

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

**FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933  
DIGITAL BRANDS GROUP, INC.**

(Exact name of registrant as specified in its charter)

<b>Delaware</b>	<b>5699</b>	<b>46-1942864</b>
<small>(State or other jurisdiction of incorporation or organization)</small>	<small>(Primary Standard Industrial Classification Code Number)</small>	<small>(I.R.S. Employer Identification Number)</small>

1400 Lavaca Street  
Austin, TX 78701  
(209) 651-0172  
(Address and telephone number of registrant's principal executive offices)

**John Hilburn Davis IV**  
**President and Chief Executive Officer**  
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(209) 651-0172  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

**Copies to:**

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**Approximate date of commencement of proposed sale to the public:**  
**As soon as practicable after the effective date of this registration statement becomes effective.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided to Section 7(a)(2)(B) of the Securities Act.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

The information in this preliminary prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission relating to these securities is effective. This preliminary prospectus is not an offer to sell these securities and it is not a solicitation of an offer to buy these securities in any jurisdiction where such offer, solicitation or sale is not permitted.

**SUBJECT TO COMPLETION, DATED SEPTEMBER 18, 2023**

## Digital Brands Group, Inc.

**32,000 Shares of Common Stock  
481,875 Shares of Common Stock issuable upon exercise of  
Pre-funded Warrants  
and accompanying 513,875 Shares of Common Stock issuable upon exercise of  
Series A Warrants and 513,875 Shares of Common Stock issuable upon exercise  
of Series B Warrants  
38,541 Shares of Common Stock issuable upon exercise of  
Placement Agent Warrants**

This prospectus relates to the offer and sale from time to time by the selling stockholders identified in this prospectus of up to an aggregate of 1,580,166 shares of our common stock, par value \$0.0001 per share, consisting of 32,000 shares of common stock, up to 481,875 shares of common stock issuable upon exercise of pre-funded warrants (the "Pre-Funded Warrants"), up to 513,875 shares of common stock issuable upon exercise of Series A Warrants (the "Series A Warrants"), up to 513,875 shares of common stock issuable upon exercise of Series B Warrants (the "Series B Warrants") and 38,541 shares of common stock issuable upon exercise of placement agent warrants (the "Placement Agent Warrants"). Each Pre-Funded Warrant represents the right to purchase one share of common stock at an exercise price of \$0.0001 per share. The Pre-Funded Warrants are exercisable immediately and may be exercised until all pre-funded warrants are exercised in full. Each Series A Warrant has an exercise price of \$9.43 per share, is immediately exercisable upon issuance and will expire on March 5, 2029. Each Series B Warrant has an exercise price of \$9.43 per share, is immediately exercisable upon issuance and will expire on December 5, 2024. The Placement Agent Warrants have an exercise price of \$12.16, are immediately exercisable upon issuance and will expire five and half years from the date of issuance.

We are registering the resale of the shares of common stock as required by the Registration Rights Agreement that we entered into with the selling stockholders on August 31, 2023 (the "Registration Rights Agreement").

Our registration of the shares of common stock covered by this prospectus does not mean that the selling stockholders will offer or sell any of the shares. The selling stockholders may offer and sell or otherwise dispose of the shares of common stock described in this prospectus from time to time through public or private transactions at prevailing market prices, at prices related to prevailing market prices or at privately negotiated prices. See "Plan of Distribution" beginning on page 95 for more information.

We are not selling any shares of common stock and will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock offered hereby. Upon the exercise of the Pre-Funded Warrants, Series A Warrants, Series B Warrants and Placement Agent Warrants for all 1,548,166 shares of our common stock by payment of cash, however, we will receive aggregate gross proceeds of approximately \$10 million.

The selling stockholders will pay all underwriting discounts and selling commissions, if any, in connection with the sale of the shares of common stock. We have agreed to pay certain expenses in connection with this registration statement and to indemnify the selling stockholders and certain related persons against certain liabilities. As of the date of this prospectus, no underwriter or other person has been engaged to facilitate the sale of shares of common stock in this prospectus.

Our shares of common stock and warrants are traded on the NasdaqCM under the symbols "DBGI" and "DBGIW," respectively. On September 14, 2023, the closing sale prices of our common stock and public warrants were \$11.29 per share and \$12.60 per public warrant, respectively.

**You should consider carefully the risks that we have described in "Risk Factors" beginning on page 7 before deciding whether to invest in our common stock.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2023.

**TABLE OF CONTENTS**

<a href="#">CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS</a>	iii
<a href="#">PROSPECTUS SUMMARY</a>	1
<a href="#">RISK FACTORS SUMMARY</a>	5
<a href="#">RISK FACTORS</a>	7
<a href="#">USE OF PROCEEDS</a>	28
<a href="#">DIVIDEND POLICY</a>	28
<a href="#">MARKET PRICE OF AND DIVIDENDS ON COMMON STOCK AND RELATED STOCKHOLDER MATTERS</a>	29
<a href="#">UNAUDITED PRO FORMA COMBINED FINANCIAL INFORMATION</a>	30
<a href="#">MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</a>	36
<a href="#">DESCRIPTION OF BUSINESS</a>	53
<a href="#">DIRECTORS AND EXECUTIVE OFFICERS</a>	62
<a href="#">EXECUTIVE COMPENSATION</a>	66
<a href="#">CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE</a>	70
<a href="#">SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</a>	73
<a href="#">SELLING STOCKHOLDERS</a>	79
<a href="#">DESCRIPTION OF CAPITAL STOCK</a>	81
<a href="#">PLAN OF DISTRIBUTION</a>	95
<a href="#">LEGAL MATTERS</a>	97
<a href="#">EXPERTS</a>	97
<a href="#">CHANGE IN CERTIFYING ACCOUNTANT</a>	97
<a href="#">WHERE YOU CAN FIND MORE INFORMATION</a>	98
<a href="#">INCORPORATION OF CERTAIN INFORMATION BY REFERENCE</a>	99
<a href="#">INDEX TO CONSOLIDATED FINANCIAL STATEMENTS</a>	F-1
<a href="#">PART II - INFORMATION NOT REQUIRED IN PROSPECTUS</a>	II-1
<a href="#">SIGNATURES</a>	II-13

You should read this prospectus carefully before you invest. It contains important information you should consider when making your investment decision. You should rely only on the information provided in this prospectus. We have not authorized anyone to provide you with different information.

The information in this document may only be accurate on the date of this document. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

**We have not authorized anyone to provide any information or to make any representations other than those contained in or incorporated by reference in this prospectus or in any free writing prospectuses prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in or incorporated by reference in this prospectus is accurate only as of its date regardless of the time of delivery of this prospectus or of any sale of common stock.**

To the extent there is a conflict between the information contained in this prospectus, on the one hand, and the information contained in any document incorporated by reference filed with the U.S. Securities and Exchange Commission (the “SEC”) before the date of this prospectus, on the other hand, you should rely on the information in this prospectus. If any statement in a document incorporated by reference is inconsistent with a statement in another document incorporated by reference having a later date, the statement in the document having the later date modifies or supersedes the earlier statement. This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under “*Where You Can Find More Information.*”

Neither we nor the placement agent have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons who come into possession of this prospectus and any free writing prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus and any free writing prospectus applicable to that jurisdiction.

This prospectus and the documents incorporated by reference in this prospectus contain market data and industry statistics and forecasts that are based on independent industry publications and other publicly available information. Although we believe that these sources are reliable, we do not guarantee the accuracy or completeness of this information and we have not independently verified this information. Although we are not aware of any misstatements regarding the market and industry data presented or incorporated by reference in this prospectus, these estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed under the heading “**Risk Factors**” and any related free writing prospectus. Accordingly, investors should not place undue reliance on this information.

## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements, which reflect the views of our management with respect to future events and financial performance. These forward-looking statements are subject to a number of uncertainties and other factors that could cause actual results to differ materially from such statements. Forward-looking statements are identified by words such as “anticipates,” “believes,” “estimates,” “expects,” “intends,” “plans,” “projects,” “targets,” and similar expressions. Such forward-looking statements may be contained in the sections “Risk Factors,” and “Business,” among other places in this prospectus. Readers are cautioned not to place undue reliance on these forward-looking statements, which are based on the information available to management at this time and which speak only as of this date. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. For a discussion of some of the factors that may cause actual results to differ materially from those suggested by the forward-looking statements, please read carefully the information under “Risk Factors.”

The identification in this document of factors that may affect future performance and the accuracy of forward-looking statements is meant to be illustrative and by no means exhaustive. All forward-looking statements should be evaluated with the understanding of their inherent uncertainty. You may rely only on the information contained in this prospectus.

We have not authorized anyone to provide information different from that contained in this prospectus. Neither the delivery of this prospectus nor the sale of our common stock means that information contained in this prospectus is correct after the date of this prospectus. This prospectus is not an offer to sell or solicitation of an offer to buy these securities in any circumstances under which the offer or solicitation is unlawful.

## PROSPECTUS SUMMARY

*This summary highlights information contained elsewhere in the prospectus. Because it is a summary, it does not contain all of the information that you should consider before investing in our common stock. You should read and carefully consider this entire prospectus before making an investment decision, especially the information presented under the headings “Risk Factors,” and “Special Note Regarding Forward-Looking Statements.”*

*Unless otherwise indicated by the context, references to “DBG” refer to Digital Brands Group, Inc. solely, and references to the “Company,” “Digital Brands,” “our,” “we,” “us” and similar terms refer to Digital Brands Group, Inc., together with Bailey 44, LLC (“Bailey”), MOSBEST, LLC (“Stateside”) and Sunnyside, LLC (“Sundry”).*

*All historical financial information presented in this prospectus for the six months ended June 30, 2023 and 2022 and the years ended December 31, 2022 and 2021 reflects Harper & Jones LLC (“H&J”) as part of our company on a consolidated basis. We transferred ownership of all membership interest in H&J back to its former owners in June 2023 in connection with the settlement of outstanding claims against our company by the former owners of H&J. The unaudited pro forma information set forth in this prospectus gives effect to the disposition of H&J for each of the six months ended June 30, 2023 and the year ended December 31, 2022. For accounting and reporting purposes, DBG has been identified as the accounting acquirer of Bailey, Stateside and Sundry and was the accounting acquirer of H&J prior to its disposition.*

*On August 21, 2023, we filed a Certificate of Amendment to our Certificate of Incorporation, as amended, to effect a one-for-twenty-five (1-for-25) reverse stock split effective August 22, 2023. All share and per share information in this prospectus has been adjusted to reflect this reverse stock split.*

### Our Company

#### General

Digital Brands is a curated collection of lifestyle brands, including Bailey, DSTLD, Sundry and ACE Studios, that offers a variety of apparel products through direct-to-consumer and wholesale distribution. Our complementary brand portfolio provides us with the unique opportunity to cross merchandise our brands. We aim for our customers to wear our brands head to toe and to capture what we call “closet share” by gaining insight into their preferences to create targeted and personalized content specific to their cohort. Operating our brands under one portfolio provides us with the ability to better utilize our technological, human capital and operational capabilities across all brands. As a result, we have been able to realize operational efficiencies and continue to identify additional cost saving opportunities to scale our brands and overall portfolio.

Our portfolio currently consists of four significant brands:

- **Bailey** combines beautiful, luxe fabrics and on-trend designs to create sophisticated ready-to-wear capsules for women on-the-go. Designing for real life, this brand focuses on feeling and comfort rather than how it looks on a runway. Bailey is primarily a wholesale brand, which we intend to transition to a digital, direct-to-consumer brand.
- **DSTLD** offers stylish high-quality garments without the luxury retail markup valuing customer experience over labels. DSTLD is primarily a digital direct-to-consumer brand, to which we recently added select wholesale retailers to generate brand awareness.
- **Stateside** is an elevated, America first brand with all knitting, dyeing, cutting and sewing sourced and manufactured locally in Los Angeles. The collection is influenced by the evolution of the classic t-shirt offering a simple yet elegant look. Stateside is primarily a wholesale brand that we intend to transition to a digital, direct-to-consumer brand.
- **Sundry** offers distinct collections of women’s clothing, including dresses, shirts, sweaters, skirts, shorts, athleisure bottoms and other accessory products. Sundry’s products are coastal casual and consist of soft, relaxed and colorful designs that feature a distinct French chic, resembling the spirits

We believe that successful apparel brands sell in all revenue channels. However, each channel offers different margin structures and requires different customer acquisition and retention strategies. We were founded as a digital-first retailer that has strategically expanded into select wholesale and direct retail channels. We strive to strategically create omnichannel strategies for each of our

brands that blend physical and online channels to engage consumers in the channel of their choosing. Our products are sold direct-to- consumers principally through our websites and our own showrooms, but also through our wholesale channel, primarily in specialty stores and select department stores. With the continued expansion of our wholesale distribution, we believe developing an omnichannel solution further strengthens our ability to efficiently acquire and retain customers while also driving high customer lifetime value.

We believe that by leveraging a physical footprint to acquire customers and increase brand awareness, we can use digital marketing to focus on retention and a very tight, disciplined high value new customer acquisition strategy, especially targeting potential customers lower in the sales funnel. Building a direct relationship with the customer as the customer transacts directly with us allows us to better understand our customer’s preferences and shopping habits. Our experience as a company originally founded as a digitally native-first retailer gives us the ability to strategically review and analyze the customer’s data, including contact information, browsing and shopping cart data, purchase history and style preferences. This in turn has the effect of lowering our inventory risk and cash needs since we can order and replenish product based on the data from our online sales history, replenish specific inventory by size, color and SKU based on real times sales data, and control our mark-down and promotional strategies versus being told what mark downs and promotions we have to offer by the department stores and boutique retailers.

#### **Recent Developments**

##### **H& J Settlement Agreement and Disposition of H&J**

We have been involved in a dispute with the former owners of H&J regarding our obligation to “true up” their ownership interest in our company further to that membership interest purchase agreement dated May 10, 2021 whereby we acquired all of the outstanding membership interests of H&J (as amended, the “H&J Purchase Agreement”). Further to the H&J Purchase Agreement, we agreed that if, at May 18, 2022, the one year anniversary of the closing date of our initial public offering, the product of the number of shares of our common stock issued at the closing of such acquisition multiplied by the average closing price per share of our shares of common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date plus the gross proceeds, if any, of shares of our stock issued to such sellers and sold by them during the one year period from the closing date of the offering does not exceed the sum of \$9.1 million, less the value of any shares of common stock cancelled further to any indemnification claims or post-closing adjustments under the H&J Purchase Agreement, then we shall issue to the subject sellers an additional aggregate number of shares of common stock equal to any such valuation shortfall at a per share price equal to the then closing price per share of our common stock as quoted on the NasdaqCM. We did not honor our obligation to issue such shares and the former owner of H&J have claimed that they were damaged as a result.

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the parties’ execution of the Settlement Agreement (i) the Company made aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. (“D. Jones”), (ii) the Company issued 78,103 shares of common stock to D. Jones at a per share purchase price of \$17.925 which represented the lower of (i) the closing price per share of the Common Stock as reported on Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones. This transaction is known as the “H&J Settlement”.

The Settlement Agreement contains a resale registration rights provision, pursuant to which the Company shall prepare and file with the SEC a registration statement on Form S-1 (or any successor to Form S-1) covering the resale of all the shares issued pursuant to the Settlement Agreement and all the shares owned by D. Jones and its principals by no later than the earlier of the following dates: (i) within 90 calendar days following the effective date of this offering and (ii) October 31, 2023. The Company shall use its commercial best efforts to have the S-1 Resale Registration Statement declared effective as soon as possible and D. Jones and its principals have agreed to sell no more than \$500,000 worth of shares in any calendar month after the registration statement is declared effective.

All historical financial information presented in this prospectus for the six months ended June 30, 2023 and 2022 and the years ended December 31, 2022 and 2021 reflects H&J as part of our company on a consolidated basis. The unaudited pro forma information set forth in this prospectus gives effect to the disposition of H&J for each of the six months ended June 30, 2023 and the year ended December 31, 2022.

#### Norwest Waiver

On June 21, 2023, the Company, on the one hand, and Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP (together, the “Norwest Investors”), on the other hand, executed Waiver and Amendment (the “Norwest Amendment”) whereby the Norwest Investors agreed to waive and terminate certain true up rights of the Norwest Investors under the Agreement and Plan of Merger, dated February 12, 2020, among the Company, Bailey 44, LLC, Norwest Venture Partners XI, LP, and Norwest Venture Partners XII, LP and Denim.LA Acquisition Corp. This transaction is known as the “Norwest Waiver”.

#### Sundry Conversion

On June 21, 2023, the Company and the former owners of Sundry (collectively, the “Sundry Investors”) executed a Securities Purchase Agreement (the “Sundry SPA”) whereby the Company issued 5,761 shares of Series C Convertible Preferred Stock, par value \$0.0001 per share (the “Series C Preferred Stock”) to the Sundry Investors at purchase price of \$1,000 per share. The Series C Preferred Stock is convertible into a number of shares of the Company’s Common Stock equal to \$1,000 divided by an initial conversion price of \$17.925 which represents the lower of (i) the closing price per share of the Common Stock as reported on the Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023. The shares of Series C Preferred Stock were issued in consideration for the cancellation of \$5,759,178 which represented amounts owing further to certain promissory notes issued by the Company to the Sundry Investors dated December 30, 2022. This transaction is known as the “Sundry Conversion”.

Pursuant to the Sundry SPA, the Company provided resale registration rights to the Sundry Investors. The Sundry SPA provides that the Company shall no later than the earlier of the following dates: (i) the date which is 90 calendar days following the effective date of this offering and (ii) October 31, 2023 use its commercially best efforts to prepare and file with the Securities Exchange Commission a Registration Statement covering the resale of 100% of the Common Stock issuable upon conversion of the Series C Preferred Stock for an offering to be made on a continuous basis pursuant to Rule 415. The Company shall to keep such S-1 Resale Registration Statement effective until the earlier to occur of (x) the date on which all Registrable Securities have been sold pursuant to such S-1 Resale Registration Statement and (y) the date as of which all Investors may sell all of the Registrable Securities without restriction pursuant to Rule 144 (including, without limitation, volume restrictions). Each of the Sundry Investors agreed that in no event will such investor, on an individual basis, convert in any calendar month, more than the greater of (i) \$300,000 of the Series C Preferred Stock (measured by the shares of Common Stock issuable upon conversion of the Series C Preferred Stock multiplied by the conversion price) or (ii) shares of Series C Preferred Stock comprising more than 3% of the aggregate trading volume of the Company’s Common Stock as reported by Nasdaq.

#### Our Corporate Information

We were incorporated in Delaware in January 2013 under the name Denim.LA, Inc. and changed our name to Digital Brands Group, Inc. in December 2020. Our corporate offices are located at 1400 Lavaca Street, Austin, TX 78701. Our telephone number is (209) 651-0172. Our website is [www.digitalbrandsgroup.co](http://www.digitalbrandsgroup.co). None of the information on our website or any other website identified herein is part of this prospectus or the registration statement of which it forms a part.

#### The Offering

On August 31, 2023, we entered into a Securities Purchase Agreement (the “Purchase Agreement”) with a certain accredited investor (the “Investor”), pursuant to which the Company agreed to issue and sell, in a private placement (the “Private Placement”), an aggregate of 32,000 shares (the “Shares”) of the Company’s common stock, par value \$0.0001 per share (“Common Stock”), 481,875 pre-funded warrants (the “Pre-Funded Warrants”) to purchase 481,875 shares of Common Stock (the “Pre-Funded Warrant Shares”), and accompanying 513,875 Series A Warrants (the “Series A Warrants”) to purchase 513,875 shares of Common Stock (the “Series A Warrant Shares”) and 513,875 Series B Warrants (the “Series B Warrants”) to purchase 513,875 shares of Common Stock (the “Series B Warrant Shares” and together with the Series A Warrant Shares, the “Common Warrant Shares”) for aggregate gross proceeds from the Private Placement of approximately \$5 million.

Each Series A Warrant has an exercise price of \$9.43 per share, is immediately exercisable upon issuance and will expire on March 5, 2029. Each Series B Warrant has an exercise price of \$9.43 per share, is immediately exercisable upon issuance and will expire on December 5, 2024.



The Pre-Funded Warrants were sold, in lieu of shares of Common Stock, to any Investor whose purchase of shares of Common Stock would otherwise result in such Investor, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at such Investor’s option upon issuance, 9.99%) of the Company’s outstanding Common Stock after giving effect to the issuance of the Securities on the closing date of the Private Placement. Each Pre-Funded Warrant represents the right to purchase one share of Common Stock at an exercise price of \$0.0001 per share. The Pre-Funded Warrants are exercisable immediately and may be exercised at any time until the Pre-Funded Warrants are exercised in full.

In connection with the Private Placement, the Company issued 38,541 warrants (the “Placement Agent Warrants” and together with the Series A Warrants, the Series B Warrants and the Pre-Funded Warrants, the “Warrants”) to purchase up to 1,548,166 shares of Common Stock (the “Placement Agent Warrant Shares” and together with the Common Warrant Shares and the Pre-Funded Warrant Shares, the “Warrant Shares,” collectively with the Shares and the Warrants, the “Securities”). The Placement Agent Warrants have an exercise price of \$12.16, and are immediately exercisable upon issuance and will expire five and half years from the date of issuance.

<b>Issuer</b>	Digital Brands Group, Inc.
<b>Common Stock offered by the selling stockholders</b>	Up to 1,580,166 shares of common stock, comprised of shares of common stock and the shares of common stock issuable upon exercise of the Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Placement Agent Warrants.
<b>Common Stock issued and outstanding before this prospectus (1)</b>	578,502 shares
<b>Use of proceeds</b>	We will not receive any of the proceeds from the sale by the selling stockholders of the securities. However, upon the exercise of the Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Placement Agent Warrants for 1,548,166 shares of our common stock by payment of cash, we will receive aggregate gross proceeds of approximately \$10 million. Any proceeds from the exercise of the warrants will be used for working capital and general corporate purposes. See “Use of Proceeds.”
<b>Common Stock NASDAQ Symbol</b>	DBGI
<b>Risk factors</b>	You should read the section entitled “Risk Factors” beginning on page 7, the risk factors incorporated by reference in this prospectus, and any risk factors set forth in any applicable prospectus supplement or incorporated by reference therein, for a discussion of some of the risks and uncertainties you should carefully consider before deciding to invest in our securities.

(1) The number of shares of common stock outstanding is based on 578,502 shares of our common stock outstanding as of September 14, 2023 and excludes the following:

- Shares of common stock underlying the Warrants;
- Shares of common stock underlying other outstanding warrants, which include, without limitation, (i) common stock warrants to acquire up to 31,278 shares of our common stock at exercise prices between \$106.5 and \$19,150 expiring between October 2021 and October 2030, and (ii) Class B Warrants to acquire up to 72,728 shares of our common stock at an exercise price of \$9.43 expiring on March 5, 2029;
- 1,558 shares of our common stock issuable upon exercise of outstanding stock options by the members of our board of directors and third parties at a weighted average exercise price of \$9,052.75 per share as of August 22, 2023;
- 237,745 shares of common stock issuable upon the exercise of outstanding warrants at a weighted average exercise price of \$193.75 as of August 22, 2023;
- excludes shares of our common stock issuable upon conversion of outstanding 6,300 shares of Series A preferred stock and 5,761 shares of Series C preferred stock;
- Up to 2,332 shares of common stock issuable further to a \$17.5 million equity line of credit; and
- 31,908 shares of our common stock reserved for future issuance under our 2020 Omnibus Incentive Plan

Except as otherwise indicated herein, all information in this prospectus assumes the exercise of the Warrants and sale of all shares available for sale under this prospectus and no further acquisitions of shares by the selling stockholders.

### **RISK FACTORS SUMMARY**

Investing in shares of our common stock involves a high degree of risk. See “Risk Factors” beginning on page 7 of this prospectus for a discussion of factors you should carefully consider before investing in our common stock. If any of these risks actually occurs, our business, financial condition, results of operations, cash flows and prospects would likely be materially and adversely affected. As a result, the trading price of our common stock would likely decline, and you could lose all or part of your investment. Listed below is a summary of some of the principal risks related to our business:

- Our business strategy includes growth through acquisitions. If we are unable to locate desirable companies, acquire them on commercially reasonable terms, or finance such acquisitions, or if we are unable to successfully integrate the companies we do acquire or to manage our internal growth, our operating results could be adversely affected.
- Our success depends in part on the future contributions of our executives and managers, including those who were employees of Bailey, Stateside and Sundry. The loss of the services of any of them could have an adverse effect on our business and business prospects.
- Claims may be made against Bailey, Stateside and Sundry and other acquired businesses arising from their operations prior to the dates we acquired them.
- We have incurred significant net losses since our inception and we anticipate that our operating expenses will increase substantially. Accordingly, we cannot assure you that we will achieve or maintain profitable operations, obtain adequate capital funding, or improve our financial performance to continue as a going concern.
- Widespread outbreak of an illness or any other public health crisis, including the recent coronavirus (COVID-19) global pandemic, or an economic downturn in the United States could materially and adversely affect our business, financial condition and results of operations.
- Our results of operations and financial condition could be adversely affected as a result of asset impairments and increases in labor costs.
- If we fail to effectively manage our growth by implementing our operational plans and strategies, improving our business processes and infrastructure, and managing our employee base, our business, financial condition and operating results could be harmed.
- If we are unable to anticipate and respond to changing customer preferences and shifting fashion and industry trends or maintain a strong portfolio of brands, customer base, order and inventory levels or our platforms by which our customers shop with us online, our business, financial condition and operating results could be harmed.
- We operate in highly competitive markets and the size and resources of some of our competitors, including wholesalers and direct retailers of apparel, may allow them to compete more effectively than we can, resulting in a loss of our market share and a decrease in our net revenue.
- If we are unable to cost-effectively use or fully optimize social media platforms and influencers or we fail to abide by applicable laws and regulations, our reputation may be materially and adversely affected or we may be subject to fines or other penalties.
- We rely on third-party suppliers and manufacturers to provide raw materials for and to produce our products. We have limited control over these suppliers and manufacturers and we may not be able to obtain quality products on a timely basis or in sufficient quantity.
- Our operations are currently dependent on a single warehouse and distribution center in Vernon, California, and the loss of, or disruption in, our warehouse and distribution center or our third-party carriers could have a material adverse effect on our business and operations.

- If we are not able to comply with the applicable continued listing requirements or standards of NasdaqCM, NasdaqCM could delist our common stock.
- Our sales and gross margins may decline as a result of increasing product costs and freight costs and decreasing selling prices.
- We have an amount of debt which may be considered significant for a company of our size and we may not be able to service all of our debt.
- Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.
- If we cannot successfully protect our intellectual property, our business could suffer.
- We face growing regulatory and compliance requirements and substantial costs associated with failing to meet regulatory requirements, combined with the risk of fallout from security breaches, could have a material adverse effect on our business and brand.
- Our business is affected by the general seasonal trends common to the retail apparel industry.
- We are seeking stockholder approval for a reverse stock split, and even if a reverse stock split achieves the requisite increase in the market price of our common stock, we cannot assure you that we will be approved for listing on the NasdaqCM or able to comply with other continued listing standards of the NasdaqCM.

## RISK FACTORS

*Investing in our securities involves a high degree of risk. You should consider carefully the risks and uncertainties described below before making an investment decision. If any of the following risks are realized, our business, financial condition, results of operations and prospects could be materially and adversely affected. In that event, the trading price of our securities could decline, and you could lose part or all of your investment.*

### **Risks Related to Our Financial Condition and Business**

***We have incurred significant net losses since our inception and cannot assure you that we will achieve or maintain profitable operations.***

We have incurred significant net losses since inception. Our net loss was approximately \$1.1 million, \$38.0 million and \$32.4 million for six months ended June 30, 2023 and the years ended December 31, 2022 and 2021, respectively. As of June 30, 2023, we had an accumulated deficit of \$104.8 million. We may continue to incur significant losses in the future for a number of reasons, including unforeseen expenses, difficulties, complications, delays, and other unknown events, as well as the inflationary and potentially recessive economic environment. We anticipate that our operating expenses will increase substantially in the foreseeable future as we undertake the acquisition and integration of different brands, incur expenses associated with maintaining compliance as a public company, and increased marketing and sales efforts to increase our customer base. These increased expenditures may make it more difficult to achieve and maintain profitability. In addition, our efforts to grow our business may be more expensive than we expect, and we may not be able to generate sufficient revenue to offset increased operating expenses. If we are required to reduce our expenses, our growth strategy could be materially affected. We will need to generate and sustain significant revenue levels in future periods in order to become profitable, and, even if we do, we may not be able to maintain or increase our level of profitability.

Accordingly, we cannot assure you that we will achieve sustainable operating profits as we continue to expand our product offerings and infrastructure, further develop our marketing efforts, and otherwise implement our growth initiatives. Any failure to achieve and maintain profitability would have a materially adverse effect on our ability to implement our business plan, our results and operations, and our financial condition.

***If we do not obtain adequate capital funding or improve our financial performance, we may not be able to continue as a going concern.***

We have incurred a net loss in each year since our inception and expect to incur losses in future periods as we continue to increase our expenses in order to grow our business. We have a working capital deficit of \$16.0 million as of June 30, 2023. These factors raise substantial doubt about our Company's ability to continue as a going concern. If we are unable to obtain adequate funding or if we are unable to grow our revenue substantially to achieve and sustain profitability, we may not be able to continue as a going concern. The report of our independent registered public accounting firm for the year ended December 31, 2022 included herein contains an explanatory paragraph indicating that there is substantial doubt as to our ability to continue as a going concern as a result of recurring losses from operations.

We have an immediate need to raise additional funds to support our operations. If we are unable to raise additional capital when required or on acceptable terms, we will be required to significantly delay, scale back or restrict our operations or obtain funds by entering into agreements on unattractive terms, which would likely have a material adverse effect on our business, stock price and our relationships with third parties with whom we have business relationships, at least until additional funding is obtained. If we do not have sufficient funds to continue operations, we could be required to seek bankruptcy protection or other alternatives that would likely result in our stockholders losing some or all of their investment in us. In addition, our ability to achieve profitability or to respond to competitive pressures would be significantly limited.

The amount and timing of our future funding requirements depends on many factors, including

- The timing and cost of potential future acquisitions;
- Integration of the businesses that we have acquired or may acquire in the future;
- The hiring of additional management and other personnel as we continue to grow; and

- Any costs associated with any build-out and opening of showrooms, as needed, for certain of our brands.

We cannot be certain that additional funding will be available on acceptable terms, or at all. In addition, we have in the past and may in the future be restricted or limited by our current outstanding indebtedness on our ability to enter into additional indebtedness and any future debt financing based upon covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, redeem our stock, make certain investments and engage in certain merger, consolidation or asset sale transactions.

***If we are not able to comply with the applicable continued listing requirements or standards of NasdaqCM, NasdaqCM could delist our common stock.***

Our common stock is listed on the NasdaqCM. In order to maintain that listing, we must satisfy minimum financial and other continued listing requirements and standards, including those regarding director independence and independent committee requirements, minimum stockholders' equity, minimum share price, and certain corporate governance requirements. There can be no assurances that we will be able to comply with the applicable listing standards.

On May 31, 2022, we received a letter from the Listing Qualifications Staff (the "Staff") of Nasdaq indicating that the bid price of our common stock had closed below \$1.00 per share for 30 consecutive business days and, as a result, we are not in compliance with Nasdaq Listing Rule 5550(a)(2), which sets forth the minimum bid price requirement for continued listing on the Nasdaq Capital Market (the "Minimum Bid Requirement").

Nasdaq's notice has no immediate effect on the listing of common stock on Nasdaq. Pursuant to Nasdaq Listing Rule 5810(c)(3)(A), we were afforded a 180-calendar day grace period, through November 28, 2022, to regain compliance with the bid price requirement. Compliance can be achieved by evidencing a closing bid price of at least \$1.00 per share for a minimum of ten consecutive business days (but generally not more than 20 consecutive business days) during the 180-calendar day grace period.

If we did not regain compliance with the bid price requirement by November 28, 2022, we were eligible for an additional 180-calendar day compliance period so long as it satisfies the criteria for initial listing on the Nasdaq Capital Market and the continued listing requirement for market value of publicly held shares and we provide written notice to Nasdaq of its intention to cure the deficiency during the second compliance period by effecting a reverse stock split, if necessary. In the event we were not eligible for the second grace period, the Nasdaq staff would provide written notice that our Common Stock is subject to delisting; however, we may request a hearing before the Nasdaq Hearings Panel (the "Panel"), which request, if timely made, would stay any further suspension or delisting action by the Staff pending the conclusion of the hearing process and expiration of any extension that may be granted by the Panel.

On January 19, 2022, we received a letter from the Listing Qualifications Department of the Nasdaq notifying us that our common stock Market Value of Listed Securities ("MVLS") had been below the minimum \$35,000,000 required for continued inclusion as set forth in Nasdaq Listing Rule 5550(b)(2) ("MVLS Requirement").

The letter also stated that we would be provided 180 calendar days, or until July 18, 2022, to regain compliance with the MVLS Requirement ("Compliance Period"). If we did not regain compliance within the Compliance Period, we would receive a written notification from Nasdaq that our securities are subject to delisting. At that time, we could appeal the delisting determination to a Hearings Panel.

