unable to continue to cover Executive or Executive's dependents under its group health plans, or (3) the Company cannot provide the benefit without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then, in

any such case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments over the Non-CIC COBRA Period (or remaining portion thereof).

(c)Severance Payments upon Covered Termination During a Change in Control Period. If, during the Term, Executive experiences a Covered Termination during a Change in Control Period, then, in addition to the payments and benefits described in Section 6(a), the Company shall, subject to Executive's delivery to the Company of the Release that becomes effective and irrevocable in accordance with Section 11(d) and Executive's continued compliance with Section 8(a) below, provide Executive with the following (in lieu of the benefits and payments described in Section 6(b) above):

(i)The Company shall pay to Executive an amount in cash equal to eighteen (18) months of Executive's then-existing Annual Base Salary, payable, less applicable withholdings and deductions in the form of salary continuation in regular installments over the eighteen (18)-month period following the Date of Termination (the "**CiC Severance Period**") in accordance with the Company's normal payroll practices with the first of such installments to commence on the first regular payroll date following the date the Release becomes effective and irrevocable or as otherwise provided in Section 11(d) below.

(ii)In addition, Executive shall be eligible to receive an amount equal to one and a half (1.5) times his or her earned Annual Bonus for the year in which the Covered Termination occurs to the extent earned based on the attainment of applicable performance goals as determined by the Board in its sole discretion following the end of the calendar year in which the Covered Termination occurs. If and to the extent earned, such Annual Bonus shall be paid out at the same time annual bonuses are paid generally to senior executives of the Company for the relevant year, less applicable withholdings, but in no event later than March 15th of the year immediately following that in which such Annual Bonus is earned.

(iii)During the CiC Severance Period or, if earlier, the date on which Executive becomes eligible for comparable replacement coverage under a subsequent employer's group health plan (in any case, the "**CiC COBRA Period**"), subject to Executive's valid election to continue healthcare coverage under Section 4980B of the Code and the regulations thereunder, the Company shall, in its sole discretion, either (A) continue to provide to Executive and Executive's dependents, at the Company's sole expense, or (B) reimburse Executive and Executive's dependents for coverage under its group health plan (if any) at the same levels in effect on the Date of Termination; *provided, however,* that if (1) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the continuation coverage period to be, exempt from the application of Section 409A under Treasury Regulation Section 1.409A-1(a)(5), (2) the Company is otherwise unable to continue to cover Executive or Executive's dependents under its group health plans, or (3) the Company cannot provide the benefit without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then, in any such case, an amount equal to each remaining Company subsidy

shall thereafter be paid to Executive in substantially equal monthly installments over the CIC COBRA Period (or remaining portion thereof).

(iv) Cause the vesting and, if applicable, exercisability of Executive's then-outstanding and unvested equity awards, including, without limitation, any stock options and other equity awards, shall accelerate (and, if applicable, all restrictions and rights of repurchase on such awards shall lapse) as of immediately prior to the later of (i) the Date of Termination or (ii) the closing of such Change in Control, in respect of one hundred percent (100%) (or, if the Date of Termination is less than six (6) months from the Effective Date, fifty percent (50%)) of the number of shares of Company common stock subject thereto (excluding any such awards that vest in whole or in part based on the attainment of performance-vesting conditions, which shall be governed by the terms of the applicable award agreement). To give effect to the foregoing, upon the Date of Termination that occurs prior to the closing of a Change in Control, (x) the vested portion of such equity awards shall be remain outstanding and/or be exercisable for the period(s) of time set forth in the applicable equity award agreements, (y) Executive's outstanding equity awards shall cease vesting, and (z) the unvested shares subject to Executive's outstanding equity awards shall remain outstanding (but unvested) until the earlier to occur of (A) the original expiration date of the equity award and (B) three (3) month anniversary of the Date of Termination (the "Equity Award Period**"). In the event a Change in Control has not been consummated by end of the Equity Award Period, then the unvested portion of Executive's equity awards shall terminate immediately without further action as of such date.**

(d) No Other Severance. Except as otherwise approved by the Board, the provisions of this Section 6 shall supersede in their entirety any severance payment provisions in any severance plan, policy, program, or other arrangement maintained by the Company.

