

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported) **September 10, 2023**

DIGITAL BRANDS GROUP, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-40400

(Commission File Number)

46-1942864

(IRS Employer Identification No.)

1400 Lavaca Street, Austin, TX
(Address of Principal Executive Offices)

78701
(Zip Code)

(209) 651-0172

(Registrant's Telephone Number, Including Area Code)

N/A

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbols	Name of each exchange on which registered
Common Stock, par value \$0.0001	DBGI	The Nasdaq Stock Market LLC
Warrants, each exercisable to purchase one share of Common Stock	DBGIW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company x

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.

Item 1.01 Entering Into Material Definitive Agreement.

To the extent required by Item 1.01 of Form 8-K, the information contained in Item 3.02 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

On September 10, 2023, the non-employee members of the board of directors (the “Board”) of Digital Brands Group, Inc., a Delaware corporation (the “Company”), adopted a 2023 Stock Purchase Plan (the “2023 Plan”) to enable the Company to attract, retain and motivate its employees by providing for or increasing the proprietary interests of such employees in the Company, and to enable the Company and its subsidiaries to attract, retain and motivate nonemployee directors and further align their interests with those of the stockholders of the Company by providing for or increasing the proprietary interest of such directors in the Company. Under the 2023 Plan, qualified employees can purchase shares of the Company’s common stock at fair market value by either the delivery of cash or the delivery of a form of acceptable non-recourse promissory note. The aggregate number of common stock issuable under the 2023 Plan shall not exceed 65,000 subject to certain adjustment provided under the 2023 Plan.

Pursuant to the 2023 Plan, on September 10, 2023, certain qualified employees of the Company entered into a Stock Purchase Agreement (the “Stock Purchase Agreement”) in a form that was approved by the Board under the 2023 Plan and purchased in aggregate 63,000 restricted shares of our common stock, par value \$0.0001 (the “Common Stock”) at a purchase price of \$10.43 per share, which is the Nasdaq Official Closing Price (as reflected on Nasdaq.com) on the date of purchase, with 5-year non-recourse promissory notes bearing an interest at 2%, a form of which is included in the Stock Purchase Agreement.

The foregoing summaries of the 2023 Plan and the Stock Purchase Agreement are subject to, and qualified in their entirety by such documents attached as Exhibit 10.1 and Exhibit 10.2 respectively to this Current Report on Form 8-K, which are incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Cancellation of Certificate of Designation of Series A Preferred Stock

As reported in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on August 31, 2022, the Company filed, on August 31, 2022, a certificate of designation (the “Series A Certificate of Designation”) with the Secretary of State of the State of Delaware that designated the rights, preferences, privileges and restrictions of one share of Series A Preferred Stock (the “Series A Preferred Stock”). On October 13, 2022, the Series A Preferred Stock by its terms was automatically redeemed, as described in the Company’s definitive proxy statement filed with the SEC on September 14, 2022. Pursuant to the terms of the Series A Certificate of Designation, upon redemption, the share of Series A Preferred Stock redeemed was automatically retired and restored to the status of an authorized but unissued share of preferred stock, par value \$0.0001 per share (the “Preferred Stock”), of the Company.

On September 13, 2023, the Company filed a certificate of cancellation (the “Series A Certificate of Cancellation”) with the Secretary of State of the State of Delaware, effective as of the time of filing, cancelling the Series A Certificate of Designation, and thereby eliminating all Series A Preferred Stock. The foregoing description is qualified in its entirety by the full text of the Series A Certificate of Cancellation, which is filed as Exhibit 3.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

Cancellation of Certificate of Designation of Series B Preferred Stock

As reported in the Company’s Current Report on Form 8-K filed with the SEC on June 1, 2023, the Company filed, on May 30, 2023, a certificate of designation (the “Series B Certificate of Designation”) with the Secretary of State of the State of Delaware that designated the rights, preferences, privileges and restrictions of one share of Series B Preferred Stock (the “Series B Preferred Stock”). On August 21, 2023, the Series B Preferred Stock by its terms was automatically redeemed, as described in the Company’s definitive proxy statement filed with the SEC on July 19, 2023 and as amended on July 21, 2023. Pursuant to the terms of the Series B Certificate of Designation, upon redemption, the share of Series B Preferred Stock redeemed was automatically retired and restored to the status of an authorized but unissued share of Preferred Stock of the Company.