On July 21, 2022, we received a letter from Nasdaq stating that the Company had not regained compliance with the MVLS Standard, since our common stock was below the \$35 million minimum MVLS requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(2) (the "MVLS Rule") and had not been at least \$35 million for a minimum of 10 consecutive business days at any time during the 180-day grace period granted to us.

Pursuant to the Letter, unless we requested a hearing to appeal this determination by 4:00 p.m. Eastern Time on July 28, 2022, our Common Stock would be delisted from The Nasdaq Capital Market, trading of our Common Stock would be suspended at the opening of business on August 1, 2022, and a Form 25-NSE will be filed with the Securities and Exchange Commission, which would have remove our securities from listing and registration on Nasdaq.

On July 27, 2022, the Company requested a hearing before the Nasdaq Hearings Panel (the "Panel") to appeal the Letter on July 21, 2022. The request for a hearing was granted and held on September 8, 2022.

On September 21, 2022, the Nasdaq Listing Qualifications Panel (the “Hearings Panel”) granted the Company an extension until January 17, 2022, to demonstrate compliance with Listing Rule 5550(b)(1) to allow continued listing requirement of The Nasdaq Capital Market, conditioned upon achievement of certain milestones included in a plan of compliance which the Company previously submitted to the Hearings Panel. On November 29, 2022, Nasdaq formally notified the Company that it had regained compliance with the Bid Price Rule.

On November 3, 2022, the Company received notice from the Staff that the Company’s bid price had closed below \$0.10 per share for the preceding ten consecutive trading days, in contravention of Nasdaq Listing Rule 5810(3)(A)(iii) and, as a result, the Panel would consider the deficiency as an additional basis for delisting.

Effective as of 5:00 pm EST on November 3, 2022, the Company implemented a reverse stock split at a ratio of 1-for-100 shares, which the Company believed would remedy both the \$0.10 threshold price deficiency and the \$1.00 bid price deficiency cited by the Staff. In order to evidence compliance with Nasdaq’s bid price criteria, the Company must evidence a closing bid price of at least \$1.00 per share for a minimum of 10 (though generally not more than 20) consecutive business days. As of the close of business on November 11, 2022, the Company had evidenced a closing bid price in excess of \$1.00 per share for six consecutive business days.

On January 17, 2023, the Company was notified by the Panel that the Company had evidenced compliance with all applicable requirements for continued listing on The Nasdaq Capital Market, including the \$2.5 million stockholders’ equity requirement set forth in Nasdaq Listing Rule 5550(b). The Company remained subject to a “Panel Monitor,” as that term is defined by Nasdaq Listing Rule 5815(d)(4)(A), through January 17, 2024.

On May 23, 2023, the Company received a letter (the “Letter”) the Staff of Nasdaq notifying the Company that the Staff has determined to delist the Company’s common stock from Nasdaq based on the Company’s failure to comply with the listing requirements of Nasdaq Rule 5550(b)(1) as a result of the Company’s stockholders’ deficit for the period ended June 30, 2023, as demonstrated in the Company’s Quarterly Report on Form 10-Q filed on May 22, 2023, while the Company was under a Panel Monitor as had been previously disclosed. The Letter stated that the Company’s securities would be subject to delisting unless the Company timely requests a hearing before the Panel. Accordingly, the Company timely requested a hearing before a Panel. The hearing request automatically stayed any suspension or delisting action pending the hearing and the expiration of any additional extension period granted by the Panel following the hearing. At the hearing, the Company presented its plan for regaining and sustaining compliance with all applicable requirements for continued listing on The Nasdaq Capital Market.

On July 27, 2023, the Company received a letter (the “Determination”) from the Staff notifying the Company that the Panel granted the Company’s request to continue listing on Nasdaq, subject to the Company’s demonstration of compliance: (i) with the bid price rule by evidencing a closing bid price of \$1 or more per share for a minimum of ten consecutive trading sessions on or before September 6, 2023, and (ii) with the \$2.5 million stockholders’ equity requirement, set forth in Listing Rule 5550(b)(1), on or before September 15, 2023.

Although the Company has taken efforts to improve its stockholders’ equity, including converting a portion of its outstanding liabilities into preferred stock of the Company and obtaining certain stockholders’ waiver of anti-dilution rights, there can be no assurance that we will be successful in our efforts to maintain the Nasdaq listing. In addition to the Company’s efforts to improve its stockholders’ equity, the Company effected a reverse stock split of the Company’s outstanding common stock at an exchange ratio of 1-for-25 on August 22, 2023 to achieve the requisite increase in the market price of our common stock to be in compliance with the minimum bid price of Nasdaq.

If our Common Stock and warrants cease to be listed for trading on the Nasdaq Capital Market, we would expect that our Common Stock and warrants would be traded on one of the three tiered marketplaces of the OTC Markets Group. If Nasdaq were to delist our common stock and warrants, it would be more difficult for our stockholders to dispose of our common stock or warrants and more difficult to obtain accurate price quotations on our common stock or warrants. Our ability to issue additional securities for financing or other purposes, or otherwise to arrange for any financing we may need in the future, may also be materially and adversely affected if our common stock or warrants are not listed on a national securities exchange. The OTC Markets (the “OTC Mkts”) are generally regarded as a less efficient trading market than the NASDAQ Capital or Global Markets or the New York Stock Exchange.

Although the OTC Mkts do not have any listing requirements, to be eligible for quotation on the OTC Mkts, issuers must remain current in their filings with the SEC or applicable regulatory authority. If we are not able to pay the expenses associated with our reporting obligations, we will not be able to apply for quotation on the OTC Board. Market makers are not permitted to begin quotation of a security whose issuer does not meet this filing requirement. If we are delisted to the OTC Mkts and no market is ever

developed for our common stock or warrants, it will be difficult for you to sell any shares you purchase in this offering. In such a case, you may find that you are unable to achieve any benefit from your investment or liquidate your shares without considerable delay, if at all.

***If we subsequently fail to maintain or regain compliance with the minimum listing requirements, our Common Stock will be subject to delisting immediately. Our ability to publicly or privately sell equity securities and the liquidity of our Common Stock could be adversely affected if our Common Stock is delisted.***

Even though our reverse stock split was effected, some or all of the expected benefits discussed above may not be realized or maintained. The market price of our Common Stock will continue to be based, in part, on our performance and other factors unrelated to the number of shares outstanding. The Reverse Stock Split reduced the number of outstanding shares of our Common Stock without reducing the number of shares of available but unissued Common Stock, which will also have the effect of increasing the number of shares of Common Stock available for issuance. The issuance of additional shares of our Common Stock may have a dilutive effect on the ownership of existing stockholders. The current economic environment in which we operate, the debt we carry, along with otherwise volatile equity market conditions, could limit our ability to raise new equity capital in the future.

While Nasdaq rules do not impose a specific limit on the number of times a listed company may effect a reverse stock split to maintain or regain compliance with the Bid Price Rule, Nasdaq has stated that a series of reverse stock splits may undermine investor confidence in securities listed on Nasdaq. Accordingly, Nasdaq may determine that it is not in the public interest to maintain our listing, even if we regain compliance with the Bid Price Rule as a result of the Reverse Stock Split. In addition, Nasdaq Listing Rule 5810(c)(3)(A)(iv) states that any listed company that fails to meet the Bid Price Rule after effecting one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one, then the company is not eligible for a Minimum Bid Price Rule Compliance Period. As a result, since the Company had effected an one-for-one hundred (1-for-100) reverse stock split of its Common Stock on November 3, 2022, and the Reverse Stock Split at a ratio of 1-for-25, which was a ratio more than 1-for-2.5, effective August 22, 2023, if we subsequently fail to satisfy the Bid Price Rule, Nasdaq may begin the process of delisting our Common Stock without providing a Minimum Bid Price Rule Compliance Period.

***Widespread outbreak of an illness or any other public health crisis, including the recent coronavirus (COVID-19) global pandemic, could materially and adversely affect, and has materially and adversely affected, our business, financial condition and results of operations.***

Our business has been, and will continue to be, impacted by the effects of the COVID-19 global pandemic in countries where our suppliers, third-party service providers or consumers are located. These effects include recommendations or mandates from governmental authorities to close businesses, limit travel, avoid large gatherings or to self-quarantine, as well as temporary closures and decreased operations of the facilities of our suppliers, service providers and customers. The impacts on us have included, and in the future could include, but are not limited to:

- significant uncertainty and turmoil in global economic and financial market conditions causing, among other things: decreased consumer confidence and decreased consumer spending, now and in the mid and long-term. Specifically, COVID has impacted our business in several ways, including store closings, supply chain disruptions and delivery delays, meaningfully lower net revenue, furloughs and layoffs of 52 employees and increased costs to operate our warehouse to ensure a healthy and safe work environment. Approximately 220 boutique stores where we sold our products closed temporarily and permanently in 2020 and into 2021, representing a reduction in approximately 40% of such stores prior to COVID. Additionally, approximately 40 department stores that carried our products have closed as well, representing a reduction of approximately 35% of such stores prior to COVID. We do not anticipate the department stores will open those stores back up, and we do not anticipate a majority of the closed boutique stores will reopen. We also waited to hire a new Creative Director until the summer, once we knew that stores would open back up at some capacity. This delay in hiring a new designer also impacted the first half of 2021;
- inability to access financing in the credit and capital markets at reasonable rates (or at all) in the event we, or our suppliers find it desirable to do so, increased exposure to fluctuations in foreign currency exchange rates relative to the U.S. Dollar, and volatility in the availability and prices for commodities and raw materials we use for our products and in our supply chain. Specifically, the pandemic shut down our supply chain for several months in 2020, and delayed deliveries throughout the year;

- inability to meet our consumers' needs for inventory production and fulfillment due to disruptions in our supply chain and increased costs associated with mitigating the effects of the pandemic caused by, among other things: reduction or loss of workforce due to illness, quarantine or other restrictions or facility closures, scarcity of and/or increased prices for raw materials, scrutiny or embargoing of goods produced in infected areas, and increased freight and logistics costs, expenses and times; failure of third parties on which we rely, including our suppliers, customers, distributors, service providers and commercial banks, to meet their obligations to us or to timely meet those obligations, or significant disruptions in their ability to do so, which may be caused by their own financial or operational difficulties, including business failure or insolvency and collectability of existing receivables; and
- significant changes in the conditions in markets in which we do business, including quarantines, governmental or regulatory actions, closures or other restrictions that limit or close our operating and manufacturing facilities and restrict our employees' ability to perform necessary business functions, including operations necessary for the design, development, production, distribution, sale, marketing and support of our products. Specifically, we had to furlough and layoff a significant amount of employees to adjust to our lower revenues.

Any of these impacts could place limitations on our ability to execute on our business plan and materially and adversely affect our business, financial condition and results of operations. We continue to monitor the situation and may adjust our current policies and procedures as more information and guidance become available regarding the evolving situation. The impact of COVID-19 may also exacerbate other risks discussed in this "Risk Factors" section, any of which could have a material effect on us. This situation is changing rapidly and additional impacts may arise that we are not aware of currently.

***If our efforts to locate desirable targets are unsuccessful or if we are unable to acquire desirable companies on commercially reasonable terms, we may not be able to grow the business and our revenues and operating results will be adversely affected.***

One of our principal growth strategies has been and continues to be is to grow our business and increase our revenue through the acquisition of additional businesses within our industry. It may be difficult for us to identify desirable companies to acquire. We may face competition in our pursuit to acquire additional businesses, which could limit the number of available companies for sale and may lead to higher acquisition prices. When we identify desirable companies, their owners may not be willing to sell their companies at all or on terms that we have determined to be commercially reasonable. If our efforts to locate and acquire desirable companies on terms that are acceptable to us are not successful, our revenues and operating results may be adversely affected.

***We may not be able to successfully integrate future acquisitions or generate sufficient revenues from future acquisitions, which could cause our business to suffer.***

A significant part of our grown strategy is acquiring additional businesses. If we buy a company or a division of a company in the future, there can be no assurance that we will be able to profitably manage such business or successfully integrate such business without substantial costs, delays or other operational or financial problems. Acquisitions also may require us to spend a substantial portion of our available cash, incur debt or other liabilities, amortize expenses related to intangible assets, incur write-offs of goodwill or other assets or obligate us to issue a substantial number of shares of our capital stock, which would result in dilution for our existing stockholders. There can be no assurance that the businesses we acquire in the future will achieve anticipated revenues or earnings. Additionally:

- the key personnel of the acquired business may decide not to work for us;
- changes in management at an acquired business may impair its relationships with employees and customers;
- we may be unable to maintain uniform standards, controls, procedures and policies among acquired businesses;
- we may be unable to successfully implement infrastructure, logistics and systems integration;
- we may be held liable for legal claims (including environmental claims) arising out of activities of the acquired businesses prior to our acquisitions, some of which we may not have discovered during our due diligence, and we may not have indemnification claims available to us or we may not be able to realize on any indemnification claims with respect to those legal claims;



- we will assume risks associated with deficiencies in the internal controls of acquired businesses;
- we may not be able to realize the cost savings or other financial benefits we anticipated;
- we may be unable to successfully scale an acquired business; and
- our ongoing business may be disrupted or receive insufficient management attention.

Some or all of these factors could have a material adverse effect on our business, financial condition and results of operations. Moreover, we may not benefit from our acquisitions as we expect, or in the time frame we expect. In the apparel industry, differing brands are used to reach different market segments and capture new market share. However, not every brand deployment is successful. In addition, integrating an acquired business or technology is risky. We may incur significant costs acquiring, developing, and promoting new brands only to have limited market acceptance and limited resulting sales. If this occurs, our financial results may be negatively impacted and we may determine it is in the best interest of the Company to no longer support that brand. If a new brand does not generate sufficient revenues or if we are unable to efficiently manage our expanded operations, our results of operations will be adversely affected. Finally, acquisitions could be viewed negatively by analysts, investors or our customers.

In addition, we may not be successful in acquiring businesses and may expend time and expenses in connection with failed acquisitions. For example, the closing of the Acquisition with Sundry is subject to customary closing conditions and financing and there is no assurance that we will be able to complete the Acquisition. In addition to such time and expenses, public announcement of a failed acquisition could also negatively impact the trading price of our common stock.

***We may be subject to claims arising from the operations of our various businesses for periods prior to the dates we acquired them.***

We may be subject to claims or liabilities arising from the ownership or operation of acquired businesses for the periods prior to our acquisition of them, including environmental, warranty, workers' compensation and other employee-related and other liabilities and claims not covered by insurance. These claims or liabilities could be significant. Our ability to seek indemnification from the former owners of our acquired businesses for these claims or liabilities may be limited by various factors, including the specific time, monetary or other limitations contained in the respective acquisition agreements and the financial ability of the former owners to satisfy our indemnification claims. In addition, insurance companies may be unwilling to cover claims that have arisen from acquired businesses or locations, or claims may exceed the coverage limits that our acquired businesses had in effect prior to the date of acquisition. If we are unable to successfully obtain insurance coverage of third-party claims or enforce our indemnification rights against the former owners, or if the former owners are unable to satisfy their obligations for any reason, including because of their current financial position, we could be held liable for the costs or obligations associated with such claims or liabilities, which could adversely affect our financial condition and results of operations.

***Our ability to acquire additional businesses may require issuances of our common stock and/or debt financing that we may be unable to obtain on acceptable terms.***

The timing, size and success of our acquisition efforts and the associated capital commitments cannot be readily predicted. We intend to use our common stock, cash, debt and borrowings under our credit facility, if necessary, as consideration for future acquisitions of companies. The issuance of additional common stock in connection with future acquisitions may be dilutive to holders of shares of common stock issued in this offering. In addition, if our common stock does not maintain a sufficient market value or potential acquisition candidates are unwilling to accept common stock as part of the consideration for the sale of their businesses, we may be required to use more of our cash resources, including obtaining additional capital through debt financing. However, there can be no assurance that we will be able to obtain financing if and when it is needed or that it will be available on terms that we deem acceptable. As a result, we may be unable to pursue our acquisition strategy successfully, which may prevent us from achieving our growth objectives.

***We have an amount of total liabilities which may be considered significant for a company of our size which could adversely affect our financial condition and our ability to react to changes in our business.***

As of September 14, 2023, we had an aggregate principal amount of total liabilities outstanding of approximately \$22.0 million, which includes approximately \$7.9 owing further to outstanding debt obligations.

We believe this is an amount of total liabilities which may be considered significant for a company of our size and current revenue base. Our substantial total liabilities could have important consequences to us. For example, it could:

- make it more difficult for us to satisfy our obligations to the holders of our outstanding debt, resulting in possible defaults on and acceleration of such indebtedness;
- require us to dedicate a substantial portion of our cash flows from operations to make payments on our debt, which would reduce the availability of our cash flows from operations to fund working capital, capital expenditures or other general corporate purposes;
- increase our vulnerability to general adverse economic and industry conditions, including interest rate fluctuations;
- place us at a competitive disadvantage to our competitors with proportionately less debt for their size;
- limit our ability to refinance our existing debt or borrow additional funds in the future;
- limit our flexibility in planning for, or reacting to, changing conditions in our business; and
- limit our ability to react to competitive pressures or make it difficult for us to carry out capital spending that is necessary or important to our growth strategy.

Any of the foregoing impacts of our substantial total liabilities could have a material adverse effect on our business, financial condition and results of operations.

***We may not be able to generate sufficient cash to service all of our debt or refinance our obligations and may be forced to take other actions to satisfy our obligations under such indebtedness, which may not be successful.***

Our ability to repay our total liabilities, including our ability to make scheduled payments on our debt or to refinance our obligations under our debt agreements, will depend on our financial and operating performance, which, in turn, will be subject to prevailing economic and competitive conditions and to the financial and business risk factors we face as described in this section, many of which may be beyond our control. We may not be able to maintain a level of cash flows from operating activities sufficient to permit us to repay our total liabilities, including the ability to pay the principal, premium, if any, and interest on our debt.

If our cash flows and capital resources are insufficient to repay our total liabilities, including the ability to fund our debt service obligations, we may be forced to reduce or delay capital expenditures or planned growth objectives, seek to obtain additional equity capital or restructure our debt. In the future, our cash flows and capital resources may not be sufficient for payments of interest on and principal of our debt, and such alternative measures may not be successful and may not permit us to meet scheduled debt service obligations. In addition, the recent worldwide credit crisis could make it more difficult for us to repay our total liabilities, including the ability to refinance our debt on favorable terms, or at all.

In the absence of such operating results and resources, we may be required to dispose of material assets to repay our total liabilities, including the ability to meet our debt service obligations. We may not be able to consummate those sales, or, if we do, we will not control the timing of the sales or whether the proceeds that we realize will be adequate to repay our total liabilities, including the ability to meet debt service obligations when due.

***Our results of operations have been and could be in the future adversely affected as a result of asset impairments.***

Our results of operations and financial condition have been and could be in the future adversely affected by impairments to goodwill, other intangible assets, receivables, long-lived assets or investments. For example, when we acquire a business, we record goodwill in an amount equal to the amount we paid for the business minus the fair value of the net tangible assets and other identifiable intangible assets of the acquired business. Goodwill and other intangible assets that have indefinite useful lives cannot be amortized, but instead must be tested at least annually for impairment.

As a result of our acquisitions of Sundry, Stateside, H&J and Bailey, our goodwill and intangible assets as of June 30, 2023 were \$9.0 and \$11.4 million, respectively. During the six months ended June 30, 2023 and the years ended December 31, 2022 and 2021, we recorded impairment expense of \$0, \$15.5 million and \$3.4 million pertaining to the goodwill and intangible assets of Bailey and

H&J. Any future impairments, including impairments of goodwill, intangible assets, long-lived assets or investments, could have a material adverse effect on our financial condition and results of operations for the period in which the impairment is recognized.

***If we fail to effectively manage our growth, our business, financial condition and operating results could be harmed.***

We have grown and expect to continue to grow rapidly and to effectively manage our growth, we must continue to implement our operational plans and strategies, improve our business processes, improve and expand our infrastructure of people and information systems, and expand, train and manage our employee base. Since our inception and as a result of our acquisitions, we have rapidly increased our employee headcount across our organization to support the growth of our business. To support continued growth, we must effectively integrate, develop and motivate a large number of new employees while maintaining our corporate culture. We face significant competition for personnel. To attract top talent, we have had to offer, and expect to continue to offer, competitive compensation and benefits packages before we can validate the productivity of new employees. We may also need to increase our employee compensation levels to remain competitive in attracting and retaining talented employees. The risks associated with a rapidly growing workforce will be particularly acute as we choose to expand into new merchandise categories and internationally. Additionally, we may not be able to hire new employees quickly enough to meet our needs. If we fail to effectively manage our hiring needs or successfully integrate new hires, our efficiency, our ability to meet forecasts and our employee morale, productivity and retention could suffer, which may have an adverse effect on our business, financial condition and operating results.

We are also required to manage numerous relationships with various vendors and other third parties. Further growth of our operations, vendor base, fulfillment center, information technology systems or internal controls and procedures may not be adequate to support our operations. If we are unable to manage the growth of our organization effectively, our business, financial condition and operating results may be adversely affected.

***If we are unable to anticipate and respond to changing customer preferences and shifts in fashion and industry trends in a timely manner, our business, financial condition and operating results could be harmed.***

Our success largely depends on our ability to consistently gauge tastes and trends and provide a diverse and balanced assortment of merchandise that satisfies customer demands in a timely manner. Our ability to accurately forecast demand for our products could be affected by many factors, including an increase or decrease in demand for our products or for products of our competitors, our failure to accurately forecast acceptance of new products, product introductions by competitors, unanticipated changes in general market conditions, and weakening of economic conditions or consumer confidence in future economic conditions. We typically enter into agreements to manufacture and purchase our merchandise in advance of the applicable selling season and our failure to anticipate, identify or react appropriately, or in a timely manner to changes in customer preferences, tastes and trends or economic conditions could lead to, among other things, missed opportunities, excess inventory or inventory shortages, markdowns and write-offs, all of which could negatively impact our profitability and have a material adverse effect on our business, financial condition and operating results. Failure to respond to changing customer preferences and fashion trends could also negatively impact the image of our brands with our customers and result in diminished brand loyalty.

***Our business depends on our ability to maintain a strong portfolio of brands and engaged customers.. We may not be able to maintain and enhance our existing brand portfolio if we receive customer complaints, negative publicity or otherwise fail to live up to consumers' expectations, which could materially adversely affect our business, operating results and growth prospects.***

Our ability to acquire or offer new brands and maintain and enhance the appeal of our existing brands is critical to expanding our base of customers. A significant portion of our customers' experience depends on third parties outside of our control, including vendors, suppliers and logistics providers such as FedEx, UPS and the U.S. Postal Service. If these third parties do not meet our or our customers' expectations, including timely delivery of our products, or if they increase their rates, our business may suffer irreparable damage or our costs may increase. Also, if we fail to promote and maintain our brands, or if we incur excessive expenses in this effort, our business, operating results and financial condition may be materially adversely affected. We anticipate that as our market becomes increasingly competitive, our ability to acquire or offer new brands and to maintain and enhance our existing brands may become increasingly difficult and expensive and will depend largely on our ability to provide high quality products to our customers and a reliable, trustworthy and profitable sales channel to our vendors, which we may not do successfully.

Customer complaints or negative publicity about our sites, products, product delivery times, customer data handling and security practices or customer support, especially on blogs, social media websites and our sites, could rapidly and severely diminish consumer use of our sites and consumer and supplier confidence in us and result in harm to our brands.

***An economic downturn or economic uncertainty in the United States may adversely affect consumer discretionary spending and demand for our products.***

Our operating results are affected by the relative condition of the United States economy as many of our products may be considered discretionary items for consumers. Our customers may reduce their spending and purchases due to job loss or fear of job loss, foreclosures, bankruptcies, higher consumer debt and interest rates, reduced access to credit, falling home prices, increased taxes, and/or lower consumer confidence. Consumer demand for our products may not reach our targets, or may decline, when there is an economic downturn or economic uncertainty. Current, recent past, and future conditions may also adversely affect our pricing and liquidation strategy; promotional activities, product liquidation, and decreased demand for consumer products could affect profitability and margins. Any of the foregoing factors could have a material adverse effect on our business, results of operations, and financial condition.

Additionally, many of the effects and consequences of U.S. and global financial and economic conditions could potentially have a material adverse effect on our liquidity and capital resources, including the ability to raise additional capital, if needed, or could otherwise negatively affect our business and financial results. For example, global economic conditions may also adversely affect our suppliers' access to capital and liquidity with which to maintain their inventory, production levels, and product quality and to operate their businesses, all of which could adversely affect our supply chain. Market instability could make it more difficult for us and our suppliers to accurately forecast future product demand trends, which could cause us to carry too much or too little merchandise in various product categories.

***We operate in highly competitive markets and the size and resources of some of our competitors may allow them to compete more effectively than we can, resulting in a loss of our market share and a decrease in our net revenue.***

The markets in which we compete are highly competitive. Competition may result in pricing pressures, reduced profit margins or lost market share, or a failure to grow or maintain our market share, any of which could substantially harm our business and results of operations. We compete directly against wholesalers and direct retailers of apparel, including large, diversified apparel companies with substantial market share and strong worldwide brand recognition. Many of our competitors, including Vince, James Perse, Rag & Bone, Madewell, AG, FRAME, All Saints, Zegna and Ralph Lauren, have significant competitive advantages, including longer operating histories, larger and broader customer bases, more established relationships with a broader set of suppliers, greater brand recognition and greater financial, research and development, marketing, distribution, and other resources than we do.

As a result, these competitors may be better equipped than we are to influence consumer preferences or otherwise increase their market share by:

- quickly adapting to changes in customer requirements or consumer preferences;
- discounting excess inventory that has been written down or written off;
- devoting resources to the marketing and sale of their products, including significant advertising campaigns, media placement, partnerships and product endorsement; and
- engaging in lengthy and costly intellectual property and other disputes.

Our inability to compete successfully against our competitors and maintain our gross margin could have a material adverse effect on our business, financial condition and results of operations.

***Use of social media and influencers may materially and adversely affect our reputation or subject us to fines or other penalties.***

We use third-party social media platforms as, among other things, marketing tools. We also maintain relationships with many social media influencers and engage in sponsorship initiatives. As existing e-commerce and social media platforms continue to rapidly evolve and new platforms develop, we must continue to maintain a presence on these platforms and establish presences on new or emerging popular social media platforms. If we are unable to cost-effectively use social media platforms as marketing tools or if the social media platforms we use change their policies or algorithms, we may not be able to fully optimize such platforms, and our ability to maintain and acquire customers and our financial condition may suffer.

Furthermore, as laws and regulations and public opinion rapidly evolve to govern the use of these platforms and devices, the failure by us, our employees, our network of social media influencers, our sponsors or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms and devices or otherwise could subject us to regulatory investigations, class action lawsuits, liability, fines or other penalties and have a material adverse effect on our business, financial condition and operating results.

In addition, an increase in the use of social media for product promotion and marketing may cause an increase in the burden on us to monitor compliance of such materials, and increase the risk that such materials could contain problematic product or marketing claims in violation of applicable regulations. For example, in some cases, the FTC has sought enforcement action where an endorsement has failed to clearly and conspicuously disclose a financial relationship or material connection between an influencer and an advertiser.

We do not prescribe what our influencers post, and if we were held responsible for the content of their posts or their actions, we could be fined or forced to alter our practices, which could have an adverse impact on our business.

Negative commentary regarding us, our products or influencers and other third parties who are affiliated with us may also be posted on social media platforms and may be adverse to our reputation or business. Influencers with whom we maintain relationships could engage in behavior or use their platforms to communicate directly with our customers in a manner that reflects poorly on our brand and may be attributed to us or otherwise adversely affect us. It is not possible to prevent such behavior, and the precautions we take to detect this activity may not be effective in all cases. Our target consumers often value readily available information and often act on such information without further investigation and without regard to its accuracy. The harm may be immediate, without affording us an opportunity for redress or correction.

***If we fail to retain existing customers, or fail to maintain average order value levels, we may not be able to maintain our revenue base and margins, which would have a material adverse effect on our business and operating results.***

A significant portion of our net sales are generated from sales to existing customers. If existing customers no longer find our offerings appealing, or if we are unable to timely update our offerings to meet current trends and customer demands, our existing customers may make fewer or smaller purchases in the future. A decrease in the number of our customers who make repeat purchases or a decrease in their spending on the merchandise we offer could negatively impact our operating results. Further, we believe that our future success will depend in part on our ability to increase sales to our existing customers over time, and if we are unable to do so, our business may suffer. If we fail to generate repeat purchases or maintain high levels of customer engagement and average order value, our growth prospects, operating results and financial condition could be materially adversely affected.

***We purchase inventory in anticipation of sales, and if we are unable to manage our inventory effectively, our operating results could be adversely affected.***

Our business requires us to manage a large volume of inventory effectively. We regularly add new apparel, accessories and beauty styles to our sites, and we depend on our forecasts of demand for and popularity of various products to make purchase decisions and to manage our inventory of stock-keeping units, or SKUs. Demand for products, however, can change significantly between the time inventory is ordered and the date of sale. Demand may be affected by seasonality, new product launches, rapid changes in product cycles and pricing, product defects, promotions, changes in consumer spending patterns, changes in consumer tastes with respect to our products and other factors, and our consumers may not purchase products in the quantities that we expect.

It may be difficult to accurately forecast demand and determine appropriate levels of product. We generally do not have the right to return unsold products to our suppliers. If we fail to manage our inventory effectively or negotiate favorable credit terms with third-party suppliers, we may be subject to a heightened risk of inventory obsolescence, a decline in inventory values, and significant inventory write-downs or write-offs. In addition, if we are required to lower sale prices in order to reduce inventory level or to pay higher prices to our suppliers, our profit margins might be negatively affected. Any failure to manage owned brand expansion or accurately forecast demand for owned brands could adversely affect growth, margins and inventory levels. In addition, our ability to meet customer demand has been and may be in the future negatively impacted by disruptions in the supply chain from a number of factors, including, for example, the COVID-19 coronavirus outbreak in China. The COVID-19 coronavirus has and is expected to continue to impact our supply chain and may delay or prevent the manufacturing or transport of product. Any of the above may materially and adversely affect our business, financial condition and operating results.

***Merchandise returns could harm our business.***

We allow our customers to return products, subject to our return policy. If the rate of merchandise returns increases significantly or if merchandise return economics become less efficient, our business, financial condition and operating results could be harmed. Further, we modify our policies relating to returns from time to time, which may result in customer dissatisfaction or an increase in the number of product returns. From time to time our products are damaged in transit, which can increase return rates and harm our brands.

***We rely on third-party suppliers and manufacturers to provide raw materials for and to produce our products, and we have limited control over these suppliers and manufacturers and may not be able to obtain quality products on a timely basis or in sufficient quantity.***

We rely on third-party suppliers primarily located outside of the United States to provide raw materials for our products. In addition, we do not own or operate any manufacturing facilities and rely solely on unaffiliated manufacturers primarily located outside the United States to manufacture our products. Increases in the costs of labor and other costs of doing business in these countries could significantly increase our costs to produce our products and could have a negative impact on our operations, net revenue, and earnings. In addition, certain of our manufacturers are subject to government regulations related to wage rates, and therefore the labor costs to produce our products may fluctuate. Factors that could negatively affect our business include a potential significant revaluation of the currencies used in these countries, which may result in an increase in the cost of producing products, labor shortages and stoppages and increases in labor costs, and difficulties in moving products manufactured out of the countries in which they are manufactured and through the ports in North America, whether due to port congestion, labor disputes, product regulations and/or inspections or other factors, and natural disasters or health pandemics. A labor strike or other transportation disruption affecting these ports could significantly disrupt our business. In addition, the imposition of trade sanctions or other regulations against products imported by us from, or the loss of “normal trade relations” status with any country in which our products are manufactured, could significantly increase our cost of products and harm our business. We may also experience increased costs in raw goods, transportation and labor. Additionally, we are also subject to global supply chain disruptions, which may include longer lead times for raw fabrics, inbound shipping and longer production times. Supply chain issues have specifically impacted the following for our brands:

- Increased costs in raw materials from fabric prices, which have increased 10% to 100% depending on the fabric, the time of year, and the origin of the fabric, as well as where the fabric is being shipped;
- Increased cost per kilo to ship via sea or air, which has increased from 25% to 300% depending on the time of year and from the country we are shipping from;
- Increased transit time via sea or air, which have increased by two weeks to two months; and
- Increased labor costs for producing the finished goods, which have increased 5% to 25% depending on the country and the labor skill required to produce the goods.

The operations of our suppliers can be subject to additional risks beyond our control, including shipping delays, labor disputes, trade restrictions, tariffs and embargos, or any other change in local conditions. We may experience a significant disruption in the supply of fabrics or raw materials from current sources or, in the event of a disruption, we may be unable to locate alternative materials suppliers of comparable quality at an acceptable price, or at all. We do not have any long-term supply contracts in place with any of our suppliers and we compete with other companies, including many of our competitors, for fabrics, raw materials, production and import quota capacity. We have occasionally received, and may in the future receive, shipments of products that fail to comply with our specifications or that fail to conform to our quality control standards. We have also received, and may in the future receive, products that are otherwise unacceptable to us or our customers. Under these circumstances, we may incur substantial expense to remedy the problems and may be required to obtain replacement products. If we fail to remedy any such problem in a timely manner, we risk the loss of net revenue resulting from the inability to sell those products and related increased administrative and shipping costs. Additionally, if the unacceptability of our products is not discovered until after such products are purchased by our customers, our customers could lose confidence in our products or we could face a product recall. In such an event our brand reputation may be negatively impacted which could negatively impact our results of operations.