(e) No Requirement to Mitigate; Survival. Executive shall not be required to mitigate the amount of any payment provided for under this Agreement by seeking other employment or in any other manner. Notwithstanding anything to the contrary in this Agreement, the termination of Executive's employment shall not impair the rights or obligations of any Party.

(f) Certain Reductions. The Company shall reduce Executive's severance benefits under this Agreement, in whole or in part, by any other severance benefits, pay in lieu of notice, or other similar benefits payable to Executive by the Company in connection with Executive's termination, including but not limited to, payments or benefits pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act, or (ii) any Company policy or practice providing for Executive to remain on the payroll without being in active service for a limited period of time after being given notice of the termination of Executive's employment. The benefits provided under this Agreement are intended to satisfy, to the greatest extent possible, any and all statutory obligations that may arise out of Executive's termination of employment. Such reductions shall be applied on a retroactive basis, with severance benefits previously paid being recharacterized as payments pursuant to the Company's statutory obligation.

(g)Definition of Cause. For purposes hereof, “**Cause**” shall mean any one of the following: (i) Executive’s commission of any act or involvement in any situation, whether before or during the term, which brings Executive into widespread public disrepute or scandal, and which justifiably shocks, insults or offends a significant portion of the community and results in material and adverse reputational harm to the Company; (ii) Executive’s indictment of (A) a felony (other than in connection with a traffic violation that does not result in imprisonment) or (B) any misdemeanor involving moral turpitude, deceit, dishonesty or fraud (other than in connection with a traffic violation that does not result in imprisonment); (iii) Executive’s willful failure to (A) substantially perform his/her material job functions hereunder (other than any such failure resulting from Executive’s Disability (as defined in the Plan) or to the extent inconsistent with Executive’s title, duties or responsibilities hereunder) or (B) carry out or comply with a lawful and reasonable directive of the Company, in each case, which failure has not been cured (or cannot be cured) within thirty (30) days after the Company gives written notice to Executive regarding such failure; (iv) Executive’s commission of an act of fraud, embezzlement, misappropriation of funds, misrepresentation, malfeasance, breach of fiduciary duty or other willful and material act of misconduct, in each case, against the Company or any of its affiliates, which materially and adversely reflects upon the business, operations, or reputation of the Company, and which conduct has not been cured (or cannot be cured) within thirty (30) days after the Company gives written notice to Executive regarding such misconduct; or (v) Executive’s material violation of any provision of this Agreement, the Confidentiality Agreement or any agreement(s) between Executive and the Company relating to noncompetition, nonsolicitation, nondisclosure and/or assignment of inventions, and failure to cure such breach (if capable of cure) within thirty (30) days after the Company gives written notice to Executive regarding such breach. The determination that a termination of Executive’s employment is either for Cause or without Cause shall be made by the Board or the Committee, in each case, in its sole discretion. For purposes of this definition, an action or inaction is only “willful” if it is done or omitted by Executive without a good faith and reasonable belief that such action or inaction is in the best interests of the Company or any of its affiliates. Without limiting the foregoing, in no event shall any of the following constitute Cause: (A) the failure to attain any individual, divisional or Company performance, implementation, integration or other objective, (B) any act or omission taken as a result of any Disability or (C) any act, or failure to act, taken in good faith and based upon authority given by the Company.

(h)Definition of Change in Control. For purposes of this Agreement, “**Change in Control**” shall have the meaning set forth in the Company’s 2021 Incentive Award Plan. Notwithstanding the foregoing, a “Change in Control” must also constitute a “change in control event,” as defined in Treasury Regulation §1.409A-3(i)(5).

(i)Definition of Change in Control Period. For purposes hereof, “**Change in Control Period**” shall mean the period commencing three months prior to the closing of a Change in Control and ending 24 months after such Change in Control.

(j)Definition of Covered Termination. For purposes hereof, “**Covered Termination**” shall mean the termination of Executive’s employment by the Company without Cause or by Executive for Good Reason, and shall not include a termination due to Executive’s death or disability.