On September 13, 2023, the Company filed a certificate of cancellation (the “Series B Certificate of Cancellation”) with the Secretary of State of the State of Delaware, effective as of the time of filing, cancelling the Series B Certificate of Designation, and thereby eliminating all Series B Preferred Stock. The foregoing description is qualified in its entirety by the full text of the Series B Certificate of Cancellation, which is filed as Exhibit 3.2 to this Current Report on Form 8-K, and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Series A Preferred Stock Certificate of Cancellation filed on September 13, 2023
3.2	Series B Preferred Stock Certificate of Cancellation filed on September 13, 2023
10.1	Digital Brands Group, Inc. 2023 Stock Plan
10.2	Form of Stock Purchase Agreement under the Digital Brands Group, Inc. 2023 Stock Plan
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

SIGNATURES

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

DIGITAL BRANDS GROUP, INC.

Date: September 14, 2023

By: /s/ John Hilburn Davis IV
Name: John Hilburn Davis IV
Title: President and Chief Executive Officer

CANCELLATION OF
CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS
OF
DIGITAL BRANDS GROUP, INC.
SERIES A PREFERRED STOCK
PURSUANT TO SECTION 151(g)
OF THE
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

The undersigned, John Hilburn Davis IV, being the Chief Executive Officer of DIGITAL BRANDS GROUP, INC., a Delaware corporation (the “**Company**”) does hereby certify that, pursuant to the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the “**DGCL**”), the following resolution was duly adopted by the Board of Directors of the Company (the “**Board**”) on September 13, 2023, and, pursuant to authority conferred upon the Board by the provisions of the Company's certificate of incorporation, as amended and in effect (the “**Certificate of Incorporation**”), the Board adopted resolutions by unanimous written consent in accordance with Section 141 of the DGCL.

WHEREAS, on August 31, 2022, the Company filed with the Secretary of State of the State of Delaware (the “**Delaware Secretary of State**”) a Certificate of Designation of Preferences, Rights and Limitations of Series A preferred stock (the “**Certificate of Designation**”), par value \$0.0001 per share (the “**Series A Preferred Stock**”), and issued one (1) share of Series A Preferred Stock, which share represents all of the issued and outstanding Series A Preferred Stock; and

WHEREAS, on October 13, 2022, pursuant to Section 6.1 of the Certificate of Designation, the outstanding share of Series A Preferred Stock was automatically retired and restored to the status of an authorized but unissued share of preferred stock, par value \$0.0001 per share, of the Company; and

WHEREAS, the Board has determined it is advisable and in the best interests of the Company and its stockholders to retire, eliminate and cancel the Certificate of Designation.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby cancels the Certificate of Designation and retires and eliminates all Series A Preferred Stock.

RESOLVED FURTHER, that the appropriate officers of the Company are hereby authorized, directed and empowered to execute and cause to be filed on behalf of the Company, a certificate of cancellation of the Certificate of Designation with the Delaware Secretary of State (the “**Certificate of Cancellation**”).

RESOLVED FURTHER, that the Board shall provide the Secretary of the Company with a copy of the Certificate of Cancellation certified by the Delaware Secretary of State to be inserted in the corporate minute book.

RESOLVED FURTHER, that the officers of the Company, and any of them, be, and they hereby are, authorized, empowered and directed for and on behalf of the Company and in its name to execute, deliver and cause the performance of all such further documents and to take all such further actions as such officers, or any of them, may in their discretion deem necessary, appropriate or advisable in order to carry out and perform the intent of the foregoing resolutions, the execution and delivery of such documents, and the taking of any such action to conclusively evidence the authorization thereof by the Company.

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IN WITNESS WHEREOF, this Cancellation of Certificate of Designation of Preferences, Rights and Limitations of Digital Brands Group, Inc. Series A Preferred Stock has been executed by a duly authorized officer of the Company on this 13th day of September, 2023.