These and other factors beyond our control could result in our third-party suppliers and manufacturers being unable to fill our orders in a timely manner. If we experience significant increased demand, or we lose or need to replace an existing third- party

supplier and manufacturer as a result of adverse economic conditions or other reasons, we may not be able to secure additional manufacturing capacity when required or on terms that are acceptable to us, or at all, or manufacturers may not be able to allocate sufficient capacity to us in order to meet our requirements. In addition, even if we are able to find new third-party suppliers or manufacturers, we may encounter delays in production and added costs as a result of the time it takes to train our manufacturers on our methods, products and quality control standards. Moreover, it is possible that we will experience defects, errors, or other problems with their work that will materially affect our operations and we may have little or no recourse to recover damages for these losses. Any delays, interruption or increased costs in the supply of fabric or manufacture of our products could have an adverse effect on our ability to meet retail customer and consumer demand for our products and result in lower net revenues and net income both in the short and long term.

In addition to the foregoing, one of our subsidiary's depends on two primary suppliers located in China and Turkey for the substantial portion of raw materials used in its products and the manufacture of these products, which makes it vulnerable to a disruption in the supply of its products. As a result, termination of these supply arrangements, an adverse change in the financial condition of these suppliers or an adverse change in their ability to manufacture and/or deliver desired products on a timely basis each could have a material adverse effect on our business, financial condition and results of operations.

***Our sales and gross margins may decline as a result of increasing product costs and decreasing selling prices.***

The fabrics used in our products include synthetic fabrics whose raw materials include petroleum-based products, as well as natural fibers such as cotton. Significant price fluctuations or shortages in petroleum or other raw materials can materially adversely affect our cost of net revenues.

In addition, the United States and the countries in which our products are produced or sold internationally have imposed and may impose additional quotas, duties, tariffs, or other restrictions or regulations, or may adversely adjust prevailing quota, duty or tariff levels. Countries impose, modify and remove tariffs and other trade restrictions in response to a diverse array of factors, including global and national economic and political conditions, which make it impossible for us to predict future developments regarding tariffs and other trade restrictions. Trade restrictions, including tariffs, quotas, embargoes, safeguards, and customs restrictions, could increase the cost or reduce the supply of products available to us or may require us to modify our supply chain organization or other current business practices, any of which could harm our business, financial condition and results of operations.

***Our operations are currently dependent on a single warehouse and distribution center, and the loss of, or disruption in, the warehouse and distribution center and other factors affecting the distribution of merchandise could have a material adverse effect on our business and operations.***

Our warehouse and fulfillment/distribution functions are currently primarily handled from a single facility in Vernon, California. Our current fulfillment/distribution operations are dependent on the continued use of this facility. Any significant interruption in the operation of the warehouse and fulfillment/ distribution center due to COVID-19 restrictions, natural disasters, accidents, system issues or failures, or other unforeseen causes that materially impair our ability to access or use our facility, could delay or impair the ability to distribute merchandise and fulfill online orders, which could cause sales to decline.

We also depend upon third-party carriers for shipment of a significant amount of merchandise directly to our customers. An interruption in service by these third-party carriers for any reason could cause temporary disruptions in business, a loss of sales and profits, and other material adverse effects.

***Our sales and gross margins may decline as a result of increasing freight costs.***

Freight costs are impacted by changes in fuel prices through surcharges, among other factors. Fuel prices and surcharges affect freight costs both on inbound freight from suppliers to the distribution center as well as outbound freight from the distribution center to stores/shops, supplier returns and third-party liquidators, and shipments of product to customers. The cost of transporting our products for distribution and sale is also subject to fluctuation due in large part to the price of oil. Because most of our products are manufactured abroad, our products must be transported by third parties over large geographical distances and an increase in the price of oil can significantly increase costs. Manufacturing delays or unexpected transportation delays can also cause us to rely more heavily on airfreight to achieve timely delivery to our customers, which significantly increases freight costs. Increases in fuel prices, surcharges, and other potential factors may increase freight costs. Any of these fluctuations may increase our cost of products and have an adverse effect on our margins, results of operations and financial condition.

***Increases in labor costs, including wages, could adversely affect our business, financial condition and results of operations.***

Labor is a significant portion of our cost structure and is subject to many external factors, including unemployment levels, prevailing wage rates, minimum wage laws, potential collective bargaining arrangements, health insurance costs and other insurance costs and changes in employment and labor legislation or other workplace regulation. From time to time, legislative proposals are made to increase the federal minimum wage in the United States, as well as the minimum wage in California and a number of other states and municipalities, and to reform entitlement programs, such as health insurance and paid leave programs. As minimum wage rates increase or related laws and regulations change, we may need to increase not only the wage rates of our minimum wage employees, but also the wages paid to our other hourly or salaried employees. Any increase in the cost of our labor could have an adverse effect on our business, financial condition and results of operations or if we fail to pay such higher wages we could suffer increased employee turnover. Increases in labor costs could force us to increase prices, which could adversely impact our sales. If competitive pressures or other factors prevent us from offsetting increased labor costs by increases in prices, our profitability may decline and could have a material adverse effect on our business, financial condition and results of operations.

***Security breaches and other disruptions could compromise our information and expose us to liability, which would cause our business and reputation to suffer.***

In the ordinary course of our business, we collect and store sensitive data, including intellectual property, our proprietary business information, and financial and other personally identifiable information of our customers and employees. The secure processing, maintenance, and transmission of this information is critical to our operations and business strategy. Despite our security measures, our information technology and infrastructure may be vulnerable to attacks by hackers or breached due to employee error, malfeasance, or other disruptions. Any such breach could compromise our networks and the information stored there could be accessed, publicly disclosed, lost, or stolen. Advanced attacks are multi-staged, unfold over time, and utilize a range of attack vectors with military-grade cyber weapons and proven techniques, such as spear phishing and social engineering, leaving organizations and users at high risk of being compromised. The vast majority of data breaches, whether conducted by a cyber attacker from inside or outside of the organization, involve the misappropriation of digital identities and user credentials.

These credentials are used to gain legitimate access to sensitive systems and high-value personal and corporate data. Many large, well-known organizations have been subject to cyber-attacks that exploited the identity vector, demonstrating that even organizations with significant resources and security expertise have challenges securing their identities. Any such access, disclosure, or other loss of information could result in legal claims or proceedings, liability under laws that protect the privacy of personal information, regulatory penalties, a disruption of our operations, damage to our reputation, or a loss of confidence in our business, any of which could adversely affect our business, revenues, and competitive position.

***Our future success depends on our key executive officers and our ability to attract, retain, and motivate qualified personnel.***

Our future success largely depends upon the continued services of our executive officers and management team, especially our Chief Executive Officer and President, Mr. John “Hil” Davis. If one or more of our executive officers are unable or unwilling to continue in their present positions, we may not be able to replace them readily, if at all. Additionally, we may incur additional expenses to recruit and retain new executive officers. If any of our executive officers joins a competitor or forms a competing company, we may lose some or all of our customers. Finally, we do not maintain “key person” life insurance on any of our executive officers. Because of these factors, the loss of the services of any of these key persons could adversely affect our business, financial condition, and results of operations, and thereby an investment in our stock.

In addition, our continuing ability to attract and retain highly qualified personnel, especially employees with experience in the fashion and fitness industries, will also be critical to our success because we will need to hire and retain additional personnel as our business grows. There can be no assurance that we will be able to attract or retain highly qualified personnel. We face significant competition for skilled personnel in our industries. This competition may make it more difficult and expensive to attract, hire, and retain qualified managers and employees. Because of these factors, we may not be able to effectively manage or grow our business, which could adversely affect our financial condition or business. As a result, the value of your investment could be significantly reduced or completely lost.

***If we cannot successfully protect our intellectual property, our business could suffer.***

We rely on a combination of intellectual property rights, contractual protections and other practices to protect our brand, proprietary information, technologies and processes. We primarily rely on copyright and trade secret laws to protect our proprietary technologies and processes, including the algorithms we use throughout our business. Others may independently develop the same or



similar technologies and processes, or may improperly acquire and use information about our technologies and processes, which may allow them to provide a service similar to ours, which could harm our competitive position. Our principal trademark assets include the registered trademarks “DSTLD”, “Bailey 44”, “ACE STUDIOS”, “STATESIDE” and “SUNDRY” and our logos and taglines. Our trademarks are valuable assets that support our brand and consumers’ perception of our services and merchandise. We also hold the rights to the “www.digitalbrandsgroup.com”, www.dstld.com and “www.bailey44.com”. Internet domain name and various related domain names, which are subject to Internet regulatory bodies and trademark and other related laws of each applicable jurisdiction. If we are unable to protect our trademarks or domain names, our brand recognition and reputation would suffer, we would incur significant expense establishing new brands and our operating results would be adversely impacted. Further, to the extent we pursue patent protection for our innovations, patents we may apply for may not issue, and patents that do issue or that we acquire may not provide us with any competitive advantages or may be challenged by third parties. There can be no assurance that any patents we obtain will adequately protect our inventions or survive a legal challenge, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain. We may be required to spend significant resources to monitor and protect our intellectual property rights, and the efforts we take to protect our proprietary rights may not be sufficient.

***If the technology-based systems that give our customers the ability to shop with us online do not function effectively, our operating results could be materially adversely affected.***

A substantial number of our customers currently shop with us through our e-commerce website and mobile application. Increasingly, customers are using tablets and smart phones to shop online with us and with our competitors and to do comparison shopping. Any failure on our part to provide an attractive, effective, reliable, user-friendly e-commerce platform that offers a wide assortment of merchandise with rapid delivery options and that continually meet the changing expectations of online shoppers could place us at a competitive disadvantage, result in the loss of sales, harm our reputation with customers, and could have a material adverse impact on our business and results of operations.

***Organizations face growing regulatory and compliance requirements.***

New and evolving regulations and compliance standards for cyber security, data protection, privacy, and internal IT controls are often created in response to the tide of cyber-attacks and will increasingly impact organizations. Existing regulatory standards require that organizations implement internal controls for user access to applications and data. In addition, data breaches are driving a new wave of regulation with stricter enforcement and higher penalties. Regulatory and policy-driven obligations require expensive and time-consuming compliance measures. The fear of non-compliance, failed audits, and material findings has pushed organizations to spend more to ensure they are in compliance, often resulting in costly, one-off implementations to mitigate potential fines or reputational damage. Any substantial costs associated with failing to meet regulatory requirements, combined with the risk of fallout from security breaches, could have a material adverse effect on our business and brand.

***Our failure to comply with trade and other regulations could lead to investigations or actions by government regulators and negative publicity.***

The labeling, distribution, importation, marketing and sale of our products are subject to extensive regulation by various federal agencies, including the Federal Trade Commission, Consumer Product Safety Commission and state attorneys general in the U.S., as well as by various other federal, state, provincial, local and international regulatory authorities in the locations in which our products are distributed or sold. If we fail to comply with those regulations, we could become subject to significant penalties or claims or be required to recall products, which could negatively impact our results of operations and disrupt our ability to conduct our business, as well as damage our brand image with consumers. In addition, the adoption of new regulations or changes in the interpretation of existing regulations may result in significant unanticipated compliance costs or discontinuation of product sales and may impair the marketing of our products, resulting in significant loss of net revenues.

Any international operations are also subject to compliance with the U.S. Foreign Corrupt Practices Act, or FCPA, and other anti-bribery laws applicable to our operations. Although we have policies and procedures to address compliance with the FCPA and similar laws, there can be no assurance that all of our employees, agents and other partners will not take actions in violations of our policies. Any such violation could subject us to sanctions or other penalties that could negatively affect our reputation, business and operating results.

***Our business is affected by seasonality.***

Our business is affected by the general seasonal trends common to the retail apparel industry. This seasonality may adversely affect our business and cause our results of operations to fluctuate, and, as a result, we believe that comparisons of our operating results between different quarters within a single fiscal year are not necessarily meaningful and that results of operations in any period should not be considered indicative of the results to be expected for any future period.

**Risks Relating to An Investment in Our Securities**

***The price of our common stock has in the past and may in the future fluctuate substantially.***

The market price of our common stock has in the past and could in the future be extremely volatile.

From May 2021 to September 14, 2023, the high and low prices of our common stock as quoted on the NasdaqCM (which gives effect to a 1-100 reverse stock split effected by the Company in November 2022 and the 1-25 reverse stock split effected by the Company in August 2023) was \$14,925 and \$7.34, respectively. The future market price of our common stock may be significantly affected by factors, such as:

- market conditions affecting the apparel industries;
- quarterly variations in our results of operations;
- changes in government regulations;
- the announcement of acquisitions by us or our competitors;
- changes in general economic and political conditions;
- volatility in the financial markets;
- results of our operations and the operations of others in our industry;
- changes in interest rates;
- threatened or actual litigation and government investigations;
- the addition or departure of key personnel;
- actions taken by our stockholders, including the sale or disposition of their shares of our common stock; and
- differences between our actual financial and operating results and those expected by investors and analysts and changes in analysts' recommendations or projections.

These and other factors may lower the market price of our common stock, regardless of our actual operating performance. As a result, our common stock may trade at prices significantly below the public offering price.

Furthermore, in recent years the stock market has experienced significant price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies. The changes frequently appear to occur without regard to the operating performance of the affected companies. Hence, the price of our common stock could fluctuate based upon factors that have little or nothing to do with us, and these fluctuations could materially reduce the price of our common stock and materially affect the value of your investment.

In the past, securities class action litigation often has been instituted against companies following periods of volatility in the market price of their securities. This type of litigation, if directed at us, could result in substantial costs and a diversion of management's attention and resources.

***If we are unable to implement and maintain effective internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports, which could adversely affect the market price of our common stock.***

We are not currently required to comply with Section 404 of the Sarbanes-Oxley Act, and are therefore not required to make an assessment of the effectiveness of our internal control over financial reporting for that purpose. We have identified material weaknesses in our internal control over financial reporting. These material weaknesses relate to the fact that we do not maintain a comprehensive policies and procedures manual designed to establish internal controls over financial reporting to reduce the risk of publishing materially misstated financial statements, as well as define responsibilities and segregate incompatible duties to reduce the risk of unauthorized transactions.

We are in the process of taking steps intended to remedy these material weaknesses, and we will not be able to fully address these material weaknesses until these steps have been completed. See “*Management’s Discussion and Analysis of Financial Condition and Results of Operations — Controls and Procedures*” for information regarding our remediation efforts.

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal controls. A material weakness is defined in the standards established by the Public Company Accounting Oversight Board (United States) as a deficiency, or an acquisition of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. In addition, we were required to furnish a report by management on the effectiveness of our internal control over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act, or Section 404, at the time of our second annual report on Form 10-K, which was for our year ending December 31, 2022. We intend to begin the process of designing, implementing and testing the internal control over financial reporting required to comply with this obligation upon the completion of this offering, which process is time consuming, costly and complex. If we fail to increase and maintain the number and expertise of our staff for our accounting and finance functions and to improve and maintain internal control over financial reporting adequate to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, we may be unable to report our financial results accurately and prevent fraud. In addition, we cannot be certain that any such steps we undertake will successfully remediate the material weaknesses or that other material weaknesses and control deficiencies will not be discovered in the future. If our remediation efforts are not successful or other material weaknesses or control deficiencies occur in the future, we may be unable to report our financial results accurately or on a timely basis, which could cause our reported financial results to be materially misstated and result in the loss of investor confidence or delisting and cause our stock price to decline. As a result of such failures, we could also become subject to investigations by NasdaqCM, the SEC, or other regulatory authorities, and become subject to litigation from investors and stockholders, any of which could harm our reputation and financial condition, and divert financial and management resources. Even if we are able to report our consolidated financial statements accurately and timely, if we do not make all the necessary improvements to address the material weaknesses, continued disclosure of our material weaknesses will be required in future filings with the SEC, which could reduce investor confidence in our reported results and our cause our stock price to decline.

***We are an emerging growth company and a smaller reporting company within the meaning of the Securities Act of 1933, as amended (the “Securities Act”), and as a result of the reduced disclosure and governance requirements applicable to emerging growth companies and smaller reporting companies, our common stock may be less attractive to investors and may make it more difficult to compare our performance with other public companies.***

We are an emerging growth company, as defined in the JOBS Act, and we are eligible to take advantage of certain exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies. Those exemptions include, but are not limited to, a requirement to present only two years of audited financial statements, an exemption from the auditor attestation requirement of Section 404 of the Sarbanes-Oxley Act, reduced disclosure about executive compensation arrangements in our periodic reports and proxy statements, and no requirement to seek non-binding advisory votes on executive compensation or golden parachute arrangements. We have elected to adopt these reduced disclosure requirements. We may take advantage of these provisions until we are no longer an emerging growth company.

We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenue of at least \$1.0 billion or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the prior December 31st, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period. We cannot predict if investors will find our common stock less attractive as a result of our taking

advantage of these exemptions. If some investors find our common stock less attractive as a result of our choices, there may be a less active trading market for our common stock and our stock price may be more volatile.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. We have elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, we, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard. This may make comparison of our financial statements with another public company which is neither an emerging growth company nor an emerging growth company which has opted out of using the extended transition period difficult or impossible because of the potential differences in accounting standards used.

Additionally, we are a “smaller reporting company” as defined in Rule 10(f)(1) of Regulation S-K. We will remain a smaller reporting company until the last day of the fiscal year in which (1) the market value of our ordinary shares held by non-affiliates exceeds \$250 million as of the end of that year’s second fiscal quarter, or (2) our annual revenues exceeded \$100 million during such completed fiscal year and the market value of our ordinary shares held by non-affiliates exceeds \$700 million as of the end of that year’s second fiscal quarter. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited financial statements in our Annual Report on Form 10-K and, similar to emerging growth companies, reduced disclosure obligations regarding executive compensation. Furthermore, as long as we are neither a “large accelerated filer” nor an “accelerated filer,” as a smaller reporting company, we would not be required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act. To the extent we take advantage of such reduced disclosure obligations, it may also make comparison of our financial statements with other public companies difficult or impossible.

***Future sales of our common stock, or the perception in the public markets that these sales may occur, may depress our stock price.***

The market price of our common stock could decline significantly as a result of sales of a large number of shares of our common stock in the market after this offering. These sales, or the perception that these sales might occur, could depress the market price of our common stock or make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate.

***Provisions in our sixth amended and restated certificate of incorporation and bylaws and under Delaware law could discourage a takeover that stockholders may consider favorable.***

Our sixth amended and restated certificate of incorporation and amended and restated bylaws may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable because they, among other things:

- establish a supermajority voting requirement of at least 66<sup>2</sup>/<sub>3</sub>% of the outstanding voting stock in order to amend certain provisions in our sixth amended and restated certificate of incorporation, which makes it more difficult for stockholders to eliminate anti- takeover provisions;
- eliminate stockholder-initiated action by written consent in lieu of a meeting, which hampers the ability of stockholders to take action during the interim periods between annual meetings of stockholders; and
- require the written request of stockholders holding an aggregate of 25% of shares of our common stock in order for stockholders to call a special meeting, which together with the elimination of stockholder action by written consent described above, makes it very difficult for stockholders to take action during the interim periods between annual meetings of stockholders.

As a Delaware corporation, we are also subject to the Delaware anti-takeover provisions contained in Section 203 of the Delaware General Corporation Law. Under Delaware law, a corporation may not engage in a business acquisition with any holder of 15% or more of its capital stock unless the holder has held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on this provision to prevent or delay an acquisition of us.

***Our sixth amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders.***

Our sixth amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative action or proceeding brought on our behalf;
- any action asserting a breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders;
- any action asserting a claim against us or our directors, officers or other employees arising under the Delaware General Corporation Law, our sixth amended and restated certificate of incorporation or our bylaws;
- any action or proceeding to interpret, apply, enforce or determine the validity of our sixth amended and restated certificate of incorporation or our bylaws;
- any action or proceeding as to which the Delaware General Corporation Law confers jurisdiction to the Court of Chancery of the State of Delaware; or
- any action asserting a claim against us or our directors, officers or other employees that is governed by the “internal affairs doctrine” as that term is defined in Section 115 of the Delaware General Corporation Law.

Our sixth amended and restated certificate of incorporation further provides that unless the Company consents in writing to the selection of an alternative forum, the U.S. federal district courts have exclusive jurisdiction of the resolution of any complaint asserting a cause of action arising under the Securities Act. The enforceability of similar exclusive federal forum provisions in other companies' organizational documents has been challenged in legal proceedings, and while the Delaware Supreme Court has ruled that this type of exclusive federal forum provision is facially valid under Delaware law, there is uncertainty as to whether other courts would enforce such provisions and that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

This exclusive forum provision does not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and to have consented to this exclusive forum provision of our sixth amended and restated certificate of incorporation. This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find this choice of forum provision in our sixth amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions. Additional costs associated with resolving an action in other jurisdictions could materially adversely affect our business, financial condition and results of operations.

***We do not expect to pay any dividends in the foreseeable future.***

We intend to retain our future earnings, if any, in order to reinvest in the development and growth of our business and, therefore, do not intend to pay dividends on our common stock for the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, the limits imposed by the terms of our credit facility and such other factors as our board of directors deems relevant. Accordingly, investors in our common stock may need to sell their shares to realize a return on their investment in our common stock, and investors may not be able to sell their shares at or above the prices paid for them.

***If securities analysts do not publish favorable reports about us or if we, or our industry, are the subject of unfavorable commentary, the price of our common stock could decline.***

The trading price for our common stock will depend in part on the research and reports about us that are published by analysts in the financial industry. Analysts could issue negative commentary about us or our industry, or they could downgrade our common stock. We may also not receive sufficient research coverage or visibility in the market. Any of these factors could result in the decline the trading price of our common stock, causing investors in our common stock to lose all or a portion of their investment.

***Even if our reverse stock split effected on August 22, 2023 achieves the requisite increase in the market price of our common stock, we cannot assure you that we will be approved for listing on the NasdaqCM or able to comply with other continued listing standards of the NasdaqCM.***

The NasdaqCM requires that the trading price of its listed stocks remain above one dollar in order for the stock to remain listed. If a listed stock trades below one dollar for more than 30 consecutive trading days, then it is subject to delisting from Nasdaq. The Company effected a reverse stock split of the Company's outstanding common stock at an exchange ratio of 1-for-25 to achieve the requisite increase in the market price of our common stock to be in compliance with the minimum bid price of Nasdaq.

Even if the reverse stock split achieves the requisite increase in the market price of our common stock to be in compliance with the minimum bid price of Nasdaq, there can be no assurance that the market price of our common stock following the reverse stock split will remain at the level required for continuing compliance with that requirement. It is not uncommon for the market price of a company's common stock to decline in the period following a reverse stock split. If the market price of our common stock declines following the effectuation of the reverse stock split, the percentage decline may be greater than would occur in the absence of a reverse stock split. In any event, other factors unrelated to the number of shares of our common stock outstanding, such as negative financial or operational results, could adversely affect the market price of our common stock and jeopardize our ability to meet or maintain Nasdaq's minimum bid price requirement.

***A reverse stock split may decrease the liquidity of the shares of our common stock.***

The liquidity of the shares of our common stock may be affected adversely by a reverse stock split given the reduced number of shares that will be outstanding following the reverse stock split, especially if the market price of our common stock does not increase as a result of the reverse stock split. In addition, a reverse stock split may increase the number of shareholders who own odd lots (less than 100 shares) of our common stock, creating the potential for such shareholders to experience an increase in the cost of selling their shares and greater difficulty effecting such sales.

***Following a reverse stock split, the resulting market price of our common stock may not attract new investors, including institutional investors, and may not satisfy the investing requirements of those investors. Consequently, the trading liquidity of our common stock may not improve.***

Although we believe that a higher market price of our common stock may help generate greater or broader investor interest, there can be no assurance that a reverse stock split will result in a share price that will attract new investors, including institutional investors. In addition, there can be no assurance that the market price of our common stock will satisfy the investing requirements of those investors. As a result, the trading liquidity of our common stock may not necessarily improve.

***Our common stock (and our warrants) may be subject to the "penny stock" rules in the future. It may be more difficult to resell securities classified as "penny stock."***

Our common stock and warrants may be subject to "penny stock" rules (generally defined as non-exchange traded stock with a per-share price below \$5.00) in the future. While our common stock and warrants are currently not considered "penny stock" since they are listed on the NasdaqCM, if we are unable to maintain that listing and our common stock and warrants are no longer listed on the NasdaqCM, unless we maintain a per-share price above \$5.00, our common stock and warrants will become "penny stock." These rules impose additional sales practice requirements on broker-dealers that recommend the purchase or sale of penny stocks to persons other than those who qualify as "established customers" or "accredited investors." For example, broker-dealers must determine the appropriateness for non-qualifying persons of investments in penny stocks. Broker-dealers must also provide, prior to a transaction in a penny stock not otherwise exempt from the rules, a standardized risk disclosure document that provides information about penny stocks and the risks in the penny stock market. The broker-dealer also must provide the customer with current bid and offer quotations for the penny stock, disclose the compensation of the broker-dealer and its salesperson in the transaction, furnish monthly account

statements showing the market value of each penny stock held in the customer's account, provide a special written determination that the penny stock is a suitable investment for the purchaser, and receive the purchaser's written agreement to the transaction.

Legal remedies available to an investor in "penny stocks" may include the following:

- If a "penny stock" is sold to the investor in violation of the requirements listed above, or other federal or states securities laws, the investor may be able to cancel the purchase and receive a refund of the investment.
- If a "penny stock" is sold to the investor in a fraudulent manner, the investor may be able to sue the persons and firms that committed the fraud for damages.
- If a "penny stock" is sold to the investor in violation of the requirements listed above, or other federal or states securities laws, the investor may be able to cancel the purchase and receive a refund of the investment.
- If a "penny stock" is sold to the investor in a fraudulent manner, the investor may be able to sue the persons and firms that committed the fraud for damages.
- If a "penny stock" is sold to the investor in violation of the requirements listed above, or other federal or states securities laws, the investor may be able to cancel the purchase and receive a refund of the investment.
- If a "penny stock" is sold to the investor in a fraudulent manner, the investor may be able to sue the persons and firms that committed the fraud for damages.
- If a "penny stock" is sold to the investor in violation of the requirements listed above, or other federal or states securities laws, the investor may be able to cancel the purchase and receive a refund of the investment.
- If a "penny stock" is sold to the investor in a fraudulent manner, the investor may be able to sue the persons and firms that committed the fraud for damages.

These requirements may have the effect of reducing the level of trading activity, if any, in the secondary market for a security that becomes subject to the penny stock rules. The additional burdens imposed upon broker-dealers by such requirements may discourage broker-dealers from effecting transactions in our securities, which could severely limit the market price and liquidity of our securities. These requirements may restrict the ability of broker-dealers to sell our common stock or our warrants and may affect your ability to resell our common stock and our warrants.

Many brokerage firms will discourage or refrain from recommending investments in penny stocks. Most institutional investors will not invest in penny stocks. In addition, many individual investors will not invest in penny stocks due, among other reasons, to the increased financial risk generally associated with these investments.

For these reasons, penny stocks may have a limited market and, consequently, limited liquidity. We can give no assurance at what time, if ever, our common stock or our warrants will not be classified as a "penny stock" in the future.

***We do not intend to pay dividends for the foreseeable future and thus you must rely on stock appreciation for any return on your investment.***

We do not anticipate paying cash dividends on our common stock in the foreseeable future. We may not have sufficient funds to legally pay dividends. Even if funds are legally available to pay dividends, we may nevertheless decide in our sole discretion not to pay dividends. The declaration, payment and amount of any future dividends will be made at the discretion of our board of directors, and will depend upon, among other things, the results of our operations, cash flows and financial condition, operating and capital requirements, and other factors our board of directors may consider relevant. There is no assurance that we will pay any dividends in the future, and, if dividends are paid, there is no assurance with respect to the amount of any such dividend. As a result, you must rely on stock appreciation and a liquid trading market for any return on your investment. If an active and liquid trading market does not develop, you may be unable to sell your shares of common stock at or above the price in this offering at the time you would like to sell.

***Our certificate of incorporation grants our board of directors the authority to issue a new series of preferred stock without further approval by our shareholders, which could adversely affect the rights of the holders of our common shares.***

Our board of directors has the power to fix and determine the relative rights and preferences of preferred stock. Our board of directors also has the power to issue preferred stock without further shareholder approval, subject to applicable listing regulations. As a result, our board of directors could authorize the issuance of new series of preferred stock that would grant to holders thereof certain rights in preference to the rights of our common stockholders to:

- our assets upon liquidation;
- receive dividend payments ahead of holders of common shares;
- the redemption of the shares, together with a premium, prior to the redemption of our common shares;
- vote to approve matters as a separate class or have more votes per share relative to shares of common stock.

In addition, our board of directors could authorize the issuance of new series of preferred stock that is convertible into our common shares, or may also authorize the sale of additional shares of authorized common stock, which could decrease the relative voting power of our common shares or result in dilution to our existing shareholders.



#### **USE OF PROCEEDS**

All securities sold pursuant to this prospectus will be offered and sold by the selling stockholders. We will not receive any proceeds from the sale of common stock offered by the selling stockholders. However, upon the exercise of the Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Placement Agent Warrants by payment of cash, we would receive aggregate gross proceeds of approximately \$10 million. Any proceeds from the exercise of the Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Placement Agent Warrants will be used for working capital and general corporate purposes. We cannot predict when or if the Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Placement Agent Warrants will be exercised, and it is possible that the Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Placement Agent Warrants may expire and never be exercised or may be exercised pursuant to a cashless exercise. We will bear the out-of-pocket costs, expenses and fees incurred in connection with the registration of shares of our common stock to be sold by the selling stockholders, including registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel, or collectively, the Registration Expenses. Other than Registration Expenses, the selling stockholders will bear underwriting discounts, commissions, placement agent fees or other similar expenses payable with respect to sales of shares.

#### **DIVIDEND POLICY**

We have never declared or paid any cash dividends on our capital stock and do not anticipate paying any cash dividends in the foreseeable future. We currently expect to retain future earnings, if any, to finance the growth and development of our business. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions, and other factors that our board of directors may deem relevant.

**MARKET PRICE OF AND DIVIDENDS ON COMMON STOCK AND RELATED STOCKHOLDER MATTERS**

**Market Information**

Our common stock and warrants are quoted on the NasdaqCM under the symbols DBGI and DBGIW, respectively. Until May 2021, there was no public market for our common stock or warrants.

The following table sets forth the high and low sales prices as reported on the NasdaqCM. The quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission, and may not represent actual transactions. The quotations have given effect to a 1-100 reverse stock split effected by us in November 2022 and the 1-25 reverse stock split effected by us in August 2023.

<b>Common Stock Quarter Ended</b>	<b>High</b>	<b>Low</b>
December 31, 2022	\$ 295.25	\$ 80.25
March 31, 2023	\$ 106.75	\$ 27.75
June 30, 2023	\$ 39.00	\$ 17.03

  

<b>Warrants Quarter Ended</b>	<b>High</b>	<b>Low</b>
December 31, 2022	\$ 17.00	\$ 0.71
March 31, 2023	\$ 2.23	\$ 1.54
June 30, 2023	\$ 5.96	\$ 1.00

The last reported sales price of our common stock on the NasdaqCM on September 14, 2023 was \$11.29.

**Holders**

As of September 14, 2023, the total number of accounts of holders of our common stock is approximately 5,728.

## UNAUDITED PRO FORMA COMBINED FINANCIAL INFORMATION

### H& J Settlement Agreement and Disposition of H&J

We have been involved in a dispute with the former owners of H&J regarding our obligation to “true up” their ownership interest in our Company further to that membership interest purchase agreement dated May 10, 2021 whereby we acquired all of the outstanding membership interests of H&J (as amended, the “H&J Purchase Agreement”). Further to the H&J Purchase Agreement, we agreed that if, at May 18, 2022, the one year anniversary of the closing date of our initial public offering, the product of the number of shares of our common stock issued at the closing of such acquisition multiplied by the average closing price per share of our shares of common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date plus the gross proceeds, if any, of shares of our stock issued to such sellers and sold by them during the one year period from the closing date of the offering does not exceed the sum of \$9.1 million, less the value of any shares of common stock cancelled further to any indemnification claims or post-closing adjustments under the H&J Purchase Agreement, then we shall issue to the subject sellers an additional aggregate number of shares of common stock equal to any such valuation shortfall at a per share price equal to the then closing price per share of our common stock as quoted on the NasdaqCM. We did not honor our obligation to issue such shares and the former owner of H&J have claimed that they were damaged as a result.

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the parties’ execution of the Settlement Agreement (i) the Company made aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. (“D. Jones”), (ii) the Company issued 78,103 shares of common stock to D. Jones at a per share purchase price of \$17.925 which represented the lower of (i) the closing price per share of the Common Stock as reported on Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones. This transaction is known as the “H&J Settlement”.