(k)Definition of Good Reason. For purposes hereof, “**Good Reason**” shall mean that Executive has complied in all material respects with the “Good Reason Process” (hereinafter defined) following the occurrence of any of the following events, without Executive’s prior written consent: (i) a reduction of Executive’s Annual Base Salary by more than 10% (except in connection with an across-the-board reduction in the salary of all similarly situated employees); (ii) a material diminution of Executive’s authority, duties or responsibilities (other than temporarily while physically or mentally incapacitated or as required by applicable law), *provided* that a mere change of title alone shall not constitute such a material diminution; or (iii) relocation of Executive’s principal place of employment by more than 30 miles from Executive’s then-current principal place of employment, except for such travel as may be reasonably necessary in the performance of Executive’s duties hereunder.

(l)Definition of Good Reason Process. For the purposes hereof, “**Good Reason Process**” shall mean that (A) Executive has reasonably determined in good faith that a “Good Reason” condition has occurred; (B) Executive has notified the Company in writing of the first occurrence of the Good Reason condition within 90 days of the first time the Executive becomes aware of the occurrence of such condition; (C) Executive has cooperated in good faith with the Company’s efforts, for a period not less than 30 days immediately following the Company’s receipt of such notice (the “**Cure Period**”), to remedy the condition; (D) notwithstanding such efforts, the Good Reason condition continues to exist; and (E) Executive terminates Executive’s employment with the Company within 30 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

7. Assignment and Successors. The Company shall assign its rights and obligations under this Agreement to any successor to all or substantially all of the business or the assets of the Company (by merger or otherwise). This Agreement shall be binding upon and inure to the benefit of the Company, Executive, and their respective successors, assigns, personnel, and legal representatives, executors, administrators, heirs, distributees, devisees, and legatees, as applicable. None of Executive’s rights or obligations may be assigned or transferred by Executive, other than Executive’s rights to payments hereunder, which may be transferred only by will, operation of law, or as otherwise provided herein.

8. Miscellaneous Provisions.

(a)Restrictive Covenant Agreements; Right to Work. Executive hereby agrees to execute as of the date hereof and be bound by those certain Confidentiality and Non-Competition Agreement and Inventions Agreement, in each case, in the form provided by the Company (the “**Confidentiality Agreement**”). The Confidentiality Agreement shall survive the termination of this Agreement and Executive’s employment with the Company for the applicable period(s) set forth therein. Notwithstanding the foregoing, in the event of any conflict between the terms of the Confidentiality Agreement and the terms of this Agreement, the terms of this Agreement shall prevail. As a condition of Executive’s employment with the Company, Executive is required to provide evidence of Executive’s identity and eligibility for employment in the United States.

(b)Governing Law. This Agreement shall be governed, construed, interpreted, and enforced in accordance with its express terms, and otherwise in accordance with the substantive laws of the State of Colorado, without giving effect to any principles of conflicts of law, whether of the State of Colorado or any other jurisdiction, and where applicable, the laws of the United States, that would result in the application of the laws of any other jurisdiction.

(c)Validity. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(d)Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement. Signatures delivered by facsimile or PDF shall be deemed effective for all purposes.

(e)Entire Agreement. The terms of this Agreement, together with the Confidentiality Agreement, are intended by the Parties to be the final expression of their agreement with respect to the employment of Executive by the Company and supersede all prior understandings and agreements, whether written or oral, regarding Executive's service to the Company. The Parties further intend that this Agreement, together with the Confidentiality Agreement, shall constitute the complete and exclusive statement of their terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, or other legal proceeding to vary the terms of this Agreement or the Confidentiality Agreement. Notwithstanding the foregoing, in the event of any conflict between the terms of the Confidentiality Agreement and the terms of this Agreement, the terms of this Agreement shall prevail.

(f)Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing signed by Executive and a duly authorized representative of the Company. By an instrument in writing similarly executed, Executive or a duly authorized representative of the Company, as applicable, may waive compliance by the other Party with any specifically identified provision of this Agreement that such other Party was or is obligated to comply with or perform; *provided, however,* that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall preclude any other or further exercise of any other right, remedy, or power provided herein or by law or in equity.