By: /s/ John Hilburn Davis IV
Name: John Hilburn Davis IV
Title: Chief Executive Officer

CANCELLATION OF
CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS
OF
DIGITAL BRANDS GROUP, INC.
SERIES B PREFERRED STOCK
PURSUANT TO SECTION 151(g)
OF THE
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

The undersigned, John Hilburn Davis IV, being the Chief Executive Officer of DIGITAL BRANDS GROUP, INC., a Delaware corporation (the “**Company**”) does hereby certify that, pursuant to the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the “**DGCL**”), the following resolution was duly adopted by the Board of Directors of the Company (the “**Board**”) on September 13, 2023, and, pursuant to authority conferred upon the Board by the provisions of the Company's certificate of incorporation, as amended and in effect (the “**Certificate of Incorporation**”), the Board adopted resolutions by unanimous written consent in accordance with Section 141 of the DGCL.

WHEREAS, on May 30, 2023, the Company filed with the Secretary of State of the State of Delaware (the “**Delaware Secretary of State**”) a Certificate of Designation of Preferences, Rights and Limitations of Series B preferred stock (the “**Certificate of Designation**”), par value \$0.0001 per share (the “**Series B Preferred Stock**”), and issued one (1) share of Series B Preferred Stock, which share represents all of the issued and outstanding Series B Preferred Stock; and

WHEREAS, on August 21, 2023, pursuant to Section 6.1 of the Certificate of Designation, the outstanding share of Series B Preferred Stock was automatically retired and restored to the status of an authorized but unissued share of preferred stock, par value \$0.0001 per share, of the Company; and

WHEREAS, the Board has determined it is advisable and in the best interests of the Company and its stockholders to retire, eliminate and cancel the Certificate of Designation.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby cancels the Certificate of Designation and retires and eliminates all Series B Preferred Stock.

RESOLVED FURTHER, that the appropriate officers of the Company are hereby authorized, directed and empowered to execute and cause to be filed on behalf of the Company, a certificate of cancellation of the Certificate of Designation with the Delaware Secretary of State (the “**Certificate of Cancellation**”).

RESOLVED FURTHER, that the Board shall provide the Secretary of the Company with a copy of the Certificate of Cancellation certified by the Delaware Secretary of State to be inserted in the corporate minute book.

RESOLVED FURTHER, that the officers of the Company, and any of them, be, and they hereby are, authorized, empowered and directed for and on behalf of the Company and in its name to execute, deliver and cause the performance of all such further documents and to take all such further actions as such officers, or any of them, may in their discretion deem necessary, appropriate or advisable in order to carry out and perform the intent of the foregoing resolutions, the execution and delivery of such documents, and the taking of any such action to conclusively evidence the authorization thereof by the Company.

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IN WITNESS WHEREOF, this Cancellation of Certificate of Designation of Preferences, Rights and Limitations of Digital Brands Group, Inc. Series B Preferred Stock has been executed by a duly authorized officer of the Company on this 13th day of September, 2023.

By: /s/ John Hilburn Davis IV
Name: John Hilburn Davis IV
Title: Chief Executive Officer

DIGITAL BRANDS GROUP, INC. 2023 STOCK PLAN**Section 1.PURPOSE OF PLAN**

The purpose of this Stock Plan (“**Plan**”) of Digital Brands Group, Inc., a Delaware corporation (the “**Company**”), is to enable the Company to attract, retain and motivate its employees by providing for or increasing the proprietary interests of such employees in the Company, and to enable the Company and its subsidiaries to attract, retain and motivate nonemployee directors and further align their interests with those of the stockholders of the Company by providing for or increasing the proprietary interest of such directors in the Company.

Section 2.PERSONS ELIGIBLE UNDER PLAN

Each of the following persons (each, a “**Participant**”) shall be eligible to be considered for the grant of Awards (as hereinafter defined) hereunder: (1) any employee of the Company or any of its subsidiaries, including any director who is also such an employee and (2) any director of the Company or any of its subsidiaries who is not also an employee of the Company or any of its subsidiaries (a “**Nonemployee Director**”).

Section 3.AWARDS

(a) The Committee (as hereinafter defined), on behalf of the Company, is authorized under this Plan to enter into any type of arrangement with a Participant that is not inconsistent with the provisions of this Plan and that, by its terms, involves the issuance of shares of common stock of the Company (“**Common Shares**”). The entering into of any such arrangement is referred to herein as the “**grant**” of an “**Award**.”