### Norwest Waiver

On June 21, 2023, the Company, on the one hand, and Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP (together, the “Norwest Investors”), on the other hand, executed Waiver and Amendment (the “Norwest Amendment”) whereby the Norwest Investors agreed to waive and terminate certain true up rights of the Norwest Investors under the Agreement and Plan of Merger, dated February 12, 2020, among the Company, Bailey 44, LLC, Norwest Venture Partners XI, LP, and Norwest Venture Partners XII, LP and Denim.LA Acquisition Corp. This transaction is known as the “Norwest Waiver”.

The Norwest Waiver resulted in the cancellation of a contingent liability of approximately \$10.5 million in the fiscal quarter ending June 30, 2023.

### Sundry Conversion

On June 21, 2023, the Company and the former owners of Sundry (collectively, the “Sundry Investors”) executed a Securities Purchase Agreement (the “Sundry SPA”) whereby the Company issued 5,761 shares of Series C Convertible Preferred Stock, par value \$0.0001 per share (the “Series C Preferred Stock”) to the Sundry Investors at purchase price of \$1,000 per share. The Series C Preferred Stock is convertible into a number of shares of the Company’s Common Stock equal to \$1,000 divided by an initial conversion price of \$17.925 which represents the lower of (i) the closing price per share of the Common Stock as reported on the Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023. The shares of Series C Preferred Stock were issued in consideration for the cancellation of \$5,759,178.00 which represented amounts owing further to certain promissory notes issued by the Company to the Sundry Investors dated December 30, 2022. This transaction is known as the “Sundry Conversion”.

The unaudited pro forma combined balance sheets of the Company as of June 30, 2023 reflect the reported amounts as the disposition of H&J, the Norwest Waiver and the Sundry Conversion occurred on June 21, 2023 have been prepared to reflect the effects of the disposition of H&J, the Norwest Waiver, and Sundry Conversion as if they occurred on June 30, 2023. The unaudited pro forma combined statements of operations for the six months ended June 30, 2023 combine the historical results and operations of the Company giving effect to the transactions as if they occurred on January 1, 2023. The unaudited pro forma combined statements of operations for the year ended December 31, 2022 combine the historical results and operations of DBG and Sundry giving effect to the transactions as if they occurred on January 1, 2022.

The unaudited pro forma combined financial information should be read in conjunction with the audited and unaudited historical financial statements of each of DBG and Sundry and the notes thereto. Additional information about the basis of presentation of this information is provided in Note 2 below.

The unaudited pro forma combined financial information was prepared in accordance with Article 11 of Regulation S-X. The unaudited pro forma adjustments reflecting the transaction have been prepared in accordance with business combination accounting guidance as provided in Accounting Standards Codification Topic 805, Business Combinations and reflect the preliminary allocation of the purchase price to the acquired assets and liabilities based upon the preliminary estimate of fair values, using the assumptions set forth in the notes to the unaudited pro forma combined financial information.

The unaudited pro forma combined financial information is provided for informational purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the transaction had been completed as of the dates set forth above, nor is it indicative of the future results or financial position of the combined company. In connection with the pro forma financial information, DBG calculated the accounting for the disposition using its best estimates. Accordingly, the pro forma disposition value adjustments are preliminary and subject to further adjustments as additional information becomes available and as additional analyses are performed. The unaudited pro forma combined financial information also does not give effect to the potential impact of current financial conditions, any anticipated synergies, operating efficiencies or cost savings that may result from the transaction or any integration costs. However, the pro forma adjustments shown in these unaudited pro forma combined condensed financial statements reflect estimates and assumptions that we believe to be reasonable.

Furthermore, the unaudited pro forma combined statements of operations do not include certain nonrecurring charges and the related tax effects which result directly from the transaction as described in the notes to the unaudited pro forma combined financial information.

These unaudited pro forma combined condensed financial statements have been derived from our historical financial statements, which are included in our quarterly report on Form 10-Q for the quarter ended June 30, 2023 and our annual report on Form 10-K for the year ended December 31, 2022.

	DBGI As Reported	Sundry Conversion and Norwest Waiver	Notes	Pro Forma as Adjusted
Net revenues	\$ 8,869,803	\$ —		\$ 8,869,803
Cost of net revenues	4,540,488	—		4,540,488
Gross profit	4,329,315	—		4,329,315
Operating expenses:				
General and administrative	8,380,063	—		8,380,063
Sales and marketing	2,036,677	—		2,036,677
Distribution	512,399	—		512,399
Change in fair value of contingent consideration	(10,698,475)	10,698,475	(a)	—
Total operating expenses	230,664	—		10,929,139
Loss from operations	4,098,651	—		(6,599,824)
Other income (expense):				
Interest expense	(2,951,487)	259,178	(a)	(2,692,309)
Other non-operating income (expenses)	(676,749)	—		(676,749)
Total other income (expense), net	(3,628,236)	259,178		(3,369,058)
Income tax benefit (provision)	—	—		—
Net income (loss) from continuing operations	470,415	259,178		(9,968,882)
Income (loss) from discontinued operations, net of tax	(1,562,503)	—		(1,562,503)
Net income (loss)	\$ (1,092,088)	\$ 259,178		\$ (11,531,385)
Weighted average common shares outstanding – basic and diluted	236,824			314,927
Net income (loss) from continuing per common share – basic	\$ 1.99			\$ (31.65)

**UNAUDITED PRO FORMA COMBINED STATEMENT OF OPERATIONS  
FOR THE YEAR ENDED DECEMBER 31, 2022**

	DBGI As Reported	Sundry <sup>(1)</sup>	Sundry Conversion and Norwest Waiver	Notes	Pro Forma Adjustments
Net revenues	\$ 10,333,558	\$ 14,548,083	\$ —		\$ 24,881,640
Cost of net revenues	6,789,314	9,694,857	—		16,484,171
Gross profit	3,544,244	4,853,226	—		8,397,469
Operating expenses:					
General and administrative	14,067,681	3,433,633	—		17,501,314
Sales and marketing	4,018,985	913,052	—		4,932,036
Distribution	611,569	2,736,181	—		3,347,750
Impairment	5,503,095	—	—		5,503,095
Change in fair value of contingent consideration	564,303	—	(564,303)	(a)	—
Total operating expenses	24,765,633	7,082,866	(564,303)		31,284,196
Loss from operations	(21,221,389)	(2,229,640)	564,303		(22,886,726)
Other income (expense):					
Interest expense	(8,961,410)	(9,099)	—		(8,970,509)
Other non-operating income (expenses)	3,068,080	(52,354)	—		3,015,726
Total other income (expense), net	(5,893,330)	(61,453)	—		(5,954,783)
Income tax benefit (provision)	—	(800)	—		—
Net income (loss) from continuing operations	(27,114,719)	(2,291,093)	564,303		(28,841,508)
Income (loss) from discontinued operations, net of tax	(10,928,643)	—	—		(10,928,643)
Net loss	\$ (38,043,362)	\$ (2,291,893)	\$ 564,303		\$ (39,770,151)
Weighted average common shares outstanding - basic and diluted	30,852				108,955
Net loss from continuing operations per common share - basic and diluted	\$ (878.87)				\$ (264.71)

UNAUDITED PRO FORMA COMBINED BALANCE SHEET AS OF JUNE 30, 2023

	DBGI As Reported	Pro Forma Adjustments		Notes	Pro Forma as Adjusted
		H&J	Sundry Conversion and Norwest Waiver		
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 335,470	\$ (262,405)	\$ —	(a)	\$ 1,706,845
Accounts receivable, net	196,919	(55,782)	—	(a)	289,657
Due from factor, net	438,142	—	—	—	590,253
Inventory	4,771,271	—	—	—	4,926,094
Prepaid expenses and other current assets	872,142	(186,928)	—	(a)	884,402
Total current assets	6,613,944	(505,115)	—	—	8,397,251
Property, equipment and software, net	98,170	—	—	—	71,803
Goodwill	8,973,501	(1,130,310)	—	(a)	8,973,502
Intangible assets, net	11,421,311	(1,378,126)	—	(a)	12,095,025
Deposits	106,547	(4,416)	—	(a)	106,546
Right of use asset	339,085	—	—	—	467,738
Total assets	\$ 27,552,558	\$ (3,017,967)	\$ —	—	\$ 30,111,865
<b>LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)</b>					
Current liabilities:					
Accounts payable	\$ 8,143,991	\$ (45,969)	\$ —	(a)	\$ 7,625,081
Accrued expenses and other liabilities	5,038,937	(610,114)	—	(a)	4,311,856
Deferred revenue	—	(317,421)	—	(a)	—
Due to related parties	472,790	(1,008)	—	(a)	451,047
Contingent consideration liability	—	(1,400,000)	(10,698,475)	(a), (b)	—
Convertible note payable, net	100,000	—	—	—	100,000
Accrued interest payable	1,779,274	—	(4,400)	(b)	1,670,535
Note payable - related party	—	(129,489)	—	(a)	—
Loan payable, current	1,190,405	—	—	—	1,329,507
Promissory note payable, net	5,613,839	—	(5,500,000)	(b)	5,414,831
Right of use liability, current portion	312,226	—	—	—	425,654
Total current liabilities	22,651,462	(2,504,000)	(16,308,475)	—	21,820,512
Loan payable	443,635	(219,894)	—	(a)	578,865
Right of use liability	33,501	—	—	—	53,107
Total liabilities	23,128,598	(2,723,895)	(16,308,475)	—	21,38,484
Commitments and contingencies					
Stockholders' equity (deficit):					
Preferred stock	2	—	6	(b)	7
Common stock	461	—	195	(b)	793
Additional paid-in capital	109,262,902	1,400,000	5,609,799	(a), (b)	109,029,844
Accumulated deficit	(104,839,404)	(1,694,073)	10,698,475	(a), (b)	(100,879,263)
Total stockholders' equity (deficit)	4,423,38	(294,073)	16,308,475	—	8,151,381
Total liabilities and stockholders' equity (deficit)	\$ 27,552,558	\$ (3,017,967)	\$ —	—	\$ 30,111,865

## NOTES TO THE UNAUDITED PRO FORMA FINANCIAL STATEMENTS

### 1. Description of Transactions

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the parties’ execution of the Settlement Agreement (i) the Company made aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. (“D. Jones”), (ii) the Company issued 78,103 shares of common stock to D. Jones at a per share purchase price of \$17.925 which represented the lower of (i) the closing price per share of the Common Stock as reported on Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones.

On June 21, 2023, the Company, on the one hand, and Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP (together, the “Norwest Investors”), on the other hand, executed Waiver and Amendment (the “Norwest Amendment”) whereby the Norwest Investors agreed to waive and terminate the post-closing adjustment and anti-dilution rights of the Norwest Investors under the Agreement and Plan of Merger, dated February 12, 2020, among the Company, Bailey 44, LLC, Norwest Venture Partners XI, LP, and Norwest Venture Partners XII, LP and Denim.LA Acquisition Corp.

On June 21, 2023, the Company and the former owners of Sundry (collectively, the “Sundry Investors”) executed a Securities Purchase Agreement (the “Sundry SPA”) whereby the Company issued 5,761 shares of Series C Convertible Preferred Stock, par value \$0.0001 per share (the “Series C Preferred Stock”) to the Sundry Investors at purchase price of \$1,000 per share. The Series C Preferred Stock is convertible into a number of shares of the Company’s Common Stock equal to \$1,000 divided by an initial conversion price of \$17.925 which represents the lower of (i) the closing price per share of the Common Stock as reported on the Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023. The shares of Series C Preferred Stock were issued in consideration for the cancellation of \$5,759,178 which represented amounts owing further to certain promissory notes issued by the Company to the Sundry Investors dated December 30, 2022.

### 2. Basis of Presentation

The historical financial information has been adjusted to give pro forma effect to events that are directly attributable to the transaction, (ii) factually supportable, and (iii) with respect to the unaudited pro forma balance sheets and unaudited pro forma statements of operations, expected to have a continuing impact on the results.

The transactions were accounted for as a business disposition where DBG is the accounting seller that disposed of 100% of its membership interest in H&J. Upon the disposition, the assets and liabilities of H&J are not included in the results of the Company.

### 3. Pro Forma Adjustments

- (1) The pro forma statements of operations for the year ended December 31, 2022 includes the results of Sundry, which was acquired by DBG on December 30, 2022.
- (a) To recognize the effect of the Norwest Waiver and Sundry Conversion, including the conversion of an aggregate of \$5.5 million in debt, and \$0.1 million in accrued interest, into preferred stock. Furthermore, to eliminate the \$10.7 million contingent consideration liability per the Bailey acquisition which was extinguished in connection with the Norwest Waiver.
- (b) To eliminate the historical revenue and expenses of H&J.



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

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the historical financial statements of the relevant entities and the pro forma financial statements and the notes thereto included elsewhere in this prospectus. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under “Risk Factors” and “Special Note Regarding Forward-Looking Statements.”*

*Unless otherwise indicated by the context, references to “DBG” refer to Digital Brands Group, Inc. solely, and references to the “Company,” “our,” “we,” “us” and similar terms refer to Digital Brands Group, Inc., together with its wholly-owned subsidiaries Bailey 44, LLC (“Bailey”), MOSBEST, LLC (“Stateside”) and Sunnyside, LLC (“Sundry”).*

*On August 21, 2023, we filed a Certificate of Amendment to our Certificate of Incorporation, as amended, to effect a one-for-twenty-five (1-for-25) reverse stock split effective August 22, 2023. All share and per share information in this prospectus has been adjusted to reflect this reverse stock split.*

### BUSINESS OVERVIEW

#### Our Company

Digital Brands Group is a curated collection of lifestyle brands, including Bailey, DSTLD, Stateside, Sundry and ACE Studios, that offers a variety of apparel products through direct-to-consumer and wholesale distribution. Our complementary brand portfolio provides us with the unique opportunity to cross merchandise our brands. We aim for our customers to wear our brands head to toe and to capture what we call “closet share” by gaining insight into their preferences to create targeted and personalized content specific to their cohort. Operating our brands under one portfolio provides us with the ability to better utilize our technological, human capital and operational capabilities across all brands. As a result, we have been able to realize operational efficiencies and continue to identify additional cost saving opportunities to scale our brands and overall portfolio.

Our portfolio consists of four significant brands that leverage our three channels: our websites, wholesale and our own stores.

- Bailey 44 (“Bailey”) combines beautiful, luxe fabrics and on-trend designs to create sophisticated ready-to-wear capsules for women on-the-go. Designing for real life, this brand focuses on feeling and comfort rather than how it looks on a runway. Bailey is primarily a wholesale brand, which we intend to transition to a digital, direct-to-consumer brand.
- DSTLD offers stylish high-quality garments without the luxury retail markup valuing customer experience over labels. DSTLD is primarily a digital direct-to-consumer brand, to which we recently added select wholesale retailers to generate brand awareness.
- Stateside is an elevated, America first brand with all knitting, dyeing, cutting and sewing sourced and manufactured locally in Los Angeles. The collection is influenced by the evolution of the classic t-shirt offering a simple yet elegant look. Stateside is primarily a wholesale brand that we intend to transition to a digital, direct-to-consumer brand.
- Sundry offers distinct collections of women’s clothing, including dresses, shirts, sweaters, skirts, shorts, athleisure bottoms and other accessory products. Sundry’s products are coastal casual and consist of soft, relaxed and colorful designs that feature a distinct French chic, resembling the spirits of the French Mediterranean and the energy of Venice Beach in Southern California. Sundry is primarily a wholesale brand that we intend to transition to a digital, direct-to-consumer brand.

We believe that successful apparel brands sell in all revenue channels. However, each channel offers different margin structures and requires different customer acquisition and retention strategies. We were founded as a digital-first retailer that has strategically expanded into select wholesale and direct retail channels. We strive to strategically create omnichannel strategies for each of our brands that blend physical and online channels to engage consumers in the channel of their choosing. Our products are sold direct-to-consumers principally through our websites and our own showrooms, but also through our wholesale channel, primarily in specialty stores and select department stores. With the continued expansion of our wholesale distribution, we believe developing an omnichannel solution further strengthens our ability to efficiently acquire and retain customers while also driving high customer lifetime value.

We believe that by leveraging a physical footprint to acquire customers and increase brand awareness, we can use digital marketing to focus on retention and a very tight, disciplined high value new customer acquisition strategy, especially targeting potential customers lower in the sales funnel. Building a direct relationship with the customer as the customer transacts directly with us allows us to better understand our customer's preferences and shopping habits. Our experience as a company originally founded as a digitally native-first retailer gives us the ability to strategically review and analyze the customer's data, including contact information, browsing and shopping cart data, purchase history and style preferences. This in turn has the effect of lowering our inventory risk and cash needs since we can order and replenish product based on the data from our online sales history, replenish specific inventory by size, color and SKU based on real time sales data, and control our mark-down and promotional strategies versus being told what mark downs and promotions we have to offer by the department stores and boutique retailers.

We define "closet share" as the percentage ("share") of a customer's clothing units that ("of closet") she or he owns in her or his closet and the amount of those units that go to the brands that are selling these units. For example, if a customer buys 20 units of clothing a year and the brands that we own represent 10 of those units purchased, then our closet share is 50% of that customer's closet, or 10 of our branded units divided by 20 units they purchased in entirety. Closet share is a similar concept to the widely used term wallet share, it is just specific to the customer's closet. The higher our closet share, the higher our revenue as higher closet share suggests the customer is purchasing more of our brands than our competitors.

We have strategically expanded into an omnichannel brand offering these styles and content not only on-line but at selected wholesale and retail storefronts. We believe this approach allows us opportunities to successfully drive Lifetime Value ("LTV") while increasing new customer growth. We define Lifetime Value or LTV as an estimate of the average revenue that a customer will generate throughout their lifespan as our customer. This value/revenue of a customer helps us determine many economic decisions, such as marketing budgets per marketing channel, retention versus acquisition decisions, unit level economics, profitability and revenue forecasting.

We acquired Bailey in February 2020, H&J in May 2021, Stateside in August 2021 and Sundry in December 2022. We agreed on the consideration that we paid in each acquisition in the course of arm's length negotiations with the holders of the membership interests in each of Bailey, H&J, Stateside and Sundry. In determining and negotiating this consideration, we relied on the experience and judgment of our management and our evaluation of the potential synergies that could be achieved in combining the operations of Bailey, H&J, Stateside and Sundry. We did not obtain independent valuations, appraisals or fairness opinions to support the consideration that we paid/agreed to pay.

## **Recent Developments**

### *H&J Settlement Agreement and Disposition of H&J*

We have been involved in a dispute with the former owners of H&J regarding our obligation to "true up" their ownership interest in our Company further to that membership interest purchase agreement dated May 10, 2021 whereby we acquired all of the outstanding membership interests of H&J (as amended, the "H&J Purchase Agreement"). Further to the H&J Purchase Agreement, we agreed that if, at May 18, 2022, the one year anniversary of the closing date of our initial public offering, the product of the number of shares of our common stock issued at the closing of such acquisition multiplied by the average closing price per share of our shares of common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date plus the gross proceeds, if any, of shares of our stock issued to such sellers and sold by them during the one year period from the closing date of the offering does not exceed the sum of \$9.1 million, less the value of any shares of common stock cancelled further to any indemnification claims or post-closing adjustments under the H&J Purchase Agreement, then we shall issue to the subject sellers an additional aggregate number of shares of common stock equal to any such valuation shortfall at a per share price equal to the then closing price per share of our common stock as quoted on the NasdaqCM. We did not honor our obligation to issue such shares and the former owner of H&J have claimed that they were damaged as a result.

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the "Settlement Agreement") whereby contemporaneously with the parties' execution of the Settlement Agreement (i) the Company made aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. ("D. Jones"), (ii) the Company issued 78,103 shares of common stock to D. Jones at a per share purchase price of \$17.925 which represented the lower of (a) the closing price per share of the Common Stock as reported on Nasdaq on June 20, 2023, and (b) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company's membership interest in H&J to D. Jones. This transaction is known as the "H&J Settlement".

The Settlement Agreement contains a resale registration rights provision, pursuant to which the Company shall prepare and file with the SEC a registration statement on Form S-1 (or any successor to Form S-1) covering the resale of all the shares issued pursuant to the Settlement Agreement and all the shares owned by D. Jones and its principals by no later than the earlier of the following dates: (i) within 90 calendar days following the effective date of this offering and (ii) October 31, 2023. The Company shall use its commercial best efforts to have the S-1 Resale Registration Statement declared effective as soon as possible and D. Jones and its principals have agreed to sell no more than \$500,000 worth of shares in any calendar month after the registration statement is declared effective.

The H&J Settlement was accounted for a business disposition in accordance with ASC 810-40-40-3A. As of June 21, 2023, the Company no longer consolidated the assets, liabilities, revenues and expenses of H&J.

#### *Norwest Waiver*

On June 21, 2023, the Company, on the one hand, and Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP (together, the “Norwest Investors”), on the other hand, executed Waiver and Amendment (the “Norwest Amendment”) whereby the Norwest Investors agreed to waive and terminate certain true up rights of the Norwest Investors under the Agreement and Plan of Merger, dated February 12, 2020, among the Company, Bailey 44, LLC, Norwest Venture Partners XI, LP, and Norwest Venture Partners XII, LP and Denim.LA Acquisition Corp. This transaction is known as the “Norwest Waiver”. The Norwest Waiver resulted in the cancellation of a contingent liability of approximately \$10.5 million in the fiscal quarter ending June 30, 2023.

#### *Sundry Conversion*

On June 21, 2023, the Company and the former owners of Sundry (collectively, the “Sundry Investors”) executed a Securities Purchase Agreement (the “Sundry SPA”) whereby the Company issued 5,761 shares of Series C Convertible Preferred Stock, par value \$0.0001 per share (the “Series C Preferred Stock”) to the Sundry Investors at purchase price of \$1,000 per share. The Series C Preferred Stock is convertible into a number of shares of the Company’s Common Stock equal to \$1,000 divided by an initial conversion price of \$17.925 which represents the lower of (i) the closing price per share of the Common Stock as reported on the Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023. The shares of Series C Preferred Stock were issued in consideration for the cancellation of \$5,759,178.00 which represented amounts owing further to certain promissory notes issued by the Company to the Sundry Investors dated December 30, 2022. This transaction is known as the “Sundry Conversion”.

Pursuant to the Sundry SPA, the Company provided resale registration rights to the Sundry Investors. The Sundry SPA provides that the Company shall no later than the earlier of the following dates: (i) the date which is 90 calendar days following the effective date of this offering and (ii) October 31, 2023 use its commercially best efforts to prepare and file with the Securities Exchange Commission a Registration Statement covering the resale of 100% of the Common Stock issuable upon conversion of the Series C Preferred Stock for an offering to be made on a continuous basis pursuant to Rule 415. The Company shall keep such S-1 Resale Registration Statement effective until the earlier to occur of (x) the date on which all Registrable Securities have been sold pursuant to such S-1 Resale Registration Statement and (y) the date as of which all Investors may sell all of the Registrable Securities without restriction pursuant to Rule 144 (including, without limitation, volume restrictions). Each of the Sundry Investors agreed that in no event will such investor, on an individual basis, convert in the aggregate in any calendar month, more than the greater of (i) \$300,000 of the Series C Preferred Stock (measured by the shares of Common Stock issuable upon conversion of the Series C Preferred Stock multiplied by the conversion price) or (ii) shares of Series C Preferred Stock comprising more than 3% of the aggregate trading volume of the Company’s Common Stock as reported by Nasdaq.

### **Material Trends, Events and Uncertainties**

#### *COVID-19*

After the impact of COVID-19, we have implemented cost controls to reduce discretionary spending to help mitigate the loss of sales and to conserve cash while continuing to support employees. We are also assessing our forward inventory purchase commitments to ensure proper matching of supply and demand, which will result in an overall reduction in future commitments. As we continue to actively monitor the situation, we may take further actions that affect our operations.

### *Supply Chain Disruptions*

We are subject to global supply chain disruptions, which may include longer lead times for raw fabrics, inbound shipping and longer production times. Supply chain issues have specifically impacted the following for our brands:

- Increased costs in raw materials from fabric prices, which have increased 10% to 100% depending on the fabric, the time of year, and the origin of the fabric, as well as where the fabric is being shipped;
- Increased cost per kilo to ship via sea or air, which has increased from 25% to 300% depending on the time of year and from the country we are shipping from;
- Increased transit time via sea or air, which have increased by two weeks to two months; and
- Increased labor costs for producing the finished goods, which have increased 5% to 25% depending on the country and the labor skill required to produce the goods.

### *Seasonality*

Our quarterly operating results vary due to the seasonality of our individual brands, and are historically stronger in the second half of the calendar year.

### *Substantial Indebtedness*

As of September 14, 2023, we had an aggregate principal amount of total liabilities outstanding of approximately \$22.0 million, which includes approximately \$7.9 owing further to outstanding debt obligations.

We believe this is an amount of total liabilities which may be considered significant for a company of our size and current revenue base. Our substantial total liabilities could have important consequences to us. For example, it could:

- make it more difficult for us to satisfy our obligations to the holders of our outstanding debt, resulting in possible defaults on and acceleration of such indebtedness;
- require us to dedicate a substantial portion of our cash flows from operations to make payments on our debt, which would reduce the availability of our cash flows from operations to fund working capital, capital expenditures or other general corporate purposes;
- increase our vulnerability to general adverse economic and industry conditions, including interest rate fluctuations;
- place us at a competitive disadvantage to our competitors with proportionately less debt for their size;
- limit our ability to refinance our existing debt or borrow additional funds in the future;
- limit our flexibility in planning for, or reacting to, changing conditions in our business; and
- limit our ability to react to competitive pressures or make it difficult for us to carry out capital spending that is necessary or important to our growth strategy.

Any of the foregoing impacts of our substantial total liabilities could have a material adverse effect on our business, financial condition and results of operations.

Our ability to repay our total liabilities, including our ability to make scheduled payments on our debt or to refinance our obligations under our debt agreements, will depend on our financial and operating performance, which, in turn, will be subject to prevailing economic and competitive conditions and to the financial and business risk factors we face as described in this section, many of which may be beyond our control. We may not be able to maintain a level of cash flows from operating activities sufficient to permit us to repay our total liabilities, including the ability to pay the principal, premium, if any, and interest on our debt.

If our cash flows and capital resources are insufficient to repay our total liabilities, including the ability to fund our debt service obligations, we may be forced to reduce or delay capital expenditures or planned growth objectives, seek to obtain additional equity capital or restructure our debt. In the future, our cash flows and capital resources may not be sufficient for payments of interest on and principal of our debt, and such alternative measures may not be successful and may not permit us to meet scheduled debt service obligations. In addition, the recent worldwide credit crisis could make it more difficult for us to repay our total liabilities, including the ability to refinance our debt on favorable terms, or at all.

In the absence of such operating results and resources, we may be required to dispose of material assets to repay our total liabilities, including the ability to meet our debt service obligations. We may not be able to consummate those sales, or, if we do, we will not control the timing of the sales or whether the proceeds that we realize will be adequate to repay our total liabilities, including the ability to meet debt service obligations when due.

*Possible Delisting from Nasdaq*

On May 23, 2023, the Company received a letter (the “Letter”) from the Listing Qualifications Staff (the “Staff”) of Nasdaq notifying the Company that the Staff has determined to delist the Company’s common stock from Nasdaq based on the Company’s failure to comply with the listing requirements of Nasdaq Rule 5550(b)(1) as a result of the Company’s stockholders’ deficit for the period ended June 30, 2023, as demonstrated in the Company’s Quarterly Report on Form 10-Q filed on May 22, 2023, while the Company was under “Panel Monitor” as had been previously disclosed in the Company’s SEC filings. The Letter stated that the Company’s securities would be subject to delisting unless the Company timely requests a hearing before the Panel. The Company timely submitted a hearing request and, at the hearing, the Company presented its plan for regaining and sustaining compliance with all applicable requirements for continued listing on The Nasdaq Capital Market. On July 27, 2023, the Company received a letter (the “Determination”) from the Staff notifying the Company that the Panel granted the Company’s request to continue listing on Nasdaq, subject to the Company’s demonstration of compliance: (i) with the bid price rule by evidencing a closing bid price of \$1 or more per share for a minimum of ten consecutive trading sessions on or before September 6, 2023, and (ii) with the \$2.5 million stockholders’ equity requirement, set forth in Listing Rule 5550(b)(1), on or before September 15, 2023. The Company has met the aforementioned stockholders’ equity requirement as of June 30, 2023. We effectuated a reverse stock split of the Company’s outstanding common stock at an exchange ratio of 1-for-25 effective August 22, 2023 to achieve the requisite increase in the market price of our common stock to be in compliance with the minimum bid price of Nasdaq.

However, there is no guarantee we will be able to meet the continued listing standards of the NasdaqCM in the future and if Nasdaq were to delist the Company’s common stock and warrants, it would be more difficult for the Company’s stockholders, to dispose of the Company’s securities and more difficult to obtain accurate price quotations on the Company’s common stock or warrants. The Company’s ability to issue additional securities for financing or other purposes, or otherwise to arrange for any financing it may need in the future, would be materially and adversely affected if the Company’s common stock or warrants are not listed on a national securities exchange. Our ability to successfully implement our business plans and ultimately generate value for our stockholders is dependent on our ability to maximize capital raising opportunities. If we were unsuccessful in raising additional capital, we would be required to curtail our plans to expand our manufacturing and sales capabilities and instead reduce operating expenses, dispose of assets, as well as seek extended terms on our obligations, the effect of which would materially and adversely impact future operating results. See “Risk Factors — *If we are not able to comply with the applicable continued listing requirements or standards of NasdaqCM, NasdaqCM could delist our common stock.*” for more details.

Performance Factors

We believe that our future performance will depend on many factors, including the following:

*Ability to Increase Our Customer Base in both Online and Traditional Wholesale Distribution Channels*

We are currently growing our customer base through both paid and organic online channels, as well as by expanding our presence in a variety of physical retail distribution channels. Online customer acquisitions typically occur at our direct websites for each brand. Our online customer acquisition strategies include paid and unpaid social media, search, display and traditional media. Our products for Bailey, DSTLD and Stateside are also sold through a growing number of physical retail channels, including specialty stores, department stores and online multi-brand platforms.

*Ability to Acquire Customers at a Reasonable Cost*

We believe an ability to consistently acquire customers at a reasonable cost relative to customer retention rates, contribution margins and projected lifetime value will be a key factor affecting future performance. To accomplish this goal, we intend to balance advertising spend between online and offline channels, as well as cross marketing and cross merchandising our portfolio brands and their respective products. We believe the ability to cross merchandise products and cross market brands, will decrease our customer acquisition costs while increasing the customer's lifetime value and contribution margin. We will also balance marketing spend with advertising focused on creating emotional brand recognition, which we believe will represent a lower percentage of our spend.

*Ability to Drive Repeat Purchases and Customer Retention*

We accrue substantial economic value and margin expansion from customer cohort retention and repeat purchases of our products on an annual basis. Our revenue growth rate and operating margin expansion will be affected by our customer cohort retention rates and the cohorts annual spend for both existing and newly acquired customers.

*Ability to Expand Our Product Lines*

Our goal is to expand our product lines over time to increase our growth opportunity. Our customer's annual spend and brand relevance will be driven by the cadence and success of new product launches.

*Ability to Expand Gross Margins*

Our overall profitability will be impacted by our ability to expand gross margins through effective sourcing and leveraging buying power of finished goods and shipping costs, as well as pricing power over time.

*Ability to Expand Operating Margins*

Our ability to expand operating margins will be impacted by our ability to leverage (1) fixed general and administrative costs, (2) variable sales and marketing costs, (3) elimination of redundant costs as we acquire and integrate brands, (4) cross marketing and cross merchandising brands in our portfolio, and (5) drive customer retention and customer lifetime value. Our ability to expand operating margins will result from increasing revenue growth above our operating expense growth, as well as increasing gross margins. For example, we anticipate that our operating expenses will increase substantially in the foreseeable future as we undertake the acquisition and integration of different brands, incur expenses associated with maintaining compliance as a public company, and increased marketing and sales efforts to increase our customer base. While we anticipate that the operating expenses in absolute dollars will increase, we do not anticipate that the operating expenses as a percentage of revenue will increase. We anticipate that the operating expenses as a percentage of revenue will decrease as we eliminate duplicative costs across brands including a reduction in similar labor roles, contracts for technologies and operating systems and creating lower costs from higher purchasing power from shipping expenses to purchase orders of products. This reduction of expenses and lower cost per unit due to purchasing power should create meaningful savings in both dollars and as a percentage of revenue.

As an example, we were able to eliminate several million in expenses within six months of acquiring Bailey. Examples of these savings include eliminating several Bailey teams, which our teams took over.

We merged over half of the technology contracts and operating systems contracts from two brands into one brand contract at significant savings. We also eliminated our office space and rent and moved everyone into the Bailey office space. Finally, we eliminated DSTLD's third-party logistics company and started using Bailey's internal logistics. This resulted in an increase in our operating expenses in absolute dollars as there were now two brands versus one brand. However, the operating expenses as a percentage of pre-COVID revenue declined meaningfully and as we increase revenue for each brand, we expect to experience higher margins.