(g)Dispute Resolution. To ensure the timely and economical resolution of disputes that arise in connection with this Agreement, Executive and the Company agree that, except as excluded herein, any and all controversies, claims and disputes arising out of or relating to this Agreement, including without limitation any alleged violation of its terms or otherwise arising out of the Parties' relationship, shall be resolved solely and exclusively by final and binding arbitration held in Douglas County, Colorado through JAMS in conformity with Colorado law and the then-existing JAMS employment arbitration rules, which can be found at <https://www.jamsadr.com/rules-employment-arbitration>. The arbitration provisions of this Agreement shall be governed by and enforceable pursuant to the Federal Arbitration Act. In all

other respects for provisions not governed by the Federal Arbitration Act, this Agreement shall be construed in accordance with the laws of the State of Colorado, without reference to conflicts of law principles. The arbitrator shall: (a) provide adequate discovery for the resolution of the dispute; and (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award. The arbitrator shall award the prevailing Party attorneys' fees and expert fees, if any. Notwithstanding the foregoing, it is acknowledged that it will be impossible to measure in money the damages that would be suffered if the Parties fail to comply with any of the obligations imposed on them under Section 8(a), and that in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Any such person shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations, and if any action shall be brought in equity to enforce any of the provisions of Section 8(a), none of the Parties shall raise the defense, without a good faith basis for raising such defense, that there is an adequate remedy at law. Executive and the Company understand that by agreement to arbitrate any claim pursuant to this Section 8(h), they will not have the right to have any claim decided by a jury or a court, but shall instead have any claim decided through arbitration. Executive and the Company waive any constitutional or other right to bring claims covered by this Agreement other than in their individual capacities. Except as may be prohibited by applicable law, the foregoing waiver includes the ability to assert claims as a plaintiff or class member in any purported class or representative proceeding. Nothing herein shall limit Executive's ability to pursue claims for workers compensation or unemployment benefits or pursue other claims which by law cannot be subject to mandatory arbitration.

(h) Enforcement. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a portion of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

(i) Notices. Any notice, request, claim, demand, document and other communication hereunder to any Party shall be effective upon receipt (or refusal of receipt) and shall be in writing and delivered personally or sent by facsimile or certified or registered mail, postage prepaid, as follows:

(i) If to the Company, to the Board at the Company's headquarters,

(ii) If to Executive, to the last address that the Company has in its personnel records for Executive,
or

(iii) At any other address as any Party shall have specified by notice in writing to the other Party.

(j) Withholding. The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local, or foreign withholding or other taxes or charges which the Company is required to withhold. The Company shall be entitled to rely on an opinion of counsel if any questions as to the amount or requirement of withholding shall arise.

(k) Whistleblower Protections and Trade Secrets. Notwithstanding anything to the contrary contained herein, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (x) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (y) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

(l) Anti-Kickback. Executive shall not engage in unlawful inducement, meaning the prohibitions of the federal Anti-Kickback Statute and any other applicable state anti-kickback statutes. Executive shall comply with all other applicable federal, state, and local laws and regulations in the solicitations of sales and provision of services hereunder, including those regulations promulgated by the Food & Drug Administration, the Health Insurance Portability and Accountability Act of 1996 as amended, the Physician Payment Sunshine Act provisions of the Patient Protection and Affordable Care Act, and all laws and regulations requiring Executive to possess any license, permit, or other documentation in order to lawfully carry out his/her duties hereunder. Executive shall keep himself/herself aware of and in compliance with all changes in such laws and regulations. Executive shall comply with all applicable rules and regulations of the Company, and the policies and procedures of the Company as are in effect from time-to-time and meet all training requirements established by the Company.

(m) Reporting Requirements. Executive acknowledges that the Company has certain reporting requirements under the federal law commonly referred to as the Physician Payments Sunshine Act. Executive must monthly report in writing to the Company any monies expended on Covered Recipients. Executive shall comply with the specific information requests and process requirements for such reporting and shall indemnify, defend, and hold the Company harmless from any claim brought by any third party arising from any failure of Executive to properly report hereunder. Executive agrees to fully comply with the Company's Physician Payment Sunshine Act Policy.