(b) Subject to the provisions of this Plan, the Committee, in its sole and absolute discretion, shall determine all of the terms and conditions of each Award granted under this Plan, which terms and conditions may include, among other things

(i) a provision permitting the recipient of such Award, including any recipient who is a director or officer of the Company, to pay the purchase price of the Common Shares issuable pursuant to such Award, in whole or in part, by any one or more of the following:

(A) the delivery of cash; or

(B) the delivery of a non-recourse promissory note deemed acceptable by Committee.

(c) All grants of Awards of Common Shares shall be made at fair market value.

(d) All certificates evidencing Common Shares issued pursuant thereto shall bear any legend determined by the Board or the Committee (as defined below) to be necessary or appropriate.

Section 4.STOCK SUBJECT TO PLAN

At any time, the aggregate number of Common Shares issuable under this Plan shall not exceed 65,000 subject to adjustment as provided in Section 7 hereof.

Section 5.DURATION OF PLAN

No Awards shall be made under this Plan after December 31, 2023.

Section 6. ADMINISTRATION OF PLAN

(a) This Plan shall be administered by a committee (the “**Committee**”) of the Board of Directors of the Company (the “**Board**”) consisting of two or more directors, each of whom is an “outside director” within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended; and who otherwise comply with the requirements of Rule 16b-3; provided, however, that grants of Awards may, in the absence of action of the Committee, be made by the entire Board.

(b) Subject to the provisions of this Plan, the Committee shall be authorized and empowered to do all things necessary or desirable in connection with the administration of this Plan, including, without limitation, the following:

- (i) adopt, amend and rescind rules and regulations relating to this Plan;
- (ii) grant Awards to Participants and determine the terms and conditions thereof;
- (iii) determine whether, and the extent to which adjustments are required pursuant to Section 7 hereof;
- (iv) interpret and construe this Plan and the tenors and conditions of any Award granted hereunder; and

(v) certify in writing prior to payment of compensation that any other material terms of any Award were in fact satisfied. For this purpose, approved minutes of the Committee meeting in which the certification is made are treated as a written certification.

Section 7. ADJUSTMENTS

If the outstanding securities of the class then subject to this Plan are increased, decreased or exchanged for or converted into cash, property or a different number or kind of securities, or if cash, property or securities are distributed in respect of such outstanding securities, in either case as a result of a reorganization, merger, consolidation, recapitalization, restructuring, reclassification, dividend (other than a regular cash dividend) or other distribution, stock split, reverse stock split or the like, or if substantially all of the property and assets of the Company are sold, then, unless the terms of such transaction shall provide otherwise, the Committee shall make appropriate and proportionate adjustments in (i) the number and type of shares that may be acquired pursuant to Awards theretofore granted under this Plan and (ii) the maximum number and type of shares that may be issued pursuant to Awards thereafter granted under this Plan.

Section 8. AMENDMENT AND TERMINATION OF PLAN

The Board may amend or terminate this Plan at any time and in any manner, provided that no such amendment or termination shall deprive the recipient of any Award theretofore granted under this Plan, without the consent of such recipient, of any of his or her rights thereunder with respect thereto.

Section 9. EFFECTIVE DATE OF PLAN

This Plan shall be effective as of September 10, 2023, the date upon which it was approved by the Board.

Section 10. GOVERNING LAW

This Plan and any Award granted hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without reference to choice or conflict of law principals.

**STOCK PURCHASE AGREEMENT
FURTHER TO DIGITAL BRANDS GROUP, INC. 2023 STOCK PLAN**

This Stock Purchase Agreement (this "Agreement") is made as of September 10, 2023, by and between Digital Brands Group, Inc., a Delaware corporation (the "Company"), and _____ (the "Purchaser"), such purchase being made pursuant to an Award granted under the Company's 2023 Stock Plan.

In consideration of the mutual promises and covenants herein, the receipt and sufficiency are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

Section 1 Authorization And Sale Of Common Stock

1.1 **Sale of Stock.** Subject to the terms and conditions hereof, the Company will sell to the Purchaser and the Purchaser will buy from the Company _____ (_____) common shares (the "Shares") of the Company for the aggregate purchase price of _____ Dollars (\$_____).