*Ability to Create Free Cash Flow*

Our goal is to achieve near term free cash flow through cash flow positive acquisitions, elimination of redundant expenses in acquired companies, increasing customer annual spend and lowering customer acquisition costs through cross merchandising across our brand portfolio.

## **Critical Accounting Policies and Estimates**

### *Basis of Presentation and Principles of Consolidation*

Our accounting and reporting policies conform to accounting principles generally accepted in the United States of America (“GAAP”).

### *Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### *Business Acquisitions*

We record our acquisitions under the acquisition method of accounting, under which most of the assets acquired and liabilities assumed are initially recorded at their respective fair values and any excess purchase price is reflected as goodwill. We utilize management estimates and, in some instances, independent third-party valuation firms to assist in determining the fair values of assets acquired, liabilities assumed and contingent consideration, if any. Such estimates and valuations require us to make significant assumptions, including projections of future events and operating performance.

The fair value of customer relationships, backlog and trade names/trademarks acquired in our acquisitions are determined using various valuation methods, based on a number of significant assumptions.

We determine which assets have finite lives and then determine the estimated useful life of finite assets.

The expected useful life of customer relationships is established as three years, which is the period over which these assets are expected to reasonably contribute to future cash flows. We expect to amortize such customer relationships using the straight-line method.

The estimated fair values are subject to change during the measurement period, which is limited to one year subsequent to the acquisition date.

### *Revenue Recognition*

Revenues are recognized when performance obligations are satisfied through the transfer of promised goods to our customers. Control transfers upon shipment of product and when the title has been passed to the customers. This includes the transfer of legal title, physical possession, the risks and rewards of ownership, and customer acceptance. We provide the customer the right of return on the product and revenue is adjusted based on an estimate of the expected returns based on historical rates. We consider the sale of products as a single performance obligation. Sales tax collected from customers and remitted to taxing authorities is excluded from revenue and is included in accrued expenses. Revenue is deferred for orders received for which associated shipments have not occurred.

### *Accounts Receivable*

We carry our accounts receivable at invoiced amounts less allowances for customer credits, doubtful accounts, and other deductions. We do not accrue interest on its trade receivables. Management evaluates the ability to collect accounts receivable based on a combination of factors. Receivables are determined to be past due based on individual credit terms. A reserve for doubtful accounts is maintained based on the length of time receivables are past due, historical collections, or the status of a customer’s financial position. Receivables are written off in the year deemed uncollectible after efforts to collect the receivables have proven unsuccessful.

We periodically review accounts receivable, estimate an allowance for bad debts, and simultaneously record the appropriate expense in the statement of operations. Such estimates are based on general economic conditions, the financial conditions of customers, and the amount and age of past due accounts. Past due accounts are written off against that allowance only after all collection attempts have been exhausted and the prospects for recovery are remote.

### *Goodwill Impairment*

We are required to assess our goodwill for impairment at least annually for each reporting unit that carries goodwill. We may elect to first do a qualitative assessment to determine whether it is more likely than not that a reporting unit's fair value is in excess of its carrying value. If the qualitative assessment concludes that it is more-likely-than-not that the fair value of a reporting unit is less than its carrying value, a quantitative assessment is performed. If the fair value is determined to be less than its carrying value, we record goodwill impairment equal to the amount by which the reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill.

### *Intangible Assets Impairment*

We evaluate the carrying amount of intangible assets and other long-lived assets for impairment whenever indicators of impairment exist. We test these assets for recoverability by comparing the net carrying amount of the asset or asset group to the undiscounted net cash flows to be generated from the use and eventual disposition of that asset or asset group. If the assets are recoverable, an impairment loss does not exist, and no loss is recorded. If the carrying amounts of the assets are not recoverable, an impairment loss is recognized for any deficiency of the asset or asset group's fair value compared to their carrying amount. Although we base cash flow forecasts on assumptions that are consistent with plans and estimates we use to manage our business, there is significant judgment in determining the cash flows attributable to these assets, including markets and market share, sales volumes and mix, and working capital changes.

## **Financial Statement Components**

### ***Bailey***

#### *Net Revenue*

Bailey sells its products directly to customers. Bailey also sells its products indirectly through wholesale channels that include third-party online channels and physical channels such as specialty retailers and department stores.

#### *Cost of Net Revenue*

Bailey's cost of net revenue includes the direct cost of purchased and manufactured merchandise; inventory shrinkage; inventory adjustments due to obsolescence including excess and slow-moving inventory and lower of cost and net realizable reserves; duties; and inbound freight. Cost of net revenue also includes direct labor to production activities such as pattern makers, cutters and sewers. Cost of net revenue includes an allocation of overhead costs such as rent, utilities and commercial insurance pertaining to direct inventory activities.

#### *Operating Expenses*

Bailey's operating expenses include all operating costs not included in cost of net revenues and sales and marketing. These costs consist of general and administrative, fulfillment and shipping expense to the customer.

General and administrative expenses consist primarily of all payroll and payroll-related expenses, professional fees, insurance, software costs, occupancy expenses related to Bailey's operations at its headquarters, including utilities, depreciation and amortization, and other costs related to the administration of its business.

Bailey's fulfillment and shipping expenses include the cost to operate its warehouse including occupancy and labor costs to pick and pack customer orders and any return orders; packaging; and shipping costs to the customer from the warehouse and any returns from the customer to the warehouse.

#### *Sales & Marketing*

Bailey's sales and marketing expense primarily includes digital advertising; photo shoots for wholesale and direct-to-consumer communications, including email, social media and digital advertisements; and commission expenses associated with sales representatives.



*Interest Expense*

Bailey's interest expense consists primarily of interest related to its outstanding debt to our senior lender.

**DBG**

*Net Revenue*

We sell our products to our customers directly through our website. In those cases, sales, net represents total sales less returns, promotions and discounts.

*Cost of Net Revenue*

Cost of net revenue include direct cost of purchased merchandise; inventory shrinkage; inventory adjustments due to obsolescence, including excess and slow-moving inventory and lower of cost and net realizable reserves.

*Operating Expenses*

Our operating expenses include all operating costs not included in cost of net revenues. These costs consist of general and administrative, sales and marketing, and fulfillment and shipping expense to the customer.

General and administrative expenses consist primarily of all payroll and payroll-related expenses, professional fees, insurance, software costs, and expenses related to our operations at our headquarters, including utilities, depreciation and amortization, and other costs related to the administration of our business.

We expect to continue to incur additional expenses as a result of operating as a public company, including costs to comply with the rules and regulations applicable to companies listed on a national securities exchange, costs related to compliance and reporting obligations pursuant to the rules and regulations of the SEC and higher expenses for insurance, investor relations and professional services. We expect these costs will increase our operating costs.

Fulfillment and shipping expenses include the cost to operate our warehouse — or prior to the Bailey acquisition, costs paid to our third-party logistics provider — including occupancy and labor costs to pick and pack customer orders and any return orders; packaging; and shipping costs to the customer from the warehouse and any returns from the customer to the warehouse.

In addition, going forward, the amortization of the identifiable intangibles acquired in the acquisitions will be included in operating expenses.

*Interest Expense*

Interest expense consists primarily of interest related to our debt outstanding to our senior lender, convertible debt, and other interest bearing liabilities.

**Stateside**

*Net Revenue*

Stateside sells its products directly to customers. Stateside also sells its products indirectly through wholesale channels that include third-party online channels and physical channels such as specialty retailers and department stores.

*Cost of Net Revenue*

Stateside's cost of net revenue includes the direct cost of purchased and manufactured merchandise; inventory shrinkage; inventory adjustments due to obsolescence including excess and slow-moving inventory and lower of cost and net realizable reserves; duties; and inbound freight. Cost of net revenue also includes direct labor to production activities such as pattern makers, cutters and sewers. Cost of net revenue includes an allocation of overhead costs such as rent, utilities and commercial insurance pertaining to direct inventory activities.

*Operating Expenses*

Stateside's operating expenses include all operating costs not included in cost of net revenues and sales and marketing. These costs consist of general and administrative, fulfillment and shipping expense to the customer.

General and administrative expenses consist primarily of all payroll and payroll-related expenses, professional fees, insurance, software costs, occupancy expenses related to Stateside's stores and to Stateside's operations at its headquarters, including utilities, depreciation and amortization, and other costs related to the administration of its business.

Stateside's fulfillment and shipping expenses include the cost to operate its warehouse including occupancy and labor costs to pick and pack customer orders and any return orders; packaging; and shipping costs to the customer from the warehouse and any returns from the customer to the warehouse.

*Sales & Marketing*

Stateside's sales and marketing expense primarily includes digital advertising; photo shoots for wholesale and direct-to-consumer communications, including email, social media and digital advertisements; and commission expenses associated with sales representatives.

**Sundry**

*Net Revenue*

Sundry sells its products directly to customers. Sundry also sells its products indirectly through wholesale channels that include third-party online channels and physical channels such as specialty retailers and department stores.

*Cost of Net Revenue*

Sundry's cost of net revenue includes the direct cost of purchased and manufactured merchandise; inventory shrinkage; inventory adjustments due to obsolescence including excess and slow-moving inventory and lower of cost and net realizable reserves; duties; and inbound freight. Cost of net revenue also includes direct labor to production activities such as pattern makers, cutters and sewers. Cost of net revenue includes an allocation of overhead costs such as rent, utilities and commercial insurance pertaining to direct inventory activities.

*Operating Expenses*

Sundry's operating expenses include all operating costs not included in cost of net revenues and sales and marketing. These costs consist of general and administrative, fulfillment and shipping expense to the customer.

General and administrative expenses consist primarily of all payroll and payroll-related expenses, professional fees, insurance, software costs, occupancy expenses related to Sundry's stores and to Sundry's operations at its headquarters, including utilities, depreciation and amortization, and other costs related to the administration of its business.

Sundry's fulfillment and shipping expenses include the cost to operate its warehouse including occupancy and labor costs to pick and pack customer orders and any return orders; packaging; and shipping costs to the customer from the warehouse and any returns from the customer to the warehouse.

*Sales and Marketing*

Sundry's sales and marketing expense primarily includes digital advertising; photo shoots for wholesale and direct-to-consumer communications, including email, social media and digital advertisements; and commission expenses associated with sales representatives.

**Six Months Ended June 30, 2023 compared to Six Months Ended June 30, 2022****Results of Operations**

The following table presents our results of operations for the six months ended June 30, 2023 and 2022:

	Six Months Ended June 30,	
	2023	2022
Net revenues	\$ 8,869,803	\$ 5,278,562
Cost of net revenues	4,540,488	3,552,396
Gross profit	4,329,315	1,726,166
General and administrative	8,380,063	8,073,621
Sales and marketing	2,036,677	2,230,087
Other operating expenses (income)	(10,186,076)	7,546,013
Operating loss	4,098,651	(16,123,555)
Other income (expenses)	(3,628,236)	(1,077,237)
Loss before provision for income taxes	470,415	(17,200,792)
Provision for income taxes	—	—
Net income (loss) from continuing operations	<u>\$ 470,415</u>	<u>\$ (17,200,792)</u>

*Net Revenues*

Revenues increased by \$3.6 million to \$8.9 million for the six months ended June 30, 2023, compared to \$5.3 million in the corresponding fiscal period in 2022. The increase was primarily due to full results in 2023 pertaining to the acquisition of Sundry in December 2022.

*Gross Profit*

Our gross profit increased by \$2.6 million for the six months ended June 30, 2023 to \$4.3 million from a gross profit of \$1.7 million for the corresponding fiscal period in 2022. The increase in gross margin was primarily attributable to increased revenue in the six months ended June 30, 2023 and the gross profit achieved by Sundry since the acquisition, as well as increasing margins across all entities.

Our gross margin was 48.8% for the six months ended June 30, 2023 compared to 32.7% for the six months ended June 30, 2022. The increase in gross margin was due to a shift in sales mix towards e-commerce, led by the Sundry business, which is able to achieve higher margins than wholesale, as well as heavy discounting in the first quarter of 2022.

*Operating Expenses*

Our operating expenses decreased by \$17.6 million for the six months ended June 30, 2023 to \$0.2 million compared to \$17.8 million for the corresponding fiscal period in 2022. The decrease in operating expenses was primarily due to the change in fair value of contingent consideration of \$17.8 million. General and administrative expenses increased by \$0.3 million primarily due to Sundry's operations. Sales and marketing expenses decreased by \$0.2 million due to decreased spending on advertising and other cost-cutting marketing efforts. Through the second quarter of 2023, we were able to obtain and efficiencies in fully absorbing all of our brands.

*Other Income (Expenses)*

Other expenses was \$3.6 million and \$1.1 million for the six months ended June 30, 2023 and 2022, respectively. In 2023, the Company had less interest expense due to less outstanding notes. In 2022, other expense was offset by a gain due to the change in fair value of derivative liability in 2022.

*Net Loss from Continuing Operations*

Our net loss from continuing operations decreased by \$17.7 million to income of \$0.5 million for the six months ended June 30, 2023 compared to a loss of \$17.2 million for the corresponding fiscal period in 2022, primarily due to the change in fair value of contingent consideration, higher gross profit and lower operating expenses, partially offset by other expenses.

**Cash Flow Activities**

The following table presents selected captions from our condensed statement of cash flows for the six months ended June 30, 2023 and 2022:

	Six Months Ended June 30,	
	2023	2022
Net cash provided by operating activities:		
Net loss	\$ (1,092,088)	\$ (17,366,866)
Non-cash adjustments	\$ (4,050,146)	\$ 8,647,035
Change in operating assets and liabilities	\$ 2,160,788	\$ 2,110,361
Net cash used in operating activities	\$ (2,981,446)	\$ (6,609,470)
Net cash provided by (used in) investing activities	\$ 41,331	\$ —
Net cash provided by financing activities	\$ 1,999,969	\$ 6,883,800
Net change in cash	\$ (940,146)	\$ 274,330

**Cash Flows Used In Operating Activities**

Our cash used by operating activities decreased by \$3.6 million to cash used of \$3.0 million for the six months ended June 30, 2023 as compared to cash used of \$6.6 million for the corresponding fiscal period in 2022. The increase in net cash used in operating activities was primarily driven by changes in our operating assets and liabilities, partially offset by a lower net loss in 2023.

**Cash Flows Provided By Investing Activities**

Our cash provide by investing activities was \$87,378 in 2023 due to return of deposits. Our cash used in investing activities was \$27,855 in 2023 due to purchases of property and equipment.

**Cash Flows Provided by Financing Activities**

Cash provided by financing activities was \$2.0 million for the six months ended June 30, 2023. Cash inflows included \$5.0 million in issuance of common stock in public offering, \$6.6 million in proceeds from loans and promissory notes and \$0.2 million in advances from the factor.

Cash provided by financing activities was \$6.9 million for the six months ended June 30, 2022. Cash inflows in the six months ended June 30, 2022 were primarily related to \$3.1 million in repayment of convertible and promissory notes partially offset by factor repayments of \$0.1 million.

**Contractual Obligations and Commitments**

As of June 30, 2023, we have a \$7.5 million in outstanding principal on debt, primarily our promissory notes due to the Bailey44 Sellers, the March 2023 Notes, PPP and merchant advances. Aside from our remaining non-current SBA obligations, all outstanding loans have maturity dates through 2024.

**Year ended December 31, 2022 compared to year ended December 31, 2021****Results of Operations**

The following table presents our results of operations for the year ended December 31, 2022 and 2021 which excludes H&J due to its retroactive discontinued operations classification:

	Year Ended	
	December 31,	
	2022	2021
Net revenues	\$ 10,333,558	\$ 5,764,963
Cost of net revenues	6,789,314	3,828,496
Gross profit	3,544,244	1,936,467
General and administrative	14,067,681	16,149,510
Sales and marketing	4,018,985	3,269,710
Other operating expenses	6,678,966	12,653,831
Operating loss	(21,221,389)	(30,136,583)
Other expenses	(5,893,330)	(2,297,621)
Loss before provision for income taxes	(27,114,719)	(32,434,204)
Provision for income taxes	—	1,100,120
Net loss from continuing operations	<u>\$ (27,114,719)</u>	<u>\$ (31,334,084)</u>

*Net Revenues*

Revenue increased by \$4.5 million to \$10.3 million for the year ended December 31, 2022, compared to \$5.8 million in the corresponding fiscal period in 2021. The increase was primarily due to full results in 2022 pertaining to the acquisition of Stateside in August 2021.

*Gross Profit*

Our gross profit increased by \$1.6 million for the year ended December 31, 2022 to \$3.5 million from \$1.9 million for the corresponding fiscal period in 2021. The increase in gross margin was primarily attributable to increased revenue in 2022 and the gross profit achieved by Stateside since the acquisition, as well as discounting and liquidation measures by both DBG and Bailey to sell aged inventory in 2021.

Our gross margin was 34.3% for the year ended December 31, 2022 compared to 33.6% for year ended December 31, 2021.

*General and Administrative*

General and administrative expenses decreased by \$2.0 million for the year ended December 31, 2022 to \$14.1 million compared to \$16.1 million in 2021. The decrease in general and administrative expenses was primarily due to non-cash charges incurred in 2021 upon the Company's initial public offering (the "IPO"), including stock-based compensation expense of \$4.8 million. This was partially offset by increased general and administrative expenses in 2022 due to full scale operations of all subsidiaries, as well as increased headcount and corporate costs.

General and administrative expenses as a percentage of revenue was 136% in 2022 as compared to 280% in 2021.

*Sales and Marketing*

Sales and marketing expenses increased by \$0.7 million for the year ended December 31, 2022 to \$4.0 million compared to \$3.3 million in 2021. The increase in sales and marketing expenses was primarily due to full-year advertising and marketing efforts by each subsidiary.

Sales and marketing expenses as a percentage of revenue was 39% in 2022 as compared to 57% in 2021.

#### *Other Operating Expenses*

Other operating expenses includes distribution expenses, impairment and change in fair value of contingent consideration. Other operating expenses was \$6.7 million in 2022 as compared to \$12.7 million in 2021. The decrease was primarily due to a decrease in the change in fair value of contingent consideration of \$8.2 million.

#### *Other Income (Expense)*

Other expenses increased by \$3.8 million to \$5.9 million in the year ended December 31, 2022 compared to \$2.1 million in the corresponding fiscal period in 2021. The increase in other expenses in 2022 was primarily due to amortization of debt discount and related interest expense on the Company's various convertible notes and change in fair value of derivative liability, partially offset by PPP forgiveness.

#### *Net Loss from Continuing Operations*

Our net loss from continuing operations decreased by \$5.6 million to a loss of \$27.2 million for the year ended December 31, 2022 compared to a loss of \$31.3 million for the corresponding fiscal period in 2021 primarily due a higher gross profit in 2022.

#### *Cash Flow Activities*

The following table presents selected captions from our condensed statement of cash flows for the years ended December 31, 2022 and 2021:

	Year Ended December 31,	
	2022	2021
Net cash provided by operating activities:		
Net loss	\$ (38,043,362)	\$ (32,357,957)
Non-cash adjustments	\$ 23,441,875	\$ 18,424,622
Change in operating assets and liabilities	\$ 3,833,781	\$ (297,622)
Net cash used in operating activities	\$ (10,767,706)	\$ (14,230,957)
Net cash used in investing activities	\$ (7,369,137)	\$ (6,011,053)
Net cash provided by financing activities	\$ 18,896,664	\$ 20,181,820
Net change in cash	\$ 759,821	\$ (60,190)

#### *Cash Flows Used In Operating Activities*

Our cash used in operating activities decreased by \$3.4 million to \$10.8 million to cash used for the year ended December 31, 2022 as compared to cash used of \$14.2 million for the corresponding fiscal period in 2021. The decrease in net cash used in operating activities was primarily driven by an increase in non-cash adjustments of \$5.0 million and more cash provided by changes in our operating assets and liabilities in 2022, partially offset by an increase in our net loss in 2022.

#### *Cash Flows Used in Investing Activities*

Our cash used in investing activities was \$7.3 million in the year ended December 31, 2022 as compared to cash used of \$6.0 million for the corresponding fiscal period in 2021. Cash used in 2022 was primarily related to the cash consideration in the Sundry acquisition. Cash used in 2021 was primarily related to the cash consideration in the H&J and Stateside acquisitions.

#### *Cash Flows Provided by Financing Activities*

Cash provided by financing activities was \$18.9 million for the year ended December 31, 2022 compared to cash provided of \$20.2 million for the corresponding fiscal period in 2021. Cash inflows in 2022 were primarily related to \$16.4 million in equity proceeds after offering costs, \$10.2 million from convertible notes and loans, partially offset by note repayments of \$7.4 million. Cash inflows in 2021 were primarily related to \$8.6 million in net proceeds from the IPO after deducting underwriting discounts and commissions and offering expenses, as well as \$1.4 million in net proceeds from the underwriter's exercise of their over-allotment option in the IPO.

### *Contractual Obligations and Commitments*

In March 2017, we entered into a senior credit agreement with an outside lender for up to \$4,000,000, dependent upon the achievement of certain milestones. The initial close amount was a minimum of \$1,345,000. The loan bears interest at 12.5% per annum, compounded monthly, including fees. A 5% closing fee is due upon each closing, legal and accounting fees of up to \$40,000, and management fees of \$4,167 – \$5,000 per month. In September 2022, the entire outstanding principal was converted into preferred stock.

As of December 31, 2022 we have \$4.0 million in outstanding principal pertaining to our convertible notes which mature in February 2023. As of December 31, 2022, we have an additional 10.4 million in outstanding principal on other loans, primarily our promissory notes due to the Bailey44 and Sundry Sellers. Aside from our remaining non-current SBA obligations, as of December 31, 2022, all outstanding loans have maturity dates through 2023.

### *Off-Balance Sheet Arrangements and Future Commitments*

We have no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

### **Liquidity and Capital Resources**

Each of DBG, Bailey, H&J, Stateside and Sundry has historically funded operations with internally generated cash flow and borrowings and capital raises. Changes in working capital, most notably accounts receivable, are driven primarily by levels of business activity. Historically each of DBG, Bailey, H&J, Stateside and Sundry has maintained credit line facilities to support such working capital needs and makes repayments on that facility with excess cash flow from operations.

As of June 30, 2023, we had cash of \$0.3 million, but we had a working capital deficit of \$16.0 million. The Company requires significant capital to meet its obligations as they become due. These factors raise substantial doubt about our Company's ability to continue as a going concern. Throughout the next twelve months, the Company plans to fund its capital funding needs through a combination of Cash flow from operations and possible public or private equity offerings, debt financings or other similar sources. There can be no assurance as to the availability or terms upon which such financing and capital might be available in the future. If the Company is unable to secure additional funding, it may be forced to curtail its business plans.

### **Pro Forma (giving effect to the acquisition of Sundry in January 2023 and the disposition of H&J in June 2023)**

#### **Results of Operations**

#### *Six Months Ended June 30, 2023 compared to Six Months Ended June 30, 2022*

The following table presents our pro forma results of operations for the six months ended June 30, 2023 and 2022:

	Six Months Ended June 30,	
	2023	2022
Net revenues	\$ 8,869,803	\$ 14,728,296
Cost of net revenues	4,540,488	8,500,686
Gross profit	4,329,315	6,227,610
Operating expenses	10,929,139	14,899,418
Operating income (loss)	(6,599,824)	(8,671,808)
Other income (loss)	(3,369,058)	(1,114,104)
Income (loss) before provision for income taxes	(9,968,882)	(9,785,912)
Provision for income taxes	—	—
Net income (loss) from continuing operations	\$ (9,968,882)	\$ (9,785,912)

### Net Revenues

Pro forma revenues decreased by \$5.9 million to \$8.9 million for the six months ended June 30, 2023, compared to \$14.7 million in the corresponding fiscal period in 2022. The decrease was primarily due to lower wholesale operations for Sundry, which was acquired in December 2022.

### Gross Profit

Our pro forma gross profit decreased by \$1.9 million for the six months ended June 30, 2023 to \$4.3 million from a gross profit of \$6.2 million for the corresponding fiscal period in 2022. The decrease in gross margin was primarily attributable to decreased revenue in 2023, partially offset by higher margins achieved by each of the Company's subsidiaries in 2022.

Our pro forma gross margin was 48.8% for six months ended June 30, 2023 compared to 42.3% for the six months ended June 30, 2022. The increase in gross margin was due to our ability to achieve cost efficiencies amongst all brands after the Sundry acquisition in December 2022, as well as heavy discounting in the first quarter of 2022.

### Operating Expenses

Our pro forma operating expenses decreased by \$4.0 million for the six months ended June 30, 2023 to \$10.9 million compared to \$14.9 million for the corresponding fiscal period in 2022. The decrease in operating expenses was primarily due to lower general and administrative expenses in 2023 due to various cost cutting measures and efficiencies in fully absorbing all of our brands.

### Other Income (Expenses)

Other pro forma income (expenses) was \$3.4 and \$1.1 million for the six months ended June 30, 2023 and 2022, respectively. Other expense includes interest expense, consisting of interest on outstanding loans and amortization of debt discount, loss on extinguishment of debt in 2023 and change in fair value of derivative liability in 2022.

### Net Loss

Our pro forma net loss from continuing operations increased by \$0.2 million to a loss of \$10.0 million for the six months ended June 30, 2023 compared to a loss of \$9.8 million for the corresponding fiscal period in 2022 primarily due to lower gross profit partially offset by less operating expenses.

### Cash Flow Activities

The following table presents selected captions from our pro forma statement of cash flows for the six months ended June 30, 2023 and 2022:

	Six Months Ended	
	June 30,	
	2023	2022
Net cash provided by operating activities:		
Net loss	\$ (9,968,882)	\$ (9,785,912)
Non-cash adjustments	\$ 6,648,329	\$ 1,525,795
Change in operating assets and liabilities	\$ 339,107	\$ 1,967,371
Net cash used in operating activities	\$ (2,981,446)	\$ (6,292,746)
Net cash provided by (used in) investing activities	\$ 41,331	\$ 18,982
Net cash provided by financing activities	\$ 1,999,969	\$ 7,156,500
Net change in cash	\$ (940,146)	\$ 882,736

### Cash Flows Used In Operating Activities

Our pro forma cash used by operating activities increased by \$3.3 million to cash used of \$3.0 million for the six months ended June 30, 2023 as compared to cash used of \$6.3 million for the corresponding fiscal period in 2022. The increase in net cash used in operating activities was primarily driven by non-cash charges in 2023.



*Cash Flows Provided By Investing Activities*

Our pro forma cash provided by investing activities was \$41,331 in 2023 due to return of deposits. Our cash used in investing activities was \$18,982 in 2022.

*Cash Flows Provided by Financing Activities*

Pro forma cash provided by financing activities was \$2.0 million for the six months ended June 30, 2023. Cash inflows included \$5.0 million in issuance of common stock in public offering, \$6.6 million in proceeds from loans and promissory notes and \$0.2 million in advances from the factor. Pro forma cash provided by financing activities was \$7.1 million for the six months ended June 30, 2022.

**Liquidity and Capital Resources**

Each of DBG, Bailey, Stateside and Sundry has historically funded operations with internally generated cash flow and borrowings and capital raises. Changes in working capital, most notably accounts receivable, are driven primarily by levels of business activity. Historically each of DBG, Bailey, Stateside and Sundry has maintained credit line facilities to support such working capital needs and makes repayments on that facility with excess cash flow from operations.

As of June 30, 2023, we had pro forma cash of \$0.3 million, but we had a working capital deficit of \$16.0 million. The Company requires significant capital to meet its obligations as they become due. These factors raise substantial doubt about our Company's ability to continue as a going concern. Throughout the next twelve months, the Company plans to continue to fund its capital funding needs through a combination of public or private equity offerings, debt financings or other sources. There can be no assurance as to the availability or terms upon which such financing and capital might be available in the future. If the Company is unable to secure additional funding, it may be forced to curtail its business plans.

## DESCRIPTION OF BUSINESS

Digital Brands Group is a curated collection of lifestyle brands, including Bailey, DSTLD, Stateside, Sundry and ACE Studios, that offers a variety of apparel products through direct-to-consumer and wholesale distribution. Our complementary brand portfolio provides us with the unique opportunity to cross merchandise our brands. We aim for our customers to wear our brands head to toe and to capture what we call “closet share” by gaining insight into their preferences to create targeted and personalized content specific to their cohort. Operating our brands under one portfolio provides us with the ability to better utilize our technological, human capital and operational capabilities across all brands.

As a result, we have been able to realize operational efficiencies and continue to identify additional cost saving opportunities to scale our brands and overall portfolio.

Our portfolio currently consists of five significant brands that leverage our three channels: our websites, wholesale and showrooms.

- **Bailey** combines beautiful, luxe fabrics and on-trend designs to create sophisticated, ready-to-wear capsules for women on-the-go. Designing for real life, this brand focuses on feeling and comfort rather than how it looks on a runway. Bailey is primarily a wholesale brand, which we intend to transition to a digital, direct-to-consumer brand.
- **DSTLD** offers stylish, high-quality garments without the luxury retail markup, valuing customer experience over labels. DSTLD is primarily a digital direct-to-consumer brand, to which we recently added select wholesale retailers to generate brand awareness.
- **Stateside** is an elevated, “America first” brand with all knitting, dyeing, cutting and sewing sourced and manufactured locally in Los Angeles. The collection is influenced by the evolution of the classic t-shirt, offering a simple yet elegant look. Stateside is primarily a wholesale brand that we intend to transition to a digital, direct-to-consumer brand.
- **Sundry** offers distinct collections of women’s clothing, including dresses, shirts, sweaters, skirts, shorts, athleisure bottoms and other accessory products. Sundry’s products are coastal casual and consist of soft, relaxed and colorful designs that feature a distinct French chic, resembling the spirits of the French Mediterranean and the energy of Venice Beach in Southern California. Sundry is primarily a wholesale brand that we intend to transition to a digital, direct-to-consumer brand.

We believe that successful apparel brands sell in all revenue channels. However, each channel offers different margin structures and requires different customer acquisition and retention strategies. We were founded as a digital-first retailer that has strategically expanded into select wholesale and direct retail channels. We strive to strategically create omnichannel strategies for each of our brands that blend physical and online channels to engage consumers in the channel of their choosing. Our products are sold direct-to-consumers principally through our websites and our own showrooms, but also through our wholesale channel, primarily in specialty stores and select department stores. With the continued expansion of our wholesale distribution, we believe developing an omnichannel solution further strengthens our ability to efficiently acquire and retain customers while also driving high customer lifetime value.

We believe that by leveraging a physical footprint to acquire customers and increase brand awareness, we can use digital marketing to focus on retention and a very tight, disciplined, high value new customer acquisition strategy, especially targeting potential customers lower in the sales funnel. Building a direct relationship with the customer as the customer transacts directly with us allows us to better understand our customer’s preferences and shopping habits. Our experience as a company originally founded as a digitally native-first retailer gives us the ability to strategically review and analyze the customer’s data, including contact information, browsing and shopping cart data, purchase history and style preferences. This in turn has the effect of lowering our inventory risk and cash needs since we can order and replenish product based on the data from our online sales history, replenish specific inventory by size, color and SKU based on real time sales data, and control our mark-down and promotional strategies versus being told what mark downs and promotions we have to offer by the department stores and boutique retailers.

## **Principal Products and Services**

### **DSTLD — Brand Summary**

DSTLD focuses on minimalist design, superior quality, and only the essential wardrobe pieces for men and women. We deliver casual luxury rooted in denim; garments that are made with exhaustive attention to detail from the finest materials for a closet of timeless, functional staples. Our brand name “DSTLD” is derived from the word ‘distilled,’ meaning to extract only the essentials. As such, DSTLD boasts a line of key wardrobe pieces in a fundamental color palette of black, white, grey, and denim.

Our denim pants prices generally range from \$128 to \$148. Our tee shirts, tops and cashmere sweaters will range from \$30 to \$278. Our casual pants will range from \$148 to \$178.

### **ACE Studios — Brand Summary**

ACE Studios will design and offer luxury men’s suiting with superior performance, superb fits, and excellent quality at an exceptional value. We intend to offer men’s classic tailored apparel with premium and luxury fabrics and manufacturing. We work with the same high-quality mills and factories as the leading luxury brands. We believe most customers have different shapes and sizes, so we plan to offer multiple fits for our products. We sidestep the middleman and sell our products ourselves, allowing us to offer top-tier quality without the standard retail markup.

Our suits are expected to range from \$295 to \$495. Our dress shirts will range from \$55 to \$65. Our casual pants will range from \$85 to \$109.

We anticipate rolling out the ACE Studios brand in the third quarter of 2024 as a digitally native first brand.

### **Bailey — Brand Summary**

In February 2020, we acquired Bailey. Bailey delivers distinct high-quality, well-fitting, on-trend contemporary apparel, using an entry contemporary price point. Bailey combines beautiful, luxe fabrics and on-trend designs to offer clean, sophisticated ready-to-wear separates that easily transition from day to night and for date night. Bailey offers fashionable staples with timeless design features, making them wearable for any occasion — the majority of products are tops, sweaters and dresses.

Bailey’s full seasonal collections of dresses, tops, jumpsuits, bottoms, sets, jackets and rompers retail at price points between \$88 — \$398. We believe that we can create more compelling price points as we leverage our direct-to-consumer expertise. As we increase the direct-to-consumer revenue mix, we believe we will have opportunities to increase our margins, which will mostly be passed along to the customer with lower price points.