(n) Acknowledgments. Executive represents that Executive has not been, and during the term of this Agreement shall not be: (i) sanctioned within the meaning of Social Security Act Section 1128A or any amendments thereof; (ii) convicted of violating the federal Stark law, federal False Claims Act, federal Anti-Kickback statute, federal Health Insurance and Portability Act provisions, federal Civil Monetary Penalties Law, federal Health Care Fraud Statute, Foreign Corrupt Practices Act, or similar state laws; or (iii) debarred, excluded, or suspended from participation in any federal or state health care program. Executive represents that Executive has not had, and during the term of this Agreement shall not have, a complaint filed against Executive by any enforcement agency, which complaint alleges felony criminal acts of a violent nature; health care-related fraud, theft, or other financial misconduct; any offenses related to the delivery of items or services under Medicare, Medicaid, SCRIP, or other state health care programs; engaging in unlawful kickback arrangements; or any crime relating to the practice of medicine.

5. Prior Employment. Executive represents and warrants that Executive's acceptance of employment with the Company has not breached, and the performance of Executive's duties hereunder will not breach, any duty owed by Executive to any prior employer or other person. Executive further represents and warrants to the Company that (a) the performance of Executive's obligations hereunder will not violate any agreement between Executive and any other person, firm, organization, or other entity; (b) Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from competing, directly or indirectly, with the business of such previous employer or other party that would be violated by Executive entering into this Agreement and/or providing services to the Company pursuant to the terms of this Agreement; and (c) Executive's performance of Executive's duties under this Agreement will not require Executive to, and Executive shall not, rely on in the performance of Executive's duties or disclose to the Company or any other person or entity or induce the Company in any way to use or rely on any trade secret or other confidential or proprietary information or material belonging to any previous employer of Executive.

6. Golden Parachute Excise Tax.

(a) Best Pay. Any provision of this Agreement to the contrary notwithstanding, if any payment or benefit Executive would receive from the Company pursuant to this Agreement or otherwise ("Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then such Payment will be equal to the Reduced Amount (as defined below). The "Reduced Amount" will be either (A) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (B) the entire Payment, whichever amount after taking into account all applicable federal, state, and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate, net of the maximum reduction in federal income taxes which could be obtained from a deduction of such state and local taxes), results in Executive's receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (A) of the preceding sentence, the reduction shall occur in the manner (the "Reduction Method") that results in the greatest economic benefit for Executive. If more than one method of reduction will result in the same

economic benefit, the items so reduced will be reduced pro rata (the “**Pro Rata Reduction Method**”). Notwithstanding the foregoing, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A (as defined below) that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (1) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for Executive as determined on an after-tax basis; (2) as a second priority, Payments that are contingent on future events (e.g., being terminated without cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (3) as a third priority, Payments that are “deferred compensation” within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

(b) Accounting Firm. The accounting firm engaged by the Company for general tax purposes as of the day prior to the Change in Control will perform the calculations set forth in Section 10(a). If the firm so engaged by the Company is serving as the accountant or auditor for the acquiring company, the Company will appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company will bear all expenses with respect to the determinations by such firm required to be made hereunder. The accounting firm engaged to make the determinations hereunder will provide its calculations, together with detailed supporting documentation, to the Company within 30 days before the consummation of a Change in Control (if requested at that time by the Company) or such other time as requested by the Company. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it will furnish the Company with documentation reasonably acceptable to the Company that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder will be final, binding and conclusive upon the Company and Executive.

7. Section 409A.

(a) General. The intent of the Parties is that the payments and benefits under this Agreement comply with or be exempt from Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date, (“**Section 409A**”) and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with Executive to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including, without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section 409A; however, this Section 11(a) shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor

shall the Company (A) have any liability for failing to do so, or (B) incur or indemnify Executive for any taxes, interest or other liabilities arising under or by operation of Section 409A.

(b) Separation from Service, Installments and Reimbursements. Notwithstanding any provision to the contrary in this Agreement: (i) no amount that constitutes “deferred compensation” under Section 409A shall be payable pursuant to Section 6 unless the termination of Executive’s employment constitutes a “separation from service” within the meaning of Section 1.409A-1(h) of the Department of Treasury Regulations (“**Separation from Service**”); (ii) for purposes of Section 409A, Executive’s right to receive installment payments shall be treated as a right to receive a series of separate and distinct payments; and (iii) to the extent that any reimbursement of expenses or in-kind benefits constitutes “deferred compensation” under Section 409A, such reimbursement or benefit shall be provided no later than December 31st of the year following the year in which the expense was incurred. The amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year. The amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year.