1.2 **Consideration.** The entire purchase price shall be evidenced by the execution and delivery by Purchaser of a non-recourse promissory note (the "Promissory Note") in the form attached hereto as Exhibit "A".

Section 2 Representations And Warranties Of The Purchaser

In connection with the purchase of the Shares, the Purchaser hereby represents and warrants to the Company as follows:

2.1 **Accredited Investor/Business and Financial Experience.** Purchaser is an "accredited investor" as defined in Rule 501 under the Securities Act of 1933, as amended. Purchaser, by reason of his/her business or financial experience or the business or financial experience of its professional advisors, has the capacity to protect its own interests in connection with the purchase of the Shares. Purchaser is able to bear the economic risk of an investment in the Shares and, at the present time, is able to afford a complete loss of such investment.

2.2 **Investment Intent: Blue Sky.** Purchaser is acquiring the Shares for investment for his/her own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distribution thereof. It understands that the issuance of the Shares have not been, and will not be, registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the Purchaser's investment intent and the accuracy of the Purchaser's representations as expressed herein.

2.3 **Rule 144.** Purchaser acknowledges that the Shares must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited public resale of shares purchased in a private placement subject to the satisfaction of certain conditions.

2.4 **Access to Information.** Purchaser acknowledges that he/she has had the opportunity to review the Company's periodic reports on file with the Securities and Exchange Commission and has been afforded (i) the opportunity to ask such questions as her/she has deemed necessary of, and to receive answers from, representatives of the Company concerning and the merits and risks of investing in the Common Stock; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

2.4 Restrictions on Transfer; Restrictive Legends. Purchaser understands that the transfer of the Shares is restricted by applicable state and federal securities laws and that the certificates representing the Shares will be imprinted with legends restricting transfer except in compliance therewith.

Section 3 Miscellaneous

3.1 Governing Law. This Agreement shall be governed in all respects by the internal laws of the State of Delaware without regard to conflict of laws provisions.

3.2 Notices. All notices, requests and communications hereunder shall be in writing and any such notice, request, demand or other communication shall be deemed to have been duly given or made when delivered by hand, or, in the case of delivery by mail, when deposited in the mail, certified mail, return receipt requested, postage prepaid, addressed for purposes of delivery by mail as follows:

If to the Company:
Digital Brands Group, Inc.
1400 Lacava Street
Austin, TX 78701

If to Purchaser:

3.3 Parties in Interest. All covenants and agreements herein contained by or on behalf of the parties hereto shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives.

3.4 Amendments or Modifications. This Agreement or any provision hereof may not be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.5 Agreement Superseding. This Agreement (together with Exhibit "A" hereto) constitutes the entire agreement of the parties hereto with respect to the subject hereof and shall supersede any prior agreement between the parties hereto, whether written or oral, relating to the subject matter hereof.

3.6 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

The foregoing agreement is hereby executed effective as of the date first set forth above.

[Signature Page Follows]

“COMPANY”

Digital Brands Group, Inc.

John Hilburn Davis IV, President

“PURCHASER”

_____ (Print Name)

[Signature Page to the Stock Purchase Agreement]

EXHIBIT A

**PROMISSORY NOTE
(NON-RECOURSE)**

Date: September 10, 2023

Maker: _____

Maker's Mailing Address:

Payee: Digital Brands Group, Inc.
1400 Lacava Street
Austin, TX 78701

Principal Amount: \$ _____

Annual Interest Rate on Unpaid Principal from Date - 2% (based on a 365 day year).

Subject to earlier payment as specified herein, no payment shall be due on this note until the fifth (5th) anniversary date hereof.

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rate stated above. Maker may prepay this note at any time without penalty.

Interest on the debt evidenced by this note or any other agreement between Maker and Payee shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded.

NOTWITHSTANDING ANY STATEMENT CONTAINED HEREIN TO THE CONTRARY, THE DEBT SECURED HEREBY IS NON-RECOURSE AND MAKER SHALL NOT BE LIABLE IN EITHER A PERSONAL OR CORPORATE CAPACITY FOR ANY DEFICIENCY.

Executed on the date first above written.

_____ (Print Name)