With our acquisition of Bailey 44, LLC, we view the following as tangible near-term growth opportunities:

- Increase emphasis on email and SMS communications allowing for personalized direct customer engagement, retention and repurchases.
- Increase market share in existing and new wholesale, including specialty boutiques due to the well-known and respected designer we hired in June 2020.
- Increase digital spend, social media presence, and brand and influencer collaborations.
- Selective opportunity to roll out proven retail concept in well defined, strategic locations.
- International expansion and licensing opportunities in select categories.

### **Stateside — Brand Summary**

We acquired Stateside in August 2021. Stateside is a collection of elevated American basics influenced by the evolution of the classic T-Shirt. All garments are designed and produced in Los Angeles from the finest fabrics. All knitting, dyeing, cutting and sewing is sourced and manufactured locally in Los Angeles.

Stateside is known for delivering high quality women's clothing, including luxury T-shirts, tops and bottoms, etc. Stateside is primarily a wholesale brand with very limited online revenue. Its T-shirt prices range from \$68 to \$94, their other tops range from \$98 to \$130, and their bottoms range from \$80 to \$144.

With our acquisition of Stateside, we view the following as tangible near-term growth opportunities:

- Increase online revenues significantly as we have spent very little resources on developing its online sales opportunity from the website optimization to photography to email marketing to online advertising to digital customer acquisition and retention.
- Increase gross margins by ordering larger quantities as we pay meaningful upcharges for minimum order quantities.
- Launch seasonal new product categories such as women's knits and wovens in the top category and women's wovens in the bottom category. We believe knits and wovens tops are one of the larger product categories in womenswear, with higher price points and dollar profit.

#### **Sunnyside — Brand Summary**

We acquired Sundry in December 2021. Sundry offers distinct collections of women's clothing, including dresses, shirts, sweaters, skirts, shorts, athleisure bottoms and other accessory products. Sundry's products are coastal casual and consist of soft, relaxed and colorful designs that feature a distinct French chic, resembling the spirits of the French Mediterranean and the energy of Venice Beach in Southern California.

The products are designed and mostly produced in Los Angeles from the finest fabrics. The majority of the knitting, dyeing, cutting and sewing is sourced and manufactured locally in Los Angeles, with some sweaters made overseas.

Sundry is known for delivering high quality novelty and resort style T-shirts, tops and bottoms. Sundry is mostly a wholesale brand with meaningful online revenue. Its T-shirt prices range from \$68 to \$98, its other tops range from \$98 to \$198, and its bottoms range from \$80 to \$228.

With our acquisition of Sundry, we view the following as tangible near-term growth opportunities:

- Increase online revenues significantly as we cross market their customer base with the customer bases from our other brands, especially on the Bailey Shop.
- Increase gross margin dollars by updating the product line and driving increased volume through the wholesale and online channels.
- Launch a new product category for 2024 in women's athleisure. We believe athleisure is one of the largest product categories in womenswear, with high repeat spend and closet share.

#### **Sales and Distribution**

DSTLD products have historically been sold solely direct-to-consumer, via our website. We started offering DSTLD products through a wholesale channel in October 2020. We intend to leverage the Bailey sales force to sell DSTLD products into their select independent boutiques and select department stores. We believe that we can increase brand awareness, new customer acquisition and revenue by leveraging the Bailey independent boutiques. We intend to start selling old season stock through selected off-price retailers, with additional sales expected to be generated through specifically-cut product for select off-price retailers.

Bailey products are distributed through wholesale and direct-to-consumer channels. The wholesale channel includes premium department stores, select independent boutiques and third-party online stores.

Stateside and Sundry products are distributed through wholesale and direct-to-consumer channels includes premium department stores and national chains, select independent boutiques and third-party online stores.

We do not have material terms or arrangements with our third-party distributors. As is customary in the wholesale side of the retail apparel industry, we work with the wholesale buyers for every product collection and season to develop a purchase order based on quantities, pricing, profit margin and any future mark-down agreements. Historically, these factors are driven by the wholesale buyer's belief of how well they think the product will sell at their stores. For example, if the collection is considered very strong by the wholesale buyer, we usually achieve higher quantities, higher margins and lower future markdown guarantees. Conversely, when the wholesale buyer considers the collection to be weak, we experience lower quantities, lower margins and higher mark-down guarantees.

Our direct-to-consumer channels include our own website. Old season stock is sold through selected off-price retailers, with additional sales generated through specifically-cut product for select off-price retailers.

All of our DSTLD, Bailey and Stateside and Sundry sellable product is stored at our corporate warehouse and distribution center in Los Angeles, CA, which also houses our corporate office. In addition to storing product, we also receive and process new product deliveries, process and ship outbound orders, and process and ship customer returns in this same facility.

We offer free shipping and returns above to all our customers in the United States. We also offer customers the option to upgrade to 2-Day or Overnight Shipping for an additional cost.

### **Design and Development**

Our products are designed at the headquarters of each brand, which are in Los Angeles, CA. Each brand's design efforts are supported by well-established product development and production teams. The continued collaboration between design and merchandising ensures we respond to consumer preferences and market trends with new innovative product offerings while maintaining our core fashion foundation. In-house design and production teams in Los Angeles perform development of the sample line, allowing for speed to market, flexibility and quality of fit.

We analyze trends, markets, and social media feedback along and utilize historical data and industry tools to identify essential styles and proper replenishment timing and quantities.

We hired a new head designer for DSTLD Men's in December 2019 and contracted with a third-party designer for DSTLD Women's in June 2020. We also contracted with a third-party designer for Bailey in June 2020. We have an in-house designer for each of Stateside and Sundry.

We rely on a limited number of suppliers to provide our finished products, so we can aggregate pricing power. As we continue to increase our volumes, we will source additional factories to spread out our risks.

While we have developed long-standing relationships with a number of our suppliers and manufacturing sources and take great care to ensure that they share our commitment to quality and ethics, we do not have any long-term term contracts with these parties for the production and supply of our fabrics and products. We require that all of our manufacturers adhere to a vendor code of ethics regarding social and environmental sustainability practices. Our product quality and sustainability team partners with leading inspection and verification firms to closely monitor each supplier's compliance with applicable laws and our vendor code of ethics.

Currently, our Bailey, DSTLD and Stateside and Sundry products are shipped from our suppliers to our distribution center in Los Angeles, CA which currently handles all our warehousing, fulfillment, outbound shipping and returns processing. Our Sundry products will be shipped from our suppliers to our distribution center in Los Angeles, CA which will handle all our warehousing, fulfillment, outbound shipping and returns processing. During 2023, we will review maintaining our own distribution centers versus using a third-party solution.

### **Product Suppliers: Sourcing and Manufacturing**

We work with a variety of apparel manufacturers in North America, Asia and Europe. We only work with full package suppliers, which supply fabric, trims, along with cut/sew/wash services, only invoicing us for the final full cost of each garment. This allows us the ability to maximize cash flows and optimize operations. We do not have long-term written contracts with manufacturers, though we have long-standing relationships with a diverse base of vendors.

We do not own or operate any manufacturing facilities and rely solely on third-party contract manufacturers operating primarily in Europe, United States, and the Asia Pacific region for the production of our products depending on the brand. All of our contract

manufacturers are evaluated for quality systems, social compliance and financial strength by our internal teams prior to being selected and on an ongoing basis. Where appropriate, we strive to qualify multiple manufacturers for particular product types and fabrications.

All of our garments are produced according to each brand's specifications, and we require that all manufacturers adhere to strict regulatory compliance and standards of conduct. The vendors' factories are monitored by each brand's production team to ensure quality control, and they are monitored by independent third-party inspectors we employ for compliance with local manufacturing standards and regulations on an annual basis. We also monitor our vendors' manufacturing facilities regularly, providing technical assistance and performing in-line and final audits to ensure the highest possible quality.

We source our products from a variety of domestic and international manufacturers. When deciding which factory to source a specific product from, we consider the following factors:

- Cost of garment
- Retail price for end consumer
- Production time
- Minimum order quantity
- Shipping/delivery time
- Payment terms

By taking all of these factors into consideration, we can focus on making sure we have access to in-demand and high quality products available for sale to our customer at the competitive price points and sustainable margins for our business.

## **Marketing**

We believe marketing is a critical element in creating brand awareness and an emotional connection, as well as driving new customer acquisition and retention. Each brand has their own in-house marketing department, which creates and produces marketing initiatives specific to each marketing channel and based on the specific purpose, such as acquisition, retention or brand building. We also have an in-house marketing team at the DBG portfolio level, which reviews these brand initiatives, develops and helps initiate cross merchandising strategies, manages the data analytics and negotiates contracts using all our brands to lower the cost.

Our goal at the brand and the portfolio level is to increase brand awareness and reach, customer engagement, increase new customer conversion and repurchase rates and average order size. We utilize a multi-pronged marketing strategy to connect with our customers and drive traffic to our online platform, comprised of the following:

### **Customer Acquisition Marketing**

**Paid Social Media Marketing:** This is our primary customer acquisition channel, and it is composed almost entirely of paid Facebook and Instagram marketing. We believe our core customers rely on the opinions of their peers, often expressed through social media, social media platforms are viral marketing platforms that allow our brands to communicate directly with our customers while also allowing customers to interact with us and provide feedback on our products and service. We make regular posts highlighting new products, brand stories, and other topics and images we deem "on brand". By being a verified brand, our followers can shop products directly from our posts. We are also able to link to products in the stories feature.

**Affiliate Marketing:** With select online publications and influencers, we've sought to establish CPA or revenue sharing agreements. We believe these agreements are effective in incentivizing influencers or media to push our product and allowing us to only pay partners based on performance.

**Email Marketing:** We utilize email marketing to build awareness and drive repeat purchases. We believe this can be the most personalized customer communication channel for our brands, and therefore should continue to be one of our highest performing channels. We use an email service provider that enables us to send out a variety of promotional, transactional, and retargeting emails,

with the main goal of driving increased site traffic and purchases. We maintain a database through which we track and utilize key metrics such as customer acquisition cost, lifetime value per customer, cost per impression and cost per click.

**Retargeting:** We engage the services of certain retargeting engines that allow us to dynamically target our visitors on third-party websites via banner/content ads.

**Content Marketing:** We use content marketing platforms that allow us to serve up native ads in the form of articles promoting our brand story and specific products.

**Search Engine Optimization:** This is the process of maximizing the number of visitors to our website by increasing our rankings in the search results on internet search engines. This is done by optimizing our onsite content, by making sure our pages, titles, tags, links, and blog content is structured to increase our search results on certain keywords, and our offsite content, which is the number of external websites linking to our website, usually through press articles and other advertising channels.

**Print Advertising:** We also intend to utilize print advertisements in magazines or billboards in major metropolitan areas to drive increased site traffic and brand awareness.

**Video / Blog Content:** We plan to offer videos and blog posts as a way to engage and educate the customer on our brands, how to wear different looks and styles, and create confidence and trust between our brands and customers. Videos and blog posts will include interviews with our designers, a behind-the-scenes look at how products are made, features of other artists or creatives, and photo shoots.

**Retail Stores:** We have successfully tested retail “pop ups” in the past. These “pop ups” have resulted in higher average order value, significantly lower customer returns (even when the retail customer orders online at a later date), and higher repurchase rate and annual spend. We view these retail locations as a marketing strategy, similar to allocating funds towards digital/online marketing. We expect our pop ups to generate a small to break even profit, which is offset by any potential marketing costs to acquire those customers in another marketing channel.

As we grow the entire DBG portfolio, we will test “pop up” locations for specific brands, and also develop a multi-line pop up that incorporates our other brands into the “pop-up”. We believe this strategy should be cost effective given the number of store closures from COVID-19. We will determine whether a “pop up” or wholesale specialty boutique is the better option for each market and brand.

### **Instagram and Influencer Marketing**

Instagram and influencer marketing is one of our largest initiatives. On a weekly basis, we reach out to and receive requests from tastemakers in fashion, lifestyle, and photography. We have developed a certain set of criteria for working with influencers (for example, engagement level, aesthetic, audience demographic) that have enabled us to garner impactful impressions. Our focus is not on the size of an account, but on creating organic relationships with influencers who are excited to tell our story. While most of our collaborations are compensated solely through product gifts, we also offer an affiliate commission of up to 20% through the influencer platform reward Style, which is the parent company of LiketoKnow.it, the first influencer platform to make Instagram shoppable (users receive an email directly to their inbox with complete outfit details when they “Like” a photo with LiketoKnow.it technology).

### **Public Relations**

To generate ongoing organic and word-of-mouth awareness, we intend to work with print and online media outlets to announce new products and develop timely news stories. We are in contact with leading fashion, business, and tech writers in order to capitalize on celebrity fashion features, e-commerce trend pieces, or general brand awareness articles. We may utilize outside agencies from time to time. We plan to visit the major fashion, tech, and news outlets in New York City on a quarterly basis to keep them up to date on our latest launches and any relevant company developments. We also plan to host local Los Angeles press at our office space.

### **Celebrity gifting**

We approach celebrity gifting in a strategic, discerning manner. We have longstanding, personal relationships with the industry’s top stylists; we do not send clothing blindly or unsolicited. We have successfully placed clothing (and as a result, fashion press) on a number of well-known A-list celebrities.

## **Loyalty Program**

We plan to develop and launch a company-wide loyalty program, which would include all our brands. Our customer loyalty program will be designed to engage and reward our customers in a direct and targeted manner, and to cross merchandise our portfolio brands to our customers. Customers will earn reward points that can be used to purchase products. We will also use loyalty point multipliers to create customer purchases, which is a strategy that beauty retailers have effectively used.

## **Competition**

Our business depends on our ability to create consumer demand for our brands and products. We believe we are well-positioned to compete in the apparel, leather products and accessories segments by developing high quality, well designed products at competitive prices that are often below our competitor's pricing. We focus on designing products that we hope exceed consumer expectations, which should result in retention and repurchases. We will invest in cross merchandising brands to customers through customized customer communications and personalized styles and looks utilizing products across all our portfolio brands, which we believe creates a competitive advantage for our brands versus single brands. As noted above, each of our brands has different competitors depending on product, quality and price point.

## **Government Regulation**

Our business is subject to a number of domestic and foreign laws and regulations that affect companies conducting business on the Internet, many of which are still evolving and could be interpreted in ways that could harm our business. These laws and regulations include federal and state consumer protection laws and regulations, which address, among other things, the privacy and security of consumer information, sending of commercial email, and unfair and deceptive trade practices.

Under applicable federal and state laws and regulations addressing privacy and data security, we must provide notice to consumers of our policies with respect to the collection and use of personal information, and our sharing of personal information with third parties, and notice of any changes to our data handling practices. In some instances, we may be obligated to give customers the right to prevent sharing of their personal information with third parties. Under applicable federal and state laws, we also are required to adhere to a number of requirements when sending commercial email to consumers, including identifying advertising and promotional emails as such, ensuring that subject lines are not deceptive, giving consumers an opportunity to opt-out of further communications and clearly disclosing our name and physical address in each commercial email. Regulation of privacy and data security matters is an evolving area, with new laws and regulations enacted frequently. For example, California recently enacted legislation that, among other things, will require new disclosures to California consumers, and afford such consumers new abilities to opt out of certain sales of personal information. In addition, under applicable federal and state unfair competition laws, including the California Consumer Legal Remedies Act, and U.S. Federal Trade Commission, or FTC, regulations, we must, and our network of influencers may be required to, accurately identify product offerings, not make misleading claims on our websites or in advertising, and use qualifying disclosures where and when appropriate. The growth and demand for eCommerce could result in more stringent domestic and foreign consumer protection laws that impose additional compliance burdens on companies that transact substantial business on the Internet.

Our international business is subject to additional laws and regulations, including restrictions on imports from, exports to, and services provided to persons located in certain countries and territories, as well as foreign laws and regulations addressing topics such as advertising and marketing practices, customs duties and taxes, privacy, data protection, information security and consumer rights, any of which might apply by virtue of our operations in foreign countries and territories or our contacts with consumers in such foreign countries and territories. Many foreign jurisdictions have laws, regulations, or other requirements relating to privacy, data protection, and consumer protection, and countries and territories are adopting new legislation or other obligations with increasing frequency.

In many jurisdictions, there is great uncertainty whether or how existing laws governing issues such as property ownership, sales and other taxes, libel and personal privacy apply to the Internet and eCommerce. New legislation or regulation, the application of laws and regulations from jurisdictions whose laws do not currently apply to our business or the application of existing laws and regulations to the Internet and eCommerce could result in significant additional obligations on our business or may necessitate changes to our business practices. These obligations or required changes could have an adverse effect on our cash flows and results of operations. Further, any actual or alleged failure to comply with any of these laws or regulations by us, our vendors or our network of influencers could hurt our reputation, brand and business, force us to incur significant expenses in defending against proceedings or



investigations, distract our management, increase our costs of doing business, result in a loss of customers and suppliers and may result in the imposition of monetary penalties.

### Facilities

We currently lease approximately 49,198 square feet of office and showroom spaces in the state of California with leases that expire through 2023. We believe that our existing facilities will be sufficient for our needs for the foreseeable future.

The following table sets forth information with respect to our facilities:

Location	Type	Square Footage (approximate)	Lease Expiration
Vernon, California	Corporate Warehouse and Distribution Center	42,206	2023
Los Angeles, California	Showroom	2,000	2025

### Employees

As of September 14, 2023, we had 58 employees, all of whom were full-time employees. We believe our relationship with our employees is good. None of our employees are currently covered by a collective bargaining agreement. We have had no labor-related work stoppages and we believe our relationship with our employees is strong.

### Litigation

We are currently involved in, and may in the future be involved in, legal proceedings, claims, and government investigations in the ordinary course of business. These include proceedings, claims, and investigations relating to, among other things, regulatory matters, commercial matters, intellectual property, competition, tax, employment, pricing, discrimination, consumer rights, personal injury, and property rights. These matters also include the following:

- On March 21, 2023, a vendor filed a lawsuit against Digital Brands Group related to trade payables totaling approximately \$43,501. Such amounts include interest due, and are included in accounts payable, net of payments made to date, in the accompanying consolidated balance sheets. The Company does not believe it is probable that losses in excess of such trade payables will be incurred.
- On February 7, 2023, a vendor filed a lawsuit against Digital Brands Group related to trade payables totaling approximately \$182,400. Such amounts include interest due, and are included in accounts payable, net of payments made to date, in the accompanying consolidated balance sheets. The Company does not believe it is probable that losses in excess of such trade payables will be incurred.
- On November 9, 2022, a vendor filed a lawsuit against Digital Brand's Group related to prior services rendered. The claims (including fines, fees, and legal expenses) total an aggregate of \$50,190. The matter was settled in January 2023 and was paid off in April 2023.
- In August 2020 and March 2021, two lawsuits were filed against Bailey by third-party's related to prior services rendered. The claims (including fines, fees, and legal expenses) total an aggregate of \$96,900. Both matters were settled in February 2022 and are on payment plans which will be paid off in July and September of 2023.
- On December 21, 2020, a Company investor filed a lawsuit against Digital Brands Group for reimbursement of their investment totaling \$100,000. Claimed amounts are included in short-term convertible notes payable in the accompanying consolidated balance sheets and the Company does not believe it is probable that losses in excess of such short-term note payable will be incurred. The Company is actively working to resolve this matter.
- On September 24, 2020 a Bailey's product vendor filed a lawsuit against Bailey for non-payment of trade payables totaling approximately \$481,000 and additional damages of approximately \$296,000. Claimed amounts for trade payables are included in accounts payable in the accompanying consolidated balance sheets, net of payments made. In December 2021,

the Company reached a settlement; however, the settlement terms were not met and the Company received a judgement of \$496,000. The amount due has been paid, the lawsuit dismissed and there is no claim or amount due.

- A vendor filed a lawsuit against Bailey related to a retail store lease in the amount of \$1.5 million. The Company is disputing the claim for damages and the matter is ongoing.
- We have been involved in a dispute with the former owners of H&J regarding our obligation to “true up” their ownership interest in our Company further to that membership interest purchase agreement dated May 18, 2021 whereby we acquired all of the outstanding membership interests of H&J (the “H&J Purchase Agreement”). Further to the H&J Purchase Agreement, we agreed that if, at May 18, 2022, the one year anniversary of the closing date of our initial public offering, the product of the number of shares of our common stock issued at the closing of such acquisition multiplied by the average closing price per share of our shares of common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date plus the gross proceeds, if any, of shares of our stock issued to such sellers and sold by them during the one year period from the closing date of the offering does not exceed the sum of \$9.1 million, less the value of any shares of common stock cancelled further to any indemnification claims or post-closing adjustments under the H&J Purchase Agreement, then we shall issue to the subject sellers an additional aggregate number of shares of common stock equal to any such valuation shortfall at a per share price equal to the then closing price per share of our common stock as quoted on the NasdaqCM. We did not honor our obligation to issue such shares and the former owner of H&J have claimed that they were damaged as a result. As part of a proposed settlement with such holders, we have tentatively agreed to the following: (i) to transfer all membership interests of H&J back to the original owners, (ii) to pay such owners the sum of \$229,000, (iii) issue the former owners of H&J an aggregate of \$1,400,000 worth of our common stock to be issued on May 16, 2023 based on the lower of (a) the stock closing price per share on May 15, 2023, and (b) the average common stock closing price based on the average of the 5 trading days preceding May 16, 2023, with the closing price on May 9, 2023. On June 21, 2023, we and John Hilburn Davis IV (collectively, the “DBG Parties”), on the one hand, and Drew Jones (“Jones”), D. Jones Tailored Collection, Ltd. (“D. Jones”), and Harper & Jones, LLC (“H&J” and collectively with Jones, D. Jones, the “Jones Parties” and together with DBG Parties, the “Parties”) executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the Parties’ execution of the Settlement Agreement (i) the Company made aggregate cash payment of \$229,000 to D. Jones, (ii) the Company issued 78,103 shares of the Company’s Common Stock to D. Jones, at a per share purchase price of \$17.925, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones. The Settlement Agreement contains a mutual release whereby each of the DBG Parties and Jones Parties agreed to release and absolutely and forever discharge the other parties and their respective successors, heirs, licensees, and assigns of and from any and all claims, damages, legal fees, costs, expenses, debts, actions and causes of action of every kind and nature whatsoever, whether now known or unknown, suspected or unsuspected, asserted or unasserted, which either they now have, or at any time heretofore ever had, except for violations of the Settlement Agreement.

All claims above, to the extent management believes it will be liable, have been included in accounts payable and accrued expenses and other liabilities in the accompanying consolidated balance sheet as of June 30, 2023.

Depending on the nature of the proceeding, claim, or investigation, we may be subject to monetary damage awards, fines, penalties, or injunctive orders. Furthermore, the outcome of these matters could materially adversely affect our business, results of operations, and financial condition. The outcomes of legal proceedings, claims, and government investigations are inherently unpredictable and subject to significant judgment to determine the likelihood and amount of loss related to such matters. While it is not possible to determine the outcomes, we believe based on our current knowledge that the resolution of all such pending matters will not, either individually or in the aggregate, have a material adverse effect on our business, results of operations, cash flows, or financial condition.

## DIRECTORS AND EXECUTIVE OFFICERS

The following table sets forth certain information with respect to our executive officers and directors as of September 14, 2023.

Name	Age	Position
<b>Executive Officers and Directors</b>		
John Hilburn Davis IV	50	President and Chief Executive Officer, Director
Laura Dowling	44	Chief Marketing Officer
Reid Yeoman	40	Chief Financial Officer
Mark T. Lynn	39	Director
Trevor Pettennude	55	Director
Jameeka Green Aaron	42	Director
Huong “Lucy” Doan	53	Director

### **Board Composition**

Our board of directors may establish the authorized number of directors from time to time by resolution.

No current or pending member of our board of directors or Compensation Committee serves as a member of the board of directors or the compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

### **Executive Officers**

**John Hilburn Davis IV, “Hil”**, has served as our President and Chief Executive Officer since March 2019 and a Director since November 2020. He joined DSLTD to overhaul its supply chain in March 2018. Prior to that, Mr. Davis founded two companies, BeautyKind and J.Hilburn. He founded and was CEO of BeautyKind from October 2013 to January 2018. He also founded and was CEO of J.Hilburn from January 2007 to September 2013, growing it from \$0 to \$55 million in revenues in six years. From 1998 to 2006 Mr. Davis worked as an equity research analyst covering consumer luxury publicly traded companies at Thomas Weisel Partners, SunTrust Robinson Humphrey and Citadel Investment Group. He graduated from Rhodes College in 1995 with a BA in Sociology and Anthropology. On December 16, 2021, Mr. Davis filed for personal bankruptcy through the filing of a Chapter 7 bankruptcy petition in Texas federal court.

**Laura Dowling** has served as our Chief Marketing Officer since February 2019. Prior to that she was the Divisional Vice President of Marketing & PR, North America at Coach from February 2016 to August 2018. At Coach Ms. Dowling led a team of 25 and was held accountable for \$45 million profit and loss. From August 2011 to February 2016, she was the Director of Marketing & PR at Harry Winston and from March 2009 to August 2011 she was the Director of Wholesale Marketing at Ralph Lauren.

Ms. Dowling holds both a Masters degree (2002) and Bachelors degree (2001) in Communications & Media Studies with a Minor in French from Fordham University.

**Reid Yeoman** has served as our Chief Financial Officer since October 2019. Mr. Yeoman is a finance professional with a core Financial Planning & Analysis background at major multi-national Fortune 500 companies — including Nike & Qualcomm. He has a proven track record of driving growth and expanding profitability with retail. From November 2017 to September 2019, Mr. Yeoman served as CFO/ COO at Hurley — a standalone global brand within the Nike portfolio — where he managed the full profit and loss/ Balance Sheet, reporting directly to Nike and oversaw the brand’s logistics and operations. He is a native Californian and graduated with an MBA from UCLA’s Anderson School of Management in 2013 and a BA from UC Santa Barbara in 2004.

### **Nonemployee Board Members**

**Mark T. Lynn** has been a director of our Company since inception and served as our Co-Chief Executive Officer from September 2013 to the October 2018. Prior to joining us, until September 2011 he was Co-Founder of WINC, a direct-to-consumer e-commerce company which was then the fastest growing winery in the world, backed by Bessemer Venture Partners. Prior to Club W, Mr. Lynn co-founded a digital payments company that was sold in 2011. He holds a digital marketing certificate from Harvard Business School’s Executive Education Program.

**Trevor Pettennude** is a seasoned financial services executive. In 2013, Mr. Pettennude became the CEO of 360 Mortgage Group, where he oversees a team of 70 people generating over \$1 billion of annual loan volume. He is also the founder and principal of Banctek Solutions, a global merchant service company which was launched in 2009 and which processes over \$300 million of volume annually.

**Jameeka Green Aaron** became a director on the effective date of the IPO, May 13, 2021. Ms. Aaron is the Chief Information Security Officer at Auth0. Ms. Aaron is responsible for the holistic security and compliance of Auth0's platform, products, and corporate environment. Auth0 provides a platform to authenticate, authorize, and secure access for applications, devices, and users. Prior to her current role Ms. Aaron was the Chief Information Officer Westcoast Operations at United Legwear and Apparel. Her 20+ years of experience include serving as the Director of North American Technology and Director of Secure Code and Identity and Access Management at Nike, and as Chief of Staff to the CIO of Lockheed Martin Space Systems Company. Ms. Aaron is also a 9-year veteran of the United States Navy. Ms. Aaron's dedication to service has extended beyond her military career. She is committed to advancing women and people of color in Science, Technology, Engineering, and Mathematics (STEM) fields she is an alumni of the U.S. State Department's TechWomen program and the National Urban League of Young Professionals. Ms. Aaron currently sits on the board of the California Women Veterans Leadership Council, is an advisor for U.C. Riverside Design Thinking Program, and is a member of Alpha Kappa Alpha Sorority, Inc. Born in Stockton, California, Ms. Aaron holds a bachelor's degree in Information Technology from the University of Massachusetts, Lowell. Ms. Aaron's extensive corporate and leadership experience qualifies her to serve on our board of directors.

**Huong "Lucy" Doan** is a seasoned finance and strategy executive who brings expertise working with some of the world's best-known brands. Since 2018, Ms. Doan serves as advisor to CEOs and founders of high-growth DTC, ecommerce and retail brands, in apparel and consumer products. In this capacity, she provides strategic guidance to successfully scale businesses while driving profitability, with focus on operational excellence and capital resource planning. In 2019, she became a board member of Grunt Style, a patriotic apparel brand. Prior, Ms. Doan spent 20 years in senior executive roles at Guitar Center, Herbalife International, Drapers & Damons, and Fox Television, where she built high performance teams to drive execution of business plans and growth strategies.

#### ***Committees of the Board of Directors***

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee, each of which operates pursuant to a charter adopted by our board of directors. The board of directors may also establish other committees from time to time to assist our Company and the board of directors. The composition and functioning of all of our committees will comply with all applicable requirements of the Sarbanes-Oxley Act of 2002, NasdaqCM and SEC rules and regulations, if applicable. Each committee's charter is available on our website at [www.digitalbrandsgroup.co](http://www.digitalbrandsgroup.co). The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be part of this prospectus.

#### **Audit committee**

Trevor Pettennude, Jameeka Green Aaron and Huong "Lucy" Doan serve on the audit committee, which is chaired by Huong "Lucy" Doan. Our board of directors has determined that each are "independent" for audit committee purposes as that term is defined by the rules of the SEC and NasdaqCM, and that each has sufficient knowledge in financial and auditing matters to serve on the audit committee. Our Board of directors has designated Trevor Pettennude as an "audit committee financial expert," as defined under the applicable rules of the SEC. The audit committee's responsibilities include:

- appointing, approving the compensation of, and assessing the independence of our independent registered public accounting firm;
- pre-approving auditing and permissible non-audit services, and the terms of such services, to be provided by our independent registered public accounting firm;
- reviewing the overall audit plan with our independent registered public accounting firm and members of management responsible for preparing our financial statements;
- reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly financial statements and related disclosures as well as critical accounting policies and practices used by us;

- coordinating the oversight and reviewing the adequacy of our internal control over financial reporting;
- establishing policies and procedures for the receipt and retention of accounting-related complaints and concerns;
- recommending, based upon the audit committee's review and discussions with management and our independent registered public accounting firm, whether our audited financial statements shall be included in our Annual Report on Form 10-K;
- monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to our financial statements and accounting matters;
- preparing the audit committee report required by SEC rules to be included in our annual proxy statement;
- reviewing all related person transactions for potential conflict of interest situations and approving all such transactions; and
- reviewing quarterly earnings releases.

#### Compensation committee

Trevor Pettennude, Jameeka Green Aaron and Mark Lynn serve on the compensation committee, which is chaired by Jameeka Green Aaron. Our board of directors has determined that each member of the compensation committee is "independent" as defined in the applicable NasdaqCM rules. The compensation committee's responsibilities include:

- annually reviewing and recommending to the board of directors the corporate goals and objectives relevant to the compensation of our Chief Executive Officer;
- evaluating the performance of our Chief Executive Officer in light of such corporate goals and objectives and based on such evaluation: (i) recommending to the board of directors the cash compensation of our Chief Executive Officer, and (ii) reviewing and approving grants and awards to our Chief Executive Officer under equity-based plans;
- reviewing and recommending to the board of directors the cash compensation of our other executive officers;
- reviewing and establishing our overall management compensation, philosophy and policy;
- overseeing and administering our compensation and similar plans;
- reviewing and approving the retention or termination of any consulting firm or outside advisor to assist in the evaluation of compensation matters and evaluating and assessing potential and current compensation advisors in accordance with the independence standards identified in the applicable NasdaqCM rules;
- retaining and approving the compensation of any compensation advisors;
- reviewing and approving our policies and procedures for the grant of equity-based awards;
- reviewing and recommending to the board of directors the compensation of our directors; and
- preparing the compensation committee report required by SEC rules, if and when required, to be included in our annual proxy statement.

None of the members of our compensation committee has at any time during the prior three years been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Nominating and corporate governance committee

Trevor Pettennude, Jameeka Green Aaron and Huong “Lucy” Doan serve on the nominating and corporate governance committee, which is chaired by Trevor Pettennude. Our board of directors has determined that each member of the nominating and corporate governance committee is “independent” as defined in the applicable NasdaqCM rules. The nominating and corporate governance committee’s responsibilities include:

- developing and recommending to the board of directors’ criteria for board and committee membership;
- establishing procedures for identifying and evaluating board of director candidates, including nominees recommended by stockholders; and
- reviewing the composition of the board of directors to ensure that it is composed of members containing the appropriate skills and expertise to advise us.

**Involvement in Certain Legal Proceedings**

There are no legal proceedings that have occurred within the past ten years concerning our directors, or control persons which involved a criminal conviction, a criminal proceeding, an administrative or civil proceeding limiting one’s participation in the securities or banking industries, or a finding of securities or commodities law violations.

On December 16, 2021, Mr. Davis filed for personal bankruptcy through the filing of a Chapter 7 bankruptcy petition in Texas federal court. Except for Mr. Davis, none of our directors and officers has been affiliated with any company that has filed for bankruptcy within the last ten years. We are not aware of any proceedings to which any of our officers or directors, or any associate of any such officer or director, is a party adverse to us or any of our subsidiaries or has a material interest adverse to us or any of our subsidiaries.