(c) Specified Employee. Notwithstanding anything in this Agreement to the contrary, if Executive is deemed by the Company at the time of Executive’s Separation from Service to be a “specified employee” for purposes of Section 409A, to the extent delayed commencement of any portion of the benefits to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A, such portion of Executive’s benefits shall not be provided to Executive prior to the earlier of (i) the expiration of the six-month period measured from the date of Executive’s Separation from Service with the Company or (ii) the date of Executive’s death. Upon the first business day following the expiration of the applicable Section 409A period, all payments deferred pursuant to the preceding sentence shall be paid in a lump sum to Executive (or Executive’s estate or beneficiaries), and any remaining payments due to Executive under this Agreement shall be paid as otherwise provided herein.

(d) Release. Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of Executive’s termination of employment are subject to Executive’s execution and delivery of the Release, (i) if Executive fails to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revokes Executive’s acceptance of the Release thereafter, Executive shall not be entitled to any payments or benefits otherwise conditioned on the Release, and (ii) in any case where Executive’s Date of Termination and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. For purposes of this Section 11(d), “**Release Expiration Date**” shall mean (1) if Executive is under 40 years old as of the Date of Termination, the date that is seven days following the date upon which the Company timely delivers the Release to Executive, or such shorter time prescribed by the Company, and (2) if Executive is 40 years or older as of the Date of Termination, the date that is 21 days following the date upon which the Company timely delivers the Release to Executive, or, in the event that Executive’s termination of employment is “in connection with an exit incentive or other employment termination program” (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is 45 days following such delivery date.

To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of Executive's termination of employment are delayed pursuant to this Section 11(d), such amounts shall be paid in a lump sum on the first payroll date following the date that Executive executes and does not revoke the Release (and the applicable revocation period has expired) or, in the case of any payments subject to Section 11(d)(ii), on the first payroll period to occur in the subsequent taxable year, if later.

8.Employee Acknowledgement. Executive acknowledges that Executive has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on Executive's own judgment.

[Signature Page Follows]

The Parties have executed this Agreement as of the date set forth in the Agreement.

PARAGON 28, INC.

By: /s/ Albert DaCosta

Name: Albert DaCosta

Title: Chairman and CEO

EXECUTIVE

By: /s/ Robert McCormack

Name: Robert McCormack

Address:

EXHIBIT A

Affiliations

EXHIBIT B

RELEASE OF CLAIMS

This Release of Claims ("Release") is entered into as of _____, 20____, between Robert McCormack ("Executive") and Paragon 28, Inc. (the "Company") (collectively referred to herein as the "Parties"), effective [eight days after] OR [as of] Executive's signature hereto (the "Effective Date"), unless Executive revokes his acceptance of this Release as provided in Paragraph 2(c), below. This Agreement is being executed in connection with the terms of the Employment Agreement by and between the Parties dated as of [____], 2023 (the "Employment Agreement"), which is incorporated herein by reference.

1. Termination of Employment. The Parties hereby acknowledge and agree that Executive's employment, including his service in all positions that Executive held as an officer of the Company and as a member of the Company's board of directors, ended effective as of [____] (the "Termination Date"). The Parties acknowledge and agree that Executive is entitled to receive, and has received, payment of an amount equal to all accrued wages (including base salary and bonus compensation) earned through the Termination Date, including accrued vacation, less applicable withholding, as well as reimbursement for all expenses incurred by Executive on behalf of the Company, which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documenting such expenses.

2. Executive's Release of the Company. Executive understands that by agreeing to this Release, Executive is agreeing not to sue, or otherwise file any claim against, the Company or any of its employees or other agents for any reason whatsoever based on anything that has occurred as of the date Executive signs this Release.