**EXECUTIVE COMPENSATION**

**Compensation of Named Executive Officers**

The summary compensation table below shows certain compensation information for services rendered in all capacities for the fiscal years ended December 31, 2022 and 2021. Other than as set forth herein, no executive officer’s salary and bonus exceeded \$100,000 in any of the applicable years. The following information includes the dollar value of base salaries, bonus awards, the number of stock options granted and certain other compensation, if any, whether paid or deferred.

Name and Principal Position	Fiscal Year	Salary	Bonus	Option Awards	Stock Awards <sup>(1)</sup>	Total
John “Hil” Davis President and Chief Executive Officer	2022	\$ 350,000	\$ —	\$ —	\$ —	\$ —
	2021	\$ 350,000	\$ —	\$ 3,704,483	\$ 233,184	\$ 4,287,667
Laura Dowling Chief Marketing Officer	2022	\$ 300,000	\$ —	\$ —	\$ —	\$ —
	2021	\$ 300,000	\$ —	\$ 691,135	\$ —	\$ 991,135
Reid Yeoman Chief Financial Officer	2022	\$ 250,000	\$ —	\$ —	\$ —	\$ —
	2021	\$ 250,000	\$ —	\$ 221,163	\$ —	\$ 471,163

(1) Upon closing of the IPO, 1,273 shares of common stock were issued to the CEO as conversion of an outstanding note payable and related accrued interest, accrued compensation and other consideration. As of a result of the transaction, the Company recorded an additional \$233,184 in stock compensation expense, which is included in general and administrative expenses in the condensed consolidated statements of operations.

**Executive Officer Outstanding Equity Awards at Fiscal Year-End**

The following table provides certain information concerning any common share purchase options, stock awards or equity incentive plan awards held by each of our named executive officers that were outstanding as of December 31, 2022. The number of shares of common stock referred to in this “Executive Compensation” section gives effect to the 1-for-100 share reverse stock split that we effected on November 3, 2022 and the 1-for-25 share reverse stock split that we effected on August 22, 2023, unless the context clearly indicates otherwise.

Name	Option Awards				Stock Awards				
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested	Unearned Shares, Units or Other Rights That Have Not Vested	Equity Incentive Plan Awards: Market or Payout Value of Shares, Units or Other Rights That Have Not Vested
John “Hil” Davis	858	756	101	\$ 10,547	May-23	—	—	—	—
Laura Dowling	186	159	27	\$ 10,224	May-23	—	—	—	—
Reid Yeoman	70	54	18	\$ 9,908	May-23	—	—	—	—

**Employment Agreements**

In December 2020, we entered into an offer letter with Mr. Davis, our Chief Executive Officer, President and a member of our board. The offer letter provides for an annual base salary of \$350,000 effective October 1, 2020, and for Mr. Davis to be appointed to our board effective November 30, 2020. Effective January 1, 2021, Mr. Davis is also eligible to receive an annual bonus with a target of 175%, and with a range from 0% to a maximum of 225%, of his base salary based upon achievement of Company and individual goals. He is also eligible to participate in employee benefit plans that we offer to our other senior executives. In the event of a termination of his employment after June 30, 2021, Mr. Davis is eligible for severance benefits as may be approved by the Board. Mr. Davis is subject to our recoupment, insider trading and other company policies, a perpetual non-disclosure of confidential

information covenant, a non-disparagement covenant and a non-solicitation of employees covenant. Mr. Davis' offer letter also provided for an option grant exercisable for up to 858 shares of our common stock to him at a per share exercise price equal to the IPO price, of which 75% of the options vested on May 13, 2021, the effective date of the IPO, and 25% of the options vest in accordance with the vesting schedule provided in the Company's 2020 Stock Plan. Mr. Davis is an at-will employee and does not have a fixed employment term.

In December 2020, we entered into an offer letter with Ms. Dowling, our Chief Marketing Officer. The offer letter provides for an annual base salary of \$300,000 effective upon the closing of the IPO. Effective January 1, 2021, Ms. Dowling is also eligible to receive an annual bonus with a target of 100%, and with a range from 0% to a maximum of 125%, of her base salary based upon achievement of Company and individual goals. She is also eligible to participate in employee benefit plans that we offer to our other senior executives. In the event of a termination of her employment after June 30, 2021, Ms. Dowling is eligible for severance benefits as may be approved by the Board. Ms. Dowling is subject to our recoupment, insider trading and other company policies, a perpetual non-disclosure of confidential information covenant, a non-disparagement covenant and a non-solicitation of employees covenant. Ms. Dowling's offer letter also provided for an option grant exercisable for up to 115 shares of our common stock to her at a per share exercise price equal to the IPO price, of which 75% of the options vested on May 13, 2021, the effective date of the IPO, and 25% of the options vest in accordance with the vesting schedule provided in the Company's 2020 Stock Plan. Ms. Dowling is an at-will employee and does not have a fixed employment term.

In December 2020, we entered into an offer letter with Mr. Yeoman, our Chief Financial Officer. The offer letter provides for an annual base salary of \$250,000 effective upon the closing of the IPO. Effective January 1, 2021, Mr. Yeoman is also eligible to receive an annual bonus with a target of 50%, and with a range from 0% to a maximum of 75%, of his base salary based upon achievement of Company and individual goals. He is also eligible to participate in employee benefit plans that we offer to our other senior executives. In the event of a termination of his employment after June 30, 2021, Mr. Yeoman is eligible for severance benefits as may be approved by the Board. Mr. Yeoman is subject to our recoupment, insider trading and other company policies, a perpetual non-disclosure of confidential information covenant, a non-disparagement covenant and a non-solicitation of employees covenant. Mr. Yeoman's offer letter also provided for an option grant 51 shares of our common stock to him at a per share exercise price equal to the IPO price, of which 75% of the options vested on May 13, 2021, the effective date of the IPO, and 25% of the options vest in accordance with the vesting schedule provided in the Company's 2020 Stock Plan. Mr. Yeoman is an at-will employee and does not have a fixed employment term.

### **Compensation of Directors**

No obligations with respect to compensation for non-employee directors have been accrued or paid for any periods presented in this prospectus.

Going forward, our board of directors believes that attracting and retaining qualified non-employee directors critical to the future value growth and governance of our Company. Our board of directors also believes that any compensation package for our non-employee directors should be equity-based to align the interest of these directors with our stockholders. On May 13, 2021, the effective date of the IPO, each of our director nominees were granted options to purchase 8 shares of common stock at a per share exercise price equal to the price of the shares of common stock in the IPO. The options vest over a one year period of time. We may in the future grant additional options to our non-employee directors although there are no current plans to do so. We do not currently intend to provide any cash compensation to our non-employee directors.

Directors who are also our employees will not receive any additional compensation for their service on our board of directors.

### **2020 Incentive Stock Plan**

We have adopted a 2020 Omnibus Incentive Stock Plan (the "2020 Plan"). An aggregate of 33,000 shares of our common stock is reserved for issuance and available for awards under the 2020 Plan, including incentive stock options granted under the 2020 Plan. The 2020 Plan administrator may grant awards to any employee, director, and consultants of the Company and its subsidiaries. To date, 1,092 grants (as adjusted for the 1-for-25 Reverse Stock Split effected in August 2023) have been made under the 2020 Plan and 31,908 shares remain eligible for issuance under the Plan.

The 2020 Plan is administered by the compensation committee of the Board. The 2020 Plan administrator has the authority to determine, within the limits of the express provisions of the 2020 Plan, the individuals to whom awards will be granted, the nature, amount and terms of such awards and the objectives and conditions for earning such awards. The Board may at any time amend or terminate the 2020 Plan, provided that no such action may be taken that adversely affects any rights or obligations with respect to any



awards previously made under the 2020 Plan without the consent of the recipient. No awards may be made under the 2020 Plan after the tenth anniversary of its effective date.

Awards under the 2020 Plan may include incentive stock options, nonqualified stock options, stock appreciation rights (“SARs”), restricted shares of common stock, restricted stock Units, performance share or Unit awards, other stock-based awards and cash-based incentive awards.

### **Stock Options**

The 2020 Plan administrator may grant to a participant options to purchase our common stock that qualify as incentive stock options for purposes of Section 422 of the Internal Revenue Code (“incentive stock options”), options that do not qualify as incentive stock options (“non-qualified stock options”) or a combination thereof. The terms and conditions of stock option grants, including the quantity, price, vesting periods, and other conditions on exercise will be determined by the 2020 Plan administrator. The exercise price for stock options will be determined by the 2020 Plan administrator in its discretion, but non-qualified stock options and incentive stock options may not be less than 100% of the fair market value of one share of our company’s common stock on the date when the stock option is granted. Additionally, in the case of incentive stock options granted to a holder of more than 10% of the total combined voting power of all classes of our stock on the date of grant, the exercise price may not be less than 110% of the fair market value of one share of common stock on the date the stock option is granted. Stock options must be exercised within a period fixed by the 2020 Plan administrator that may not exceed ten years from the date of grant, except that in the case of incentive stock options granted to a holder of more than 10% of the total combined voting power of all classes of our stock on the date of grant, the exercise period may not exceed five years. At the 2020 Plan administrator’s discretion, payment for shares of common stock on the exercise of stock options may be made in cash, shares of our common stock held by the participant or in any other form of consideration acceptable to the 2020 Plan administrator (including one or more forms of “cashless” or “net” exercise).

### **Stock Appreciation Rights**

The 2020 Plan administrator may grant to a participant an award of SARs, which entitles the participant to receive, upon its exercise, a payment equal to (i) the excess of the fair market value of a share of common stock on the exercise date over the SAR exercise price, times (ii) the number of shares of common stock with respect to which the SAR is exercised. The exercise price for a SAR will be determined by the 2020 Plan administrator in its discretion; provided, however, that in no event shall the exercise price be less than the fair market value of our common stock on the date of grant.

### **Restricted Shares and Restricted Units**

The 2020 Plan administrator may award to a participant shares of common stock subject to specified restrictions (“restricted shares”). Restricted shares are subject to forfeiture if the participant does not meet certain conditions such as continued employment over a specified forfeiture period and/or the attainment of specified performance targets over the forfeiture period. The 2020 Plan administrator also may award to a participant Units representing the right to receive shares of common stock in the future subject to the achievement of one or more goals relating to the completion of service by the participant and/or the achievement of performance or other objectives (“restricted Units”). The terms and conditions of restricted share and restricted Unit awards are determined by the 2020 Plan administrator.

### ***Performance Awards***

The 2020 Plan administrator may grant performance awards to participants under such terms and conditions as the 2020 Plan administrator deems appropriate. A performance award entitles a participant to receive a payment from us, the amount of which is based upon the attainment of predetermined performance targets over a specified award period. Performance awards may be paid in cash, shares of common stock or a combination thereof, as determined by the 2020 Plan administrator.

### **Other Stock-Based Awards**

The 2020 Plan administrator may grant equity-based or equity-related awards, referred to as “other stock-based awards,” other than options, SARs, restricted shares, restricted Units, or performance awards. The terms and conditions of each other stock-based award will be determined by the 2020 Plan administrator. Payment under any other stock-based awards will be made in common stock or cash, as determined by the 2020 Plan administrator.

## **Cash-Based Awards**

The 2020 Plan administrator may grant cash-based incentive compensation awards, which would include performance-based annual cash incentive compensation to be paid to covered employees. The terms and conditions of each cash-based award will be determined by the 2020 Plan administrator.

### ***2013 Stock Plan***

#### ***Eligibility and Administration***

Our employees, outside directors and consultants are eligible to receive nonstatutory options or the direct award or sale of shares under our 2013 Stock Plan, while only our employees are eligible to receive grants of ISOs under our 2013 Stock Plan. A person who owns more than 10% of the total combined voting power of all classes of our outstanding stock, of the outstanding common stock of our parent or subsidiary, is not eligible for the grant of an ISO unless the exercise price is at least 110% of the fair market value of a share on the grant date and such ISO is not exercisable after five years from the grant date. The 2013 Stock Plan may be administered by a committee of the board of directors, and if no committee is appointed, then the board of directors. The board of directors has the authority to make all determinations and interpretations under, prescribe all forms for use with, and adopt rules for the administration of, the 2013 Stock Plan, subject to its express terms and conditions.

#### ***Shares Available and Termination***

In the event that shares previously issued under the 2013 Stock Plan are reacquired, such shares will be added to the available shares for issuance under the 2013 Stock Plan. In the event that shares that would have otherwise been issuable under the 2013 Stock Plan were withheld in payment of the purchase price, exercise price, or withholding taxes, such shares will remain available for issuance under the 2013 Stock Plan. In the event that an outstanding option or other right is cancelled or expired, the shares allocable to the unexercised portion of the option or other right will be added to the number of shares available under the 2013 Stock Plan.

The 2013 Stock Plan will terminate automatically 10 years after the later of (i) the date when the board of directors adopted the 2013 Stock Plan or (ii) the date when the board of directors approved the most recent increase in the number of shares reserved under the 2013 Stock Plan that was also approved by our stockholders.

#### ***Awards***

The 2013 Stock Plan provides for the grant of shares of common stock and options, including ISO intended to qualify under Code Section 422 and nonstatutory options which are not intended to qualify. All awards under the 2013 Stock plan will be set forth in award agreements, which will detail the terms and conditions of the awards, including any applicable vesting and payment terms and post-termination exercise limitations.

As of August 22, 2023, there were options to purchase up to 1,558 shares of our common stock at a weighted average exercise price of \$9,052.75 per share expiring between June 2024 and May 2031.

### **2023 Stock Purchase Plan**

On September 10, 2023 the non-employee members of the board of directors of the Company adopted a 2023 Stock Purchase Plan (the “2023 Plan”) to enable the us to attract, retain and motivate our employees by providing for or increasing the proprietary interests of such employees in the Company, and to enable us and our 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 our 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 purchased 63,000 restricted shares of our common stock with 5-year non-recourse promissory notes bearing an interest at 2%.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

Other than the compensation agreements and other arrangements described under “Executive Compensation” in this prospectus and the transactions described below, since January 1, 2019, there has not been and there is not currently proposed, any transaction or series of similar transactions to which we were, or will be, a party in which the amount involved exceeded, or will exceed, the lesser of (i) \$120,000 or one percent of the average of our total assets for the last two completed fiscal years, and in which any director, executive officer, holder of five percent or more of any class of our capital stock or any member of the immediate family of, or entities affiliated with, any of the foregoing persons, had, or will have, a direct or indirect material interest.

### **Related Person Transactions — Digital Brands Group, Inc.**

On May 13, 2021, the effective date of the IPO, we granted stock options to acquire up to an aggregate of 10,688 shares to our Chief Executive Officer, Chief Marketing Officer and Chief Financial Officer at a per share exercise price equal to the initial public offering price of the shares.

### **Related Person Transactions — DBG**

DBG uses Banctek Solutions, a registered independent sales organization (ISO) of FirstData as its back- end payment processor. Trevor Pettennude is majority owner of Banctek Solutions. We started to use Banctek Solutions services prior to Mr. Pettennude’s involvements with DBG. Total expenses for the years ended December 31, 2022 and 2021 were approximately \$0 and \$14,000, respectively, and included in sales and marketing in the accompanying statements of operations.

Two former officers, Corey Epstein and Mark Lynn (“Former Officers”), and one current officer, Hil Davis, of DBG deferred their salary during portions of 2014 – 2016 and 2019, respectively. In 2019, the balance due to one of the Former Officers, Corey Epstein, was relieved in full through offset. The second Former Officer, Mark Lynn, who is a director, received repayment on all balances that existed as of 2018 and advanced additional funds to DBG. These advances were non-interest bearing and due on demand. The current CEO, Hil Davis, previously advanced funds to the Company for working capital. These prior advances were converted to a note payable totaling \$115,000, which accrued interest at 5% per annum until March 25, 2021, at which time Mr. Davis agreed to waive any further requirement for the payment of future interest and to convert the balance into shares of common stock at the completion of the IPO at a 30% discount to the IPO price. Upon closing of the IPO, 1,003 shares of common stock were issued to directors and 5,091 shares of common stock were issued to the CEO, in each case, as conversion of the outstanding advances and notes payable and related accrued interest, accrued compensation and other consideration. A portion of the net proceeds of the IPO were used to pay salary and expenses to Laura Dowling, our Chief Marketing Officer, and Mark Lynn, a director.

In October 2022, the Company received advances from Trevor Pettennude totaling \$325,000. The advances are unsecured, non-interest bearing and due on demand. \$150,000 of such advances will be repaid with the proceeds of this offering.

As of December 31, 2022 and 2021, amounts due to related parties includes advances from the former officer, Mark Lynn, who also serves as a director, totaling \$104,568 and \$104,568 respectively, and accrued salary and expense reimbursements of \$100,649 and \$126,706, respectively, to current officers.

### **Related Person Transactions — Bailey**

On July 22, 2019 Bailey entered into two promissory note agreements with its managing member, Norwest Venture Partners, totaling \$350,000. The notes bear interest at 12%, and all principal and accrued interest was payable on July 22, 2021.

On December 12, 2019 Bailey entered into two promissory note agreements with its managing member, Norwest Venture Partners, totaling \$500,000. The notes bear interest at 12%, and all principal and accrued interest was payable on July 22, 2021.

### **Related Person Transactions — H&J**

In December 2019, H&J issued a promissory note with a principal amount of \$75,000 to its majority owner. The note has an interest rate of 8.5% and is payable on or before December 31, 2020. The note was repaid during 2020 and balance of the note was \$0 and \$75,000 as of December 31, 2020 and 2019, respectively.

As of December 31, 2022 and 2021, H&J had an outstanding note payable of \$129,489 and \$299,489, respectively, owned by the H&J Seller. The note matured in July 2022 and bears interest at 12% per annum. The parties are currently discussing extension options.

We have been involved in a dispute with the former owners of H&J regarding our obligation to “true up” their ownership interest in our Company further to that membership interest purchase agreement dated May 10, 2021 whereby we acquired all of the outstanding membership interests of H&J (as amended, the “H&J Purchase Agreement”). Further to the H&J Purchase Agreement, we agreed that if, at May 18, 2022, the one year anniversary of the closing date of our initial public offering, the product of the number of shares of our common stock issued at the closing of such acquisition multiplied by the average closing price per share of our shares of common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date plus the gross proceeds, if any, of shares of our stock issued to such sellers and sold by them during the one year period from the closing date of the offering does not exceed the sum of \$9.1 million, less the value of any shares of common stock cancelled further to any indemnification claims or post-closing adjustments under the H&J Purchase Agreement, then we shall issue to the subject sellers an additional aggregate number of shares of common stock equal to any such valuation shortfall at a per share price equal to the then closing price per share of our common stock as quoted on the NasdaqCM. We did not honor our obligation to issue such shares and the former owner of H&J have claimed that they were damaged as a result.

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the parties’ execution of the Settlement Agreement (i) the Company made aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. (“D. Jones”), (ii) the Company issued 78,103 shares of common stock to D. Jones at a per share purchase price of \$17.925 which represented the lower of (i) the closing price per share of the Common Stock as reported on Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones. This transaction is known as the “H&J Settlement”.

#### **Related Person Transactions — Stateside**

On August 30, 2021, we entered into a Membership Interest Purchase Agreement (the “MIPA”) with Moise Emquies pursuant to which we acquired all of the issued and outstanding membership interests of MOSBEST, LLC, a California limited liability company (“Stateside” and such transaction, the “Stateside Acquisition”). Pursuant to the MIPA, the seller, as the holder of all of the outstanding membership interests of Stateside, exchanged all of such membership interests for \$5.0 million in cash and a number of shares of our common stock equal to \$5.0 million, or 441 shares (the “Shares”), which number of Shares was calculated in accordance with the terms of the MIPA. Of such amount, \$375,000 in cash and a number of Shares equal to \$375,000, or 33 shares (calculated in accordance with the terms of the MIPA), is held in escrow to secure any working capital adjustments and indemnification claims.

The Stateside Acquisition closed on August 30, 2021. Upon closing of the Stateside Acquisition and the other transactions contemplated by the MIPA, Stateside became a wholly-owned subsidiary of the Company.

At the time of the acquisition, Moise Emquies was a member of the Board of Directors of the Company. The Stateside Acquisition was unanimously approved by all of the members of the Company’s Board of Directors (other than Moise Emquies who recused himself).

#### **Policies and Procedures for Related Person Transactions**

Our board of directors intends to adopt a written related person policy to set forth the policies and procedures for the review and approval or ratification of related person transactions. This policy will cover any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we are to be a participant, the amount involved exceeds \$100,000 and a related person had or will have a direct or indirect material interest, including purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person.

#### **Director Independence**

Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning his or her background, employment and affiliations, our board of directors has determined that Trevor Pettennude, Jameeka Aaron, and Huong “Lucy” Doan, do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is “independent” as that term is defined under the

applicable rules and regulations of the SEC and the listing standards of Nasdaq. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our Company and all other facts and circumstances our board of directors deemed relevant in determining their independence.

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The table below sets forth information regarding the beneficial ownership of our common stock as of September 14, 2023, (i) immediately prior to the consummation of this offering and (ii) as adjusted to reflect the sale of common stock and pre-funded warrants offered by this prospectus by the following individuals or groups (and in each case, as adjusted for the 1-for-25 reverse stock split effective August 22, 2023):

- each person or entity who is known by us to own beneficially more than 5% of our outstanding stock;
- each of our executive officers;
- each of our directors and director nominees; and
- all of our directors, director nominees and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes voting or investment power with respect to the securities in question. Except as otherwise indicated, and subject to applicable community property laws, the persons named in the table below have sole voting and investment power with respect to all shares of our common stock held by them.

Shares of common stock issuable pursuant to a stock option, warrant or convertible note that is currently exercisable or convertible, or is exercisable or convertible within 60 days after the date of determination of ownership, are deemed to be outstanding and beneficially owned for purposes of computing the percentage ownership of the holder of the stock option, warrant or convertible note but are not treated as outstanding for purposes of computing the percentage ownership of any other person.

The applicable percentage ownership “Before the Offering” in the following table is based on 578,502 shares of our common stock outstanding as of September 14, 2023 and excludes as of such date:

- Shares of common stock underlying the Warrants pursuant to this prospectus;
- Shares of common stock underlying other outstanding warrants, which include, without limitation, (i) common stock warrants to acquire up to 31,278 shares of our common stock at exercise prices between \$106.5 and \$19,150 expiring between October 2021 and October 2030, and (ii) Class B Warrants to acquire up to 72,728 shares of our common stock at an exercise price of \$9.43 expiring on March 5, 2029;
- 1,558 shares of our common stock issuable upon exercise of outstanding stock options by the members of our board of directors and third parties at a weighted average exercise price of \$9,052.75 per share as of August 22, 2023;
- 237,745 shares of common stock issuable upon the exercise of outstanding warrants at a weighted average exercise price of \$193.75 as of August 22, 2023;
- excludes shares of our common stock issuable upon conversion of outstanding 6,300 shares of Series A preferred stock and 5,761 shares of Series C preferred stock;
- Up to 2,332 shares of common stock issuable further to a \$17.5 million equity line of credit; and
- 31,908 shares of our common stock reserved for future issuance under our 2020 Omnibus Incentive Plan

The applicable percentage ownership “After the Offering” in the following table assumes the exercise of the pre-funded warrants and sale of all shares available for sale under this prospectus and no further acquisitions of shares by the selling stockholders.

Unless otherwise indicated, the address for each officer, director and director nominee in the following table is c/o Digital Brands Group, Inc., 1400 Lavaca Street, Austin, TX 78701.

Name of Beneficial Owner	Number of Shares Beneficially Owned Before Offering	Percentage of Shares Outstanding Before Offering	Number of Shares Beneficially Owned After Offering	Percentage of Shares Outstanding After Offering
<b><i>Executive Officers and Directors</i></b>				
John “Hil” Davis <sup>(1)</sup>	685	*	685	*
Laura Dowling <sup>(2)</sup>	134	*	134	*
Reid Yeoman <sup>(3)</sup>	46	*	46	*
Mark Lynn <sup>(4)</sup>	203	*	203	*
Trevor Pettennude <sup>(5)</sup>	131	*	131	*
Jameeka Aaron <sup>(6)</sup>	6	*	6	*
Huong “Lucy” Doan <sup>(7)</sup>	8	*	8	*
All executive officers, directors and director nominees as a group (7 persons) <sup>(8)</sup>	1,213	*	1,213	*
<b><i>Five Percent Holders of Common Stock</i></b>				
D. Jones Tailored Collection, Ltd. <sup>(9)</sup>	78,980	7.45 %	78,980	3.71 %
Boco4-DSTLD-Senior Debt, LLC <sup>(10)</sup>	27,097	2.56 %	27,097	1.27 %
George Levy <sup>(11)</sup>	105,718	9.97 %	105,718	4.97 %
Matthieu Leblan <sup>(12)</sup>	105,718	9.97 %	105,718	4.97 %
Moise Emquies <sup>(13)</sup>	54,812	5.17 %	54,812	2.58 %
Carol Ann Emquies <sup>(14)</sup>	36,262	3.42 %	36,262	1.71 %

\* Less than one percent.

- (1) Represents options exercisable at \$1,000 per share.
- (2) Represents options to acquire up to 120 shares of common stock, exercisable at \$1,000 per share and options to acquire up to 14 shares of common stock, exercisable at \$8,200 per share.
- (3) Represents options to acquire up to 38 shares of common stock, exercisable at \$100.00 per share and options to acquire up to 7 shares of common stock, exercisable at \$8,200 per share.
- (4) Includes options to acquire up to 128 shares of common stock exercisable between \$3,900 and \$8,200 per share.
- (5) Includes options to acquire up to 30 shares of common stock exercisable between \$3,900 and \$8,200 per share.
- (6) Represents options exercisable at \$1,000 per share.
- (7) Represents options exercisable at \$8,900 per share.
- (8) Includes options to acquire up to 981 shares of common stock exercisable between \$3,900 and \$10,000.
- (9) Shares are owned of record by D. Jones Tailored Collection, Ltd. Drew Jones is the Chief Executive Officer of D. Jones Tailored Collection, Ltd. and may be deemed to have sole voting and investment discretion with respect to shares of common stock held by D. Jones Tailored Collection, Ltd. The address of D. Jones Tailored Collection, Ltd. is 1334 Milwaukee Street, Denver, Colorado, 80206.
- (10) Consists of 27,097 shares of Common Stock issuable upon conversion of 6,300 shares of Series A Convertible Preferred Stock at a \$232.63 conversion price. The issuance of shares of Common Stock upon conversion of the Series A Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$500,000 or 10% of the aggregate trading volume of Common Stock as reported by Nasdaq. The shares of Series A Convertible Preferred Stock are owned of record by Boco4-DSTLD-Senior Debt, LLC. Kurt Hanson is the manager of Boco4-DSTLD-Senior Debt, LLC and as such may be deemed to have sole voting and investment discretion with respect to shares of Series A Convertible Preferred Stock held by Boco4-DSTLD-Senior Debt, LLC.

Mr. Hanson disclaims any beneficial ownership of the securities held by Boco4-DSTLD-Senior Debt, LLC other than to the extent of any pecuniary interest he may have therein, directly or indirectly. The address of Boco4-DSTLD-Senior Debt, LLC is 111 S Main Street, Suite 2025, Salt Lake City, UT 84111.

- (11) Consists of 105,718 shares of Common Stock issuable upon conversion of 1,895 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 5805 West Washington Blvd Culver City, CA 90232.
- (12) Consists of 105,718 shares of Common Stock issuable upon conversion of 1,895 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 3,0507 Tellem Drive, Pacific Palisades, CA 90272.
- (13) Consists of (i) 419 shares of Common stock and (ii) 54,393 shares of Common Stock issuable upon conversion of 975 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 805 North Hillcrest Road Beverly Hills, CA 90210.
- (14) Consists of 36,262 shares of Common Stock issuable upon conversion of 650 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 805 North Hillcrest Road Beverly Hills, CA 90210.



**DBG Series A Convertible Preferred Stock**

<b>Name and Address of Beneficial Owner</b>	<b>Number of Shares of Series A Convertible Preferred Stock Beneficially Owned Before</b>	<b>Percentage of Shares Outstanding Before<sup>(1)</sup></b>	<b>Number of Shares of Series A Convertible Preferred Stock Beneficially Owned After</b>	<b>Percentage of Shares Outstanding After</b>
<b><i>Five Percent Holders of DBG Series A Convertible Preferred Stock</i></b>				
Boco4-DSTLD-Senior Debt, LLC <sup>(2)</sup>	6,300	100 %	6,300	100 %
<b><i>Executive Officers and Directors</i></b>				
John “Hil” Davis	—	—	—	—
Laura Dowling	—	—	—	—
Reid Yeoman	—	—	—	—
Mark Lynn	—	—	—	—
Trevor Pettennude	—	—	—	—
Jameeka Aaron	—	—	—	—
Huong “Lucy” Doan	—	—	—	—
All executive officers, directors and director nominees as a group (7 persons)	—	—	—	—

(1) Percentages are based on 6,300 shares of DBG’s Series A Convertible Preferred Stock issued and outstanding as of September 14, 2023.

(2) Consists of 6,300 shares of Series A Convertible Preferred Stock at a \$232.63 conversion price. The issuance of shares of Common Stock upon conversion of the Series A Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$500,000 or 10% of the aggregate trading volume of Common Stock as reported by Nasdaq. The shares of Series A Convertible Preferred Stock are owned of record by Boco4-DSTLD-Senior Debt, LLC. Kurt Hanson is the manager of Boco4-DSTLD-Senior Debt, LLC and as such may be deemed to have sole voting and investment discretion with respect to shares of Series A Convertible Preferred Stock held by Boco4-DSTLD-Senior Debt, LLC. Mr. Hanson disclaims any beneficial ownership of the securities held by Boco4-DSTLD-Senior Debt, LLC other than to the extent of any pecuniary interest he may have therein, directly or indirectly. The address of Boco4-DSTLD-Senior Debt, LLC is 111 S Main Street, Suite 2025, Salt Lake City, UT 84111.

**DBG Series C Convertible Preferred Stock**

Name and Address of Beneficial Owner	Number of Shares of Series C Convertible Preferred Stock Beneficially Owned Before	Percentage of Shares Outstanding Before <sup>(1)</sup>	Number of Shares of Series C Convertible Preferred Stock Beneficially Owned After	Percentage of Shares Outstanding After
<b><i>Five Percent Holders of DBG Series C Convertible Preferred Stock</i></b>				
George Levy <sup>(2)</sup>	1,895	32.90 %	1,895	32.90 %
Mathieu Leblan <sup>(3)</sup>	1,895	32.90 %	1,895	32.90 %
Moise Emquies <sup>(4)</sup>	975	16.92 %	975	16.92 %
Carol Ann Emquies <sup>(5)</sup>	650	11.28 %	650	11.28 %
<b><i>Executive Officers and Directors</i></b>				
John “Hil” Davis	—	—	—	—
Laura Dowling	—	—	—	—
Reid Yeoman	—	—	—	—
Mark Lynn	—	—	—	—
Trevor Pettennude	—	—	—	—
Jameeka Aaron	—	—	—	—
Huong “Lucy” Doan	—	—	—	—
All executive officers, directors and director nominees as a group (7 persons)	—	—	—	—

(1) Percentages are based on 5,716 shares of DBG’s Series C Convertible Preferred Stock issued and outstanding as of September 14, 2023.

(2) Consists of 1,895 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 5805 West Washington Blvd., Culver City, CA 90232.

(3) Consists of 1,895 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 3,0507 Tellem Drive, Pacific Palisades, CA 90272.

(4) Consists of 975 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 805 North Hillcrest Road, Beverly Hills, CA 90210.

- (5) Consists of 650 shares of Series C Convertible Preferred Stock at \$17.925 conversion price. The issuance of shares of Common Stock upon conversion of the Series C Convertible Preferred Stock is subject to a limit of 19.99% of the issued and outstanding Common Stock and the reporting person has agreed not to convert in any calendar month more than the greater of \$300,000 or 3% of the aggregate trading volume of Common Stock as reported by Nasdaq. The address of the reporting person is 805 North Hillcrest Road, Beverly Hills, CA 90210.

## SELLING STOCKHOLDERS

The common stock being offered by the selling stockholders are those previously issued to the selling stockholders, and those issuable to the selling stockholders, upon exercise of the warrants. For additional information regarding the issuances of those shares of common stock and warrants, see “Prospectus Summary – The Offering” above. We are registering the shares of common stock in order to permit the selling stockholders to offer the shares for resale from time to time. Except for the ownership of the shares of common stock and the warrants, the selling stockholders have not had any material relationship with us within the past three years. When we refer to the “Selling Securityholders” in this prospectus, we mean the persons listed in the table below, and the pledgees, donees, transferees, assignees, successors, designees and others who later come to hold any of the Selling Securityholders’ interest in the common stock other than through a public sale.

The table below lists the selling stockholders and other information regarding the beneficial ownership of the shares of common stock by each of the selling stockholders. The second column lists the number of shares of common stock beneficially owned by each selling stockholder, based on its ownership of the shares of common stock and warrants, as of September 14, 2023, assuming exercise of the warrants held by the selling stockholders on that date, without regard to any limitations on exercises.