(a) On behalf of Executive and Executive's heirs and assigns, Executive hereby releases and forever discharges the "Releasees" hereunder, consisting of the Company, and each of its owners, affiliates, divisions, predecessors, successors, assigns, agents, directors, officers, partners, employees, and insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expense, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which Executive now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof, including, without limiting the generality of the foregoing, any Claims arising out of, based upon, or relating to Executive's hire, employment, remuneration or resignation by the Releasees, or any of them, including Claims arising under federal, state, or local laws relating to employment, Claims of any kind that may be brought in any court or administrative agency, any Claims arising under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, et seq.; Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; the Equal Pay Act, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical

Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act , 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. the Fair Labor Standards Act, 29 U.S.C. § 215 et seq., the Sarbanes-Oxley Act of 2002; the Colorado anti-discrimination statute; the Colorado Civil Rights Act (C.R.S. Sections 24-34-301 et seq. and 24-34-401 et seq.); the Colorado Wage Act; the Colorado Minimum Wage Act and Minimum Wage Order 28; Claims any other local, state or federal law governing employment; Claims for breach of contract; Claims arising in tort, including, without limitation, Claims of wrongful dismissal or discharge, discrimination, harassment, retaliation, fraud, misrepresentation, defamation, libel, infliction of emotional distress, violation of public policy, and/or breach of the implied covenant of good faith and fair dealing; and Claims for damages or other remedies of any sort, including, without limitation, compensatory damages, punitive damages, injunctive relief and attorney's fees.

(b)Notwithstanding the generality of the foregoing, Executive does not release the following claims:

(i)Claims to enforce this Release;

(ii)Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(iii)Claims for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

(iv)Claims to continued participation in certain of the Company's group benefit plans pursuant to the terms and conditions of COBRA;

(v)Claims to any benefit entitlements vested as the date of Executive's employment termination, pursuant to written terms of any Company employee benefit plan;

(vi)Claims for indemnification under indemnification under the Company's governing documents or any applicable law, and under the terms of any policy of insurance purchased by the Company;

(vii)Claims for the severance benefits Executive is entitled to receive in exchange for this Release under Section 6[(b/c)] of the Employment Agreement, including any current or future claims for vesting, acceleration of vesting, or any claims Executive may have as a stockholder of the Company; and

(viii)Executive's right to bring to the attention of the Equal Employment Opportunity Commission claims of discrimination; *provided, however, that Executive does release Executive's right to secure any damages for alleged discriminatory treatment.*

(c)[In accordance with the Older Workers Benefit Protection Act of 1990, Executive has been advised of the following:

- (i)This section and this Release are written in a manner calculated to be understood by Executive;
- (ii)Executive has the right to consult with an attorney before signing this Release;
- (iii)Executive has been given at least [21] days to consider this Release; and
- (iv)Executive has seven days after signing this Release to revoke it, and Executive will not receive the severance benefits provided by the Employment Agreement unless and until such seven day period has expired. If Executive wishes to revoke this Release, Executive must deliver notice of Executive's revocation in writing, no later than 11:59 p.m. Mountain Time on the 7th day following Executive's execution of this Release to [_____].]

3. Executive Representations. Executive represents and warrants that:

- (a)Executive has returned to the Company Property (as defined in the Employment Agreement) which he had in his possession, custody or control at the time he signed this Release;
- (b)Except as set forth herein or in any related agreement, Executive is not aware of any owed wages, commissions, bonuses or other compensation, other than wages through the date of the termination of Executive's employment, any accrued, unused vacation earned through such date, and any severance payments that become due under the Employment Agreement;
- (c)During the course of Executive's employment Executive did not sustain any injuries for which Executive might be entitled to compensation pursuant to worker's compensation law or Executive has disclosed any injuries of which he is currently, reasonably aware for which he might be entitled to compensation pursuant to worker's compensation law; and
- (d)Executive has not initiated any adversarial proceedings of any kind against the Company or against any other person or entity released herein, nor will Executive do so in the future, except as specifically allowed by this Release.

4. Maintaining Confidential Information. Executive reaffirms his obligations under that certain Employee Proprietary Information and Inventions Assignment Agreement entered into between Executive and the Company (the "**Confidentiality Agreement**"). Executive acknowledges and agrees that the severance benefits provided in the Employment Agreement shall

be subject to Executive's continued compliance with Executive's obligations under the Confidentiality Agreement.

5. Non-Disparagement. The Company agrees that it shall take all reasonable steps necessary to ensure that the Company's officers and directors will not make statements or representations to any person, firm, or entity, which could reasonably be expected to cast Executive in an unfavorable light or which could reasonably be anticipated to adversely affect the name or reputation of Executive. Executive agrees that Executive will not make statements or representations to any person, entity or firm which could reasonably be expected to cast the Company or any entity or employee affiliated with the Company in an unfavorable light or which could reasonably be anticipated to adversely affect the name or reputation of the Company or any entity affiliated with the Company, or the name or reputation of any officer, agent or employee of the Company or of any entity affiliated with the Company; *provided* that Executive will respond accurately and fully to any question, inquiry or request for information when required by legal process. Notwithstanding the foregoing, nothing in this Section 5 shall prevent Executive from making any truthful statement to the extent (i) necessary to rebut any untrue public statements made about him; (ii) necessary with respect to any litigation, arbitration or mediation involving this Release and the enforcement thereof; or (iii) required by law or by any court, arbitrator, mediator or administrative or legislative body (including any committee thereof) with jurisdiction over such person. In addition, nothing in this Release shall be construed to prohibit Executive from engaging in any lawfully protected activity or conduct, including reporting possible violations of law or regulation to any governmental agency or regulatory body (including but not limited to the Equal Employment Opportunity Commission, the Department of Justice, the Securities and Exchange Commission, the Congress, any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation), filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body, or making other disclosures that are protected under any law or regulation. Executive does not need the prior authorization of the Company to engage in any such lawfully protected activity, nor is Executive required to notify the other that he or it has done so.

6. Cooperation. Executive reaffirms his ongoing cooperation covenant set forth in the Employment Agreement.

7. Severability. The provisions of this Release are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

8. Choice of Law. This Release shall in all respects be governed and construed in accordance with the laws of the State of Colorado, including all matters of construction, validity and performance, without regard to conflicts of law principles.

9. Integration Clause. This Release and the severance benefits under the Employment Agreement contain the Parties' entire agreement with regard to the separation of Executive's employment, and supersede and replace any prior agreements as to those matters, whether oral or written, except for the Confidentiality Agreement and any equity award agreements. This Release

may not be changed or modified, in whole or in part, except by an instrument in writing signed by Executive and a duly authorized officer or director of the Company.

10. Execution in Counterparts. This Release may be executed in counterparts with the same force and effectiveness as though executed in a single document. Facsimile or PDF signatures shall have the same force and effectiveness as original signatures.

11. Intent to be Bound. The Parties have carefully read this Release in its entirety; fully understand and agree to its terms and provisions; and intend and agree that it is final and binding on all Parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing on the dates shown below.

EXECUTIVE PARAGON 28, INC.

Robert McCormack By: _____
Title:

Date: _____ Date: _____

**CERTIFICATION 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**

I, Albert DaCosta, certify that:

- 1.I have reviewed this Quarterly Report on Form 10-Q of Paragon 28, Inc. (the "registrant");
- 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a)Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b)Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c)Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d)Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5.The registrant's other certifying officer(s) 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

By: /s/ Albert DaCosta
Albert DaCosta
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION 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**

I, Stephen M. Deitsch, certify that:

- 1.I have reviewed this Quarterly Report on Form 10-Q of Paragon 28, Inc. (the "Registrant");
- 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - (a)Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b)Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c)Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d)Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
- 5.The Registrant's other certifying officer(s) 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

By: /s/ Stephen M. Deitsch
Stephen M. Deitsch
Chief Financial Officer
(Principal Financial Officer)

**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 of Paragon 28, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, 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 result of operations of the Company.

Date: November 8, 2023

By: /s/ Albert DaCosta
Albert DaCosta
Chief Executive Officer
(Principal Executive Officer)

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

**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 of Paragon 28, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, 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 result of operations of the Company.

Date: November 8, 2023

By: /s/ Stephen M. Deitsch
Stephen M. Deitsch
Chief Financial Officer
(Principal Financial Officer)

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