The third column lists the shares of common stock being offered by this prospectus by the selling stockholders.

In accordance with the terms of a registration rights agreement with the selling stockholders, this prospectus generally covers the resale of the sum of (i) the number of shares of common stock issued to the selling stockholders in the “Prospectus Summary – The Offering” described above and (ii) the maximum number of shares of common stock issuable upon exercise of the related warrants, determined as if the outstanding warrants were exercised in full as of the trading day immediately preceding the date this registration statement was initially filed with the SEC, each as of the trading day immediately preceding the applicable date of determination and all subject to adjustment as provided in the registration right agreement, without regard to any limitations on the exercise of the warrants. The fourth column assumes the sale of all of the shares offered by the selling stockholders pursuant to this prospectus.

We cannot advise you as to whether the Selling Securityholders will in fact sell any or all of such common stock or warrants. In addition, the Selling Securityholders may sell, transfer or otherwise dispose of, at any time and from time to time, the common stock and warrants in transactions exempt from the registration requirements of the Securities Act after the date of this prospectus. For purposes of this table, we have assumed that the Selling Securityholders will have sold all of the securities covered by this prospectus upon the completion of the offering.

Under the terms of the warrants, a selling stockholder may not exercise the warrants to the extent such exercise would cause such selling stockholder, together with its affiliates and attribution parties, to beneficially own a number of shares of common stock which would exceed 4.99% or 9.99%, as applicable, of our then outstanding common stock following such exercise, excluding for purposes of such determination shares of common stock issuable upon exercise of such warrants which have not been exercised. The number of shares in the second and fourth columns do not reflect this limitation. The selling stockholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

The table below reflects the 1:25 reverse stock split that was effected on August 22, 2023 and each fractional share resulting from such reverse stock split held by a selling stockholder was rounded up to the next whole share pursuant to the warrant agreements.

<b>Name of Selling Stockholder</b>	<b>Number of Shares of Common Stock Beneficially Owned Prior to Offering</b>	<b>Maximum Number of Shares of Common Stock Beneficially Owned to be Sold Pursuant to this Prospectus</b>	<b>Number of Shares of Common Stock Beneficially Owned After the Maximum Offered Shares are Sold</b>	<b>%</b>
Armistice Capital, LLC <sup>(1)</sup>	— (2)	— (2)	— (2)	— (2)
Noam Rubinstein <sup>(3)</sup>	15,066	12,140	2,926	*
Michael Vasinkevich <sup>(3)</sup>	30,669	24,714	5,955	*
Charles Worthman <sup>(3)</sup>	480	386	94	*
Craig Schwabe <sup>(3)</sup>	1,616	1,301	315	*

\* Less than one percent.

- (1) The securities reported herein are held by Armistice Capital Master Fund Ltd., a Cayman Islands exempted company (the “Master Fund”), and may be deemed to be indirectly beneficially owned by: (i) Armistice Capital, LLC (“Armistice Capital”), as the investment manager of the Master Fund; and (ii) Steven Boyd, as the Managing Member of Armistice Capital. Armistice Capital and Steven Boyd disclaim beneficial ownership of the securities except to the extent of their respective pecuniary interests therein. The address of the Master Fund is c/o Armistice Capital, LLC, 510 Madison Ave, 7th Floor, New York, NY 10022.
- (2) As of the date hereof, the Selling Stockholder holds (i) 32,000 shares of our common stock, (ii) Pre-Funded Warrants to acquire 481,875 shares of our common stock, (iii) Series A Warrants to acquire 513,875 shares of our common stock, (iv) Series B Warrants to acquire 513,875 shares of our common stock, and (v) additional warrants to acquire up to 91,798 shares of our common stock. Under the terms of the Registration Rights Agreement between the Company and the Selling Stockholder, we are obligated to file this registration statement registering all of the shares of our common stock held by the Selling Stockholder and shares of our common stock underlying the aforementioned Pre-Funded Warrants, Series A Warrants and Series B Warrants. Under the terms of the Pre-Funded Warrants, we may not effect any exercise of the Pre-Funded Warrants, and the Selling Stockholder shall not have the right to exercise any portion of such Pre-Funded Warrants, to the extent that after giving effect to such issuance the Selling Stockholder would beneficially own in excess of 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the issuance of shares of common stock issuable upon exercise of the Pre-Funded Warrants. Under the terms of the Series A and Series B Warrants, the Beneficial Ownership Limitation is 4.99%.
- (3) The Selling Stockholder is affiliated with H.C. Wainwright & Co., LLC, a registered broker-dealer, and has a registered address of c/o H.C. Wainwright & Co., LLC, 430 Park Ave, 3rd Floor, New York, NY 10022, and has sole voting and dispositive power over the securities held. The number of shares being registered hereby for resale consist of shares of common stock issuable upon exercise of placement agent warrants, which were received as compensation in connection with the Private Placement closed on September 5, 2023. The Selling Stockholder purchased the placement agent warrants in the ordinary course of business and, at the time of purchase of the securities that are registered for resale, the Selling Stockholders had no agreements or understanding, directly or indirectly, with any person to distribute such securities.

Each time a selling stockholder sells any shares of common stock offered by this prospectus, it is required to provide you with this prospectus and the related prospectus supplement, if any, containing specific information about the selling stockholder and the terms of the shares of common stock being offered in the manner required by the Securities Act.

No offer or sale may occur unless the registration statement that includes this prospectus has been declared effective by the SEC and remains effective at the time the selling stockholder offers or sells shares of common stock. We are required, under certain circumstances, to update, supplement or amend this prospectus to reflect material developments in our business, financial position and results of operations and may do so by an amendment to this prospectus or a prospectus supplement.

## DESCRIPTION OF CAPITAL STOCK

### Authorized and Outstanding Capital Stock

Our authorized capital stock consists of 1,000,000,000 shares of common stock, \$0.0001 par value per share, of which 578,502 shares are issued and outstanding as of September 14, 2023 (excluding the Pre-Funded Warrants) and 10,000,000 shares of preferred stock, \$0.0001 par value per share, of which 6,300 shares of Series A Convertible Preferred Stock, and 5,761 shares of Series C Convertible Preferred Stock are issued and outstanding. The following description of our capital stock is only a summary and is subject to and qualified in its entirety by our Sixth Amended and Restated Certificate of Incorporation, as further amended by certificates of amendment dated October 13, 2022, October 21, 2022 (but effected on November 3, 2022), May 30, 2023, June 21, 2023, and August 21, 2023 (but effected on August 22, 2023) and Amended and Restated Bylaws, as further amended by amendments Nos. 1 and 2, which are included as exhibits to the registration statement of which this prospectus forms a part, and by the applicable provisions of Delaware law.

#### *Common Stock*

Holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders, including the election of directors. Such holders are not entitled to vote cumulatively for the election of directors. Holders of a majority of the shares of common stock may elect all of the directors standing for election. Subject to preferences that may be applicable to any outstanding preferred stock, common stockholders are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available for that purpose. In the event of our liquidation, dissolution or winding up, the common stockholders are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding. Common stockholders have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock. We have never declared or paid any cash dividends on our capital stock. We currently expect to retain future earnings, if any, to finance the growth and development of our business and do not anticipate paying any cash dividends in the foreseeable future.

#### *Preferred Stock*

##### **General**

The board of directors is authorized, without action by the stockholders, to designate and issue preferred stock in one or more series and to designate the powers, preferences and rights of each series, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of the common stock until the board of directors determines the specific rights of the holders of such preferred stock. However, the effects might include, among other things:

- impairing dividend rights of the common stock;
- diluting the voting power of the common stock;
- impairing the liquidation rights of the common stock; and
- delaying or preventing a change in control of us without further action by the stockholders.

##### **Series A Convertible Preferred Stock**

On September 29, 2022, the Company filed the Certificate of Designation with the Secretary of State for the State of Delaware designating up to 6,800 shares out of the authorized but unissued shares of its preferred stock as Series A Convertible Preferred Stock. On October 4, 2022, the Company filed the Correction with the Secretary of State for the State of Delaware to correct the terms of the voting rights under the Series A Preferred Stock. The following is a summary of the principal terms of the Series A Preferred Stock.

#### *Dividends*

Except for stock dividends or distributions for which adjustments are to be made pursuant to the Certificate of Designation, the holders of the Series A Preferred Stock (the "Holders") shall be entitled to receive, and the Company shall pay, dividends on shares of the Series A Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid

on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of the Series A Preferred Stock.

#### *Voting Rights*

The Holders are entitled to vote as a class as expressly provided in the Certificate of Designation and where required pursuant to applicable law (including, without limitation, the DGCL). The Holders are also entitled to vote with the holders of shares of Common Stock, voting together as one class, on all matters in which the Holders are permitted to vote with the class of shares of Common Stock pursuant to applicable law (including, without limitation, the DGCL).

With respect to any vote with the class of Common Stock, each share of the Series A Preferred Stock shall entitle the Holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in the Certificate of Designation) using the record date for determining the stockholders of the Company eligible to vote on such matters as the date as of which the conversion price is calculated. To the extent that under the DGCL the vote of the Holders, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the Required Holders (as defined in the Certificate of Designation) of the shares of the Preferred Stock, voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable. Holders shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled to vote, which notice would be provided pursuant to the Company's bylaws and the DGCL.

#### *Ranking and Liquidation*

The Series A Preferred Stock shall rank (i) senior to all of the Common Stock; (ii) senior to any class or series of capital stock of the Company hereafter created specifically ranking by its terms junior to any Preferred Stock ("Junior Securities"); (iii) on parity with any class or series of capital stock of the Corporation created specifically ranking by its terms on parity with the Preferred Stock ("Parity Securities"); and (iv) junior to any class or series of capital stock of the Company hereafter created specifically ranking by its terms senior to any Preferred Stock ("Senior Securities"), in each case, as to dividends or distributions of assets upon liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily. Subject to any superior liquidation rights of the holders of any Senior Securities of the Company and the rights of the Company's existing and future creditors, upon any liquidation, dissolution or winding-up of the Company, whether voluntary or involuntary (a "Liquidation"), each Holder shall be entitled to be paid out of the assets of the Company legally available for distribution to stockholders, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the Common

Stock and Junior Securities and pari passu with any distribution to the holders of Parity Securities, an amount equal to the Stated Value (as defined in the Certificate of Designation) for each share of the Series A Preferred Stock held by such Holder and an amount equal to any accrued and unpaid dividends thereon, and thereafter the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Company the same amount that a holder of Common Stock would receive if the Series A Preferred Stock were fully converted (disregarding for such purposes any conversion limitations hereunder) to Common Stock which amounts shall be paid pari passu with all holders of Common Stock. The Company shall mail written notice of any such Liquidation, not less than sixty (60) days prior to the payment date stated therein, to each Holder.

#### *Conversion*

Each share of the Series A Preferred Stock shall be convertible, at any time and from time to time from and after September 29, 2022 at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d) of the Certificate of Designation) determined by dividing the Stated Value of such share of the Series A Preferred Stock (\$1,000 as of September 29, 2022) by the Conversion Price (as defined below) subject to certain terms of the beneficial ownership limitation described in this Certificate of Designation. The conversion price for each share of the Series A Preferred Stock is the Nasdaq official closing price of the Common Stock on The Nasdaq Capital Market (as reflected on Nasdaq.com) on September 29, 2022, subject to adjustment as described in the Certificate of Designation, including for stock dividends and stock splits such as the one-for-one hundred (1-for-100) reverse stock split (the "November Reverse Stock Split") of our common stock which became effective as of the close of business on November 3, 2022 and the one-for-twenty-five (1-for-25) reverse stock split (the "August

Reverse Stock Split,” together with the November Reverse Stock Split, the “Reverse Stock Splits”) of our common stock which became effective as of the close of business on August 22, 2023 (the “Conversion Price”).

#### *Certain Adjustments*

If the Company, at any time while the Series A Preferred Stock is outstanding, pays a stock dividend, issues stock splits, effects any subsequent rights offerings, or makes any dividend or other distribution of its assets, then the Conversion Price of the Series A Preferred Stock adjusts (in the case of a stock split), and the Holder can acquire the purchase rights of the Company’s securities, or participate in the distribution of the Company’s assets pursuant to Section 7 of the Certificate of Designation.

#### *Preemptive Rights*

No holders will have any preemptive rights to purchase or subscribe for the Company’s Common Stock or any of its other securities.

#### *Redemption*

The Company has the option to redeem any or all of the then outstanding Series A Preferred Stock at 112% of the then Stated Value any time after September 29, 2022 and so long as there is an effective Registration Statement covering the shares issuable upon conversion of the Series A Preferred Stock.

#### *Trading Market*

The Holders can liquidate or convert the Series A Preferred Shares according to the terms of this Certificate of Designation. However, there is no established trading market for any of the Series A Preferred Stock, and the Company does not expect a market to develop. The Company does not intend to apply for a listing for any of the Series A Preferred Stock on any securities exchange or other nationally recognized trading system.

#### **Series C Convertible Preferred Stock**

On June 21, 2023, the Company filed the Certificate of Designation with the Secretary of State for the State of Delaware designating up to 5,761 shares out of the authorized but unissued shares of its preferred stock as Series C Convertible Preferred Stock. The following is a summary of the principal terms of the Series C Preferred Stock.

#### *Dividends*

Except for stock dividends or distributions for which adjustments are to be made pursuant to the Certificate of Designation, the holders of the Series C Preferred Stock (the “Series C Holders”) shall be entitled to receive, and the Company shall pay, dividends on shares of the Series C Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of the Series C Preferred Stock.

#### *Voting Rights*

The Series C Holders are entitled to vote as a class as expressly provided in the Certificate of Designation and where required pursuant to applicable law (including, without limitation, the DGCL). The Series C Holders are also entitled to vote with the holders of shares of Common Stock, voting together as one class, on all matters in which the Series C Holders are permitted to vote with the class of shares of Common Stock pursuant to applicable law (including, without limitation, the DGCL).

With respect to any vote with the class of Common Stock, each share of the Series C Preferred Stock shall entitle the Holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in the Certificate of Designation) using the record date for determining the stockholders of the Company eligible to vote on such matters as the date as of which the conversion price is calculated. To the extent that under the DGCL the vote of the Series C Holders, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the Required Holders (as defined in the Certificate of Designation), voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL) shall constitute the



approval of such action by both the class or the series, as applicable. Series C Holders shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled to vote, which notice would be provided pursuant to the Company's bylaws and the DGCL.

#### *Ranking and Liquidation*

The Series C Preferred Stock shall rank (i) senior to all of the Common Stock; (ii) senior to Junior Securities; (iii) on parity with Parity Securities; and (iv) junior to Senior Securities, in each case, as to dividends or distributions of assets upon liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily. Subject to any superior liquidation rights of the holders of any Senior Securities of the Company and the rights of the Company's existing and future creditors, upon a Liquidation, each Holder shall be entitled to be paid out of the assets of the Company legally available for distribution to stockholders, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the Common Stock and Junior Securities and pari passu with any distribution to the holders of Parity Securities, an amount equal to the Stated Value (as defined in the Certificate of Designation) for each share of the Series C Preferred Stock held by such Holder and an amount equal to any accrued and unpaid dividends thereon, and thereafter the Series C Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Company the same amount that a holder of Common Stock would receive if the Series C Preferred Stock were fully converted (disregarding for such purposes any conversion limitations hereunder) to Common Stock which amounts shall be paid pari passu with all holders of Common Stock. The Company shall mail written notice of any such Liquidation, not less than sixty (60) days prior to the payment date stated therein, to each Holder.

#### *Conversion*

Each share of the Series C Preferred Stock shall be convertible, at any time and from time to time from and after June 21, 2023 at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d) of the Certificate of Designation) determined by dividing the Stated Value of such share of the Series C Preferred Stock (\$1,000 as of June 21, 2023) by the Conversion Price (as defined below) subject to certain terms of the beneficial ownership limitation described in this Certificate of Designation. The conversion price for each share of the Series C Preferred Stock is \$17.925, which is the lower of (a) the closing price per share of the Common Stock as reported on the Nasdaq Capital Market on June 20, 2023 (the trading day before the date of the Sundry SPA), and (b) the average closing price per share of Common Stock as reported on the Nasdaq Capital Market for the five trading days preceding the date of the Sundry SPA, subject to adjustment herein (the "Series C Conversion Price").

#### *Certain Adjustments*

If the Company, at any time while the Series C Preferred Stock is outstanding, pays a stock dividend, issues stock splits, effects any subsequent rights offerings, or makes any dividend or other distribution of its assets, then the Holder can adjust the Conversion Price of the Series C Preferred Stock, acquire the purchase rights of the Company's securities, or participate in the distribution of the Company's assets pursuant to Section 7 of the Certificate of Designation.

#### *Preemptive Rights*

No holders will have any preemptive rights to purchase or subscribe for the Company's Common Stock or any of its other securities.

#### *Redemption*

The Company has the option to redeem any or all of the then outstanding Series C Preferred Stock at 112% of the then Stated Value any time after June 21, 2023 and so long as there is an effective Registration Statement covering the shares issuable upon conversion of the Series C Preferred Stock.

#### *Trading Market*

The Series C Holders can liquidate or convert the Series C Preferred Shares according to the terms of this Certificate of Designation. However, there is no established trading market for any of the Series C Preferred Stock, and the Company does not expect a market to develop. The Company does not intend to apply for a listing for any of the Series C Preferred Stock on any securities exchange or other nationally recognized trading system.

## **Options**

As of September 14, 2023, there were outstanding options to acquire up to 1,558 shares of our common stock at exercise prices between \$2,350 and \$10,375 expiring between June 2024 and May 2031.

## **Warrants**

As of September 14, 2023, there were outstanding warrants to acquire up to 237,745 shares of our common stock at exercise prices between \$95 and \$19,150 expiring at various dates through January 2028.

### **Class B Warrants Issued to Certain Investor in December 2022 and Amended in August 2023**

#### *General*

The following is a brief summary of certain terms and conditions of the Class B Warrants. The following description is subject in all respects to the provisions contained in the form of Class B Warrant.

#### *Duration and Exercise Price*

Pursuant to a Warrant Amendment Agreement dated August 31, 2023, effective as of September 5, 2023, the Class B Warrants have an exercise price of \$9.43 per share. The Class B Warrants are immediately exercisable on September 5, 2023, and may be exercised at any time on or after September 5, 2023 and would expire on March 5, 2029. The exercise prices and numbers of shares of common stock issuable upon exercise are subject to appropriate adjustment in the event of stock dividends, stock splits, reorganizations or similar events affecting our common stock.

#### *Exercisability*

The Class B Warrants are exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). A holder (together with its affiliates) may not exercise any portion of such holder's Class B Warrants to the extent that the holder would own more than 4.99% (or 9.99%, at the holder's election) of our outstanding common stock immediately after exercise, except that upon notice from the holder to us, the holder may decrease or increase the limitation of ownership of outstanding stock after exercising the holder's Class B Warrants up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Class B Warrants, provided that any increase in such limitation shall not be effective until 61 days following notice to us.

#### *Cashless Exercise*

If, at the time a holder exercises its Class B Warrants, a registration statement registering the issuance of the shares of common stock underlying the Class B Warrants under the Securities Act, is not then effective or available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the Class B Warrant.

#### *Transferability*

A Class B Warrant may be transferred at the option of the holder upon surrender of the Class B Warrant to us together with the appropriate instruments of transfer.

#### *Fractional Shares*

No fractional shares of common stock will be issued upon the exercise of the Class B Warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the nearest whole number or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

*Trading Market*

There is no established trading market for any of the Class B Warrants, and we do not expect a market to develop. We do not intend to apply for a listing for any of the Class B Warrants on any securities exchange or other nationally recognized trading system. Without an active trading market, the liquidity of the

Class B Warrants will be limited.

*Rights as a Shareholder*

Except as otherwise provided in the warrants or by virtue of the holders' ownership of shares of our common stock, the holders of Class B Warrants do not have the rights or privileges of holders of our common stock, including any voting rights, until such Class B Warrant holders exercise their Class B Warrants.

*Fundamental Transaction*

In the event of a fundamental transaction, as described in the Class B Warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, the holders of the Class B Warrants will be entitled to receive upon exercise of the warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the Class B Warrants immediately prior to such fundamental transaction.

*Waivers and Amendments*

No term of the Class B Warrants may be amended or waived without the written consent of the holders of such Class B Warrants.

**Series A Warrants issued to Certain Investor in September 2023**

*General*

The following is a brief summary of certain terms and conditions of the Series A Warrants. The following description is subject in all respects to the provisions contained in the form of Series A Warrant.

*Duration and Exercise Price*

The Series A Warrants have an exercise price of \$9.43 per share. The Series A Warrants were immediately exercisable on September 5, 2023, and may be exercised at any time on or after the initial exercise date and would expire on March 5, 2029. The exercise prices and numbers of shares of common stock issuable upon exercise are subject to appropriate adjustment in the event of stock dividends, stock splits, reorganizations or similar events affecting our common stock.

*Exercisability*

The Series A Warrants are exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). A holder (together with its affiliates) may not exercise any portion of such holder's Series A Warrants to the extent that the holder would own more than 4.99% (or 9.99%, at the holder's election) of our outstanding common stock immediately after exercise, except that upon notice from the holder to us, the holder may decrease or increase the limitation of ownership of outstanding stock after exercising the holder's Series A Warrants up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Series A Warrants, provided that any increase in such limitation shall not be effective until 61 days following notice to us.

*Cashless Exercise*

If, at the time a holder exercises its Series A Warrants, a registration statement registering the issuance of the shares of common stock underlying the Series A Warrants under the Securities Act, is not then effective or available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the Series A Warrant.

*Transferability*

A Series A Warrant may be transferred at the option of the holder upon surrender of the Series A Warrant to us together with the appropriate instruments of transfer.

*Fractional Shares*

No fractional shares of common stock will be issued upon the exercise of the Series A Warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the nearest whole number or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

*Trading Market*

There is no established trading market for any of the Series A Warrants, and we do not expect a market to develop. We do not intend to apply for a listing for any of the Series A Warrants on any securities exchange or other nationally recognized trading system. Without an active trading market, the liquidity of the Series A Warrants will be limited.

*Rights as a Shareholder*

Except as otherwise provided in the warrants or by virtue of the holders' ownership of shares of our common stock, the holders of Series A Warrants do not have the rights or privileges of holders of our common stock, including any voting rights, until such Series A Warrant holders exercise their Series A Warrants

*Fundamental Transaction*

In the event of a fundamental transaction, as described in the Series A Warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, the holders of the Series A Warrants will be entitled to receive upon exercise of the warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the Series A Warrants immediately prior to such fundamental transaction.

*Waivers and Amendments*

No term of the Series A Warrants may be amended or waived without the written consent of the holders of such Series A Warrants.

**Series B Warrants issued to Certain Investor in September 2023**

*General*

The following is a brief summary of certain terms and conditions of the Series B Warrants. The following description is subject in all respects to the provisions contained in the form of Series B Warrant.

*Duration and Exercise Price*

The Series B Warrants have an exercise price of \$9.43 per share. The Series B Warrants were immediately exercisable on September 5, 2023, and may be exercised at any time on or after the initial exercise date and would expire on December 5, 2024. The exercise prices and numbers of shares of common stock issuable upon exercise are subject to appropriate adjustment in the event of stock dividends, stock splits, reorganizations or similar events affecting our common stock.

*Exercisability*

The Series B Warrants are exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). A holder (together with its affiliates) may not exercise any portion of such holder's Series B Warrants to the extent that the holder would own more than 4.99% (or 9.99%, at the holder's election) of our outstanding common stock immediately after exercise, except that upon notice from the holder to us, the holder may decrease or increase the limitation of ownership of outstanding stock after exercising the holder's Series B Warrants up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Series B Warrants, provided that any increase in such limitation shall not be effective until 61 days following notice to us.

*Cashless Exercise*

If, at the time a holder exercises its Series B Warrants, a registration statement registering the issuance of the shares of common stock underlying the Series B Warrants under the Securities Act, is not then effective or available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the Series B Warrant.

*Transferability*

A Series B Warrant may be transferred at the option of the holder upon surrender of the Series B Warrant to us together with the appropriate instruments of transfer.

*Fractional Shares*

No fractional shares of common stock will be issued upon the exercise of the Series B Warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the nearest whole number or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

*Trading Market*

There is no established trading market for any of the Series B Warrants, and we do not expect a market to develop. We do not intend to apply for a listing for any of the Series B Warrants on any securities exchange or other nationally recognized trading system. Without an active trading market, the liquidity of the Series B Warrants will be limited.

*Rights as a Shareholder*

Except as otherwise provided in the warrants or by virtue of the holders' ownership of shares of our common stock, the holders of Series B Warrants do not have the rights or privileges of holders of our common stock, including any voting rights, until such Series B Warrant holders exercise their Series B Warrants

*Fundamental Transaction*

In the event of a fundamental transaction, as described in the Series B Warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, the holders of the Series B Warrants will be entitled to receive upon exercise of the warrants the kind and amount of

securities, cash or other property that the holders would have received had they exercised the Series B Warrants immediately prior to such fundamental transaction.

*Waivers and Amendments*

No term of the Series B Warrants may be amended or waived without the written consent of the holders of such Series B Warrants.

**Placement Agent Warrants Issued in November 2022, January 2023 and September 2023**

*General*

The following is a brief summary of certain terms and conditions of our outstanding Placement Agent Warrants (the “Placement Agent Warrants”) that were issued to H.C. Wainwright & Co., LLC in a Best Efforts Offering in November 2022, in a Private Placement Transaction in January 2023 and in another Private Placement Transaction in September 2023. The following description is subject in all respects to the provisions contained in the form of Placement Agent Warrant, the form of which will be filed as an exhibit to the registration statement of which this prospectus forms a part.

*Duration and Exercise Price*

The Placement Agent Warrants that were issued to H.C. Wainwright & Co., LLC in the Best Efforts Offering in November 2022 have an exercise price of \$172 per share. The Placement Agent Warrants issued in the Private Placement Transaction in January 2023 have an exercise price of \$123 per share. The Placement Agent Warrants issued in the Private Placement Transaction in September 2023 have an exercise price of \$12.16 per share. The Placement Agent Warrants were immediately exercisable and may be exercised at any time on or after the initial exercise date and on or before the five-year anniversary of the date of issuance. The exercise prices and numbers of shares of common stock issuable upon exercise are subject to appropriate adjustment in the event of stock dividends, stock splits, reorganizations or similar events affecting our common stock.

*Exercisability*

The Placement Agent Warrants are exercisable, at the option of each holder, in whole or in part, by delivering to us a duly executed exercise notice accompanied by payment in full for the number of shares of our common stock purchased upon such exercise (except in the case of a cashless exercise as discussed below). A holder (together with its affiliates) may not exercise any portion of such holder’s Placement Agent Warrants to the extent that the holder would own more than 4.99% (or 9.99%, at the holder’s election) of our outstanding common stock immediately after exercise, except that upon notice from the holder to us, the holder may decrease or increase the limitation of ownership of outstanding stock after exercising the holder’s Placement Agent Warrants up to 9.99% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Placement Agent Warrants, provided that any increase in such limitation shall not be effective until 61 days following notice to us.

*Cashless Exercise*

If, at the time a holder exercises its Placement Agent Warrants, a registration statement registering the issuance of the shares of common stock underlying the Placement Agent Warrants under the Securities Act, is not then effective or available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder may elect instead to receive upon such exercise (either in whole or in part) the net number of shares of common stock determined according to a formula set forth in the Placement Agent Warrant.

*Transferability*

The Placement Agent Warrant may be transferred at the option of the holder upon surrender of the Placement Agent Warrant to us together with the appropriate instruments of transfer.

#### *Fractional Shares*

No fractional shares of common stock will be issued upon the exercise of the Placement Agent Warrants. Rather, the number of shares of common stock to be issued will, at our election, either be rounded up to the nearest whole number or we will pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the exercise price.

#### *Rights as a Shareholder*

Except as otherwise provided in the warrants or by virtue of the holders' ownership of shares of our common stock, the holders of Placement Agent Warrants do not have the rights or privileges of holders of our common stock, including any voting rights, until such Placement Agent Warrant holders exercise their Placement Agent Warrants.

#### *Fundamental Transaction*

In the event of a fundamental transaction, as described in the Placement Agent Warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, the holders of the Placement Agent Warrants will be entitled to receive upon exercise of the warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the Placement Agent Warrants immediately prior to such fundamental transaction.

#### *Waivers and Amendments*

No term of the Placement Agent Warrants may be amended or waived without the written consent of the holders of such Placement Agent Warrants.

#### **Hudson Global Common Stock Purchase Warrants**

Hudson Global Ventures, LLC, a New York limited liability company (the "Investor") entered into a fee agreement dated as of November 14, 2022.

The Common Stock Purchase Warrants have an exercise price of \$125 per share. The Common Stock Purchase Warrants are immediately exercisable and may be exercised at any time on or after the initial exercise date and on or before the five-year anniversary of the date of issuance.

#### **OID Notes and Warrants**

##### *December Notes*

On December 29, 2022, the Company and various purchasers (the "December Investors") executed a Securities Purchase Agreement (the "December SPA") whereby the December Investors purchased from the Company 20% OID promissory notes (the "December Notes") in the aggregate principal amount of \$4,000,000 (with an aggregate subscription amount of \$3,200,000). The December Notes were repaid in full in March 2023.

In connection with the December SPA, the Company issued to the December Investors an aggregate of 18,779 five-year warrants exercisable for shares of common stock at an exercise price equal to \$106.50, and 2,400 shares of our common stock. In addition, the Company entered into a Registration Rights Agreement with the investors, dated December 29, 2022 (the "December Registration Rights Agreement"). The December Registration Rights Agreement requires the Company to file a registration statement within 30 days of closing to register the incentive shares and the shares issuable upon exercise of the warrants.

##### *April Notes*

On April 7, 2023, the Company and various purchasers (the "April Investors") executed a Securities Purchase Agreement (the "April SPA") whereby the April Investors purchased from the Company 20% Original Issue Discount promissory notes (the "April Notes") in the aggregate principal amount of \$2,208,750 (with an aggregate subscription amount of \$1,800,000). The April Notes are due and payable on September 30, 2023 (the "Maturity Date"). The Company will also have the option to prepay the April Notes with no penalties at any time prior to the Maturity Date. If the Company or any subsidiary of the Company completes a

debt or equity financing of less than \$7,500,000, the Company is required to repay 50% of the remaining balance of the April Notes. Following such 50% repayment, the Company must also use any proceeds from any subsequent debt or equity financing to repay the April Notes. Upon the closing of any debt or equity financing of \$7,500,000 or greater, the Company is required to repay 100% of the April Notes with no penalties. If the April Notes are not repaid in full by the Maturity Date or if any other event of default occurs, (1) the face value of the April Notes will be automatically increased to 120%; (2) the April Notes will begin generating an annual interest rate of 20%, which will be paid in cash monthly until the default is cured; and (3) if such default continues for 14 or more calendar days, at the April Investors' discretion, the April Notes shall become convertible at the option of the April Investors into shares of the Company's Common Stock ("Conversion Shares") at a conversion price (the "Conversion Price") equal to the Nasdaq closing price of the Company's common stock, par value \$0.0001 per share (the "Common Stock"), on the Nasdaq Capital Market (as reflected on Nasdaq.com) on the date of the note conversion (the "Default Conversion Election"). If the April Investors elect such Default Conversion Election, (1) the Company shall use commercially reasonable efforts to submit to its stockholders as soon as practicable in order to obtain as soon as practicable stockholder approval for the Company to issue the number of Conversion Shares necessary to complete such conversion (inclusive of the OID) at the Conversion Price in accordance with Nasdaq Rule 5635(a)(1) and/or 5635(d) (as applicable, the "20% Rule"), Delaware corporate law and the Securities Exchange Act of 1934, as amended; (2) if such stockholder approval is obtained, such conversion shall be effected within one business day of such approval at the Conversion Price; (3) to the extent that, prior to obtaining such stockholder approval, the Company may then issue Conversion Shares at the Conversion Price without violating the 20% Rule (the "Maximum Amount"), the Company shall issue to the Investor the Maximum Amount of Conversion Shares at the Conversion Price; and (4) if such stockholder approval is not obtained within 14 calendar days of the conversion date, then the Company shall cause (i) all members of its management team to pledge their shares of common stock to the Investor to secure the repayment of amounts due under the Note, and (ii) the Chief Executive Officer to personally guarantee the repayment of all amounts due thereunder.

## **ELOC**

On August 27, 2021, the Company entered into what is sometimes termed an equity line of credit arrangement with Oasis Capital. Specifically, the Company entered into an equity purchase agreement (the "EPA"), pursuant to which Oasis Capital is committed to purchase up to \$17,500,000 of the Company's common stock over the 24-month term of the EPA. The Company is not obligated to request any portion of the \$17,500,000.

In connection with the execution of the EPA, the Company issued Oasis Capital \$350,000 of its shares of common stock, or 51 shares (the "Commitment Shares") at a per share price which was based on the closing sale price per share on the Nasdaq Capital Market on the trading date prior to issuance (the "Issuance Reference Date"), as adjusted for the reverse stock split. On the earlier of (i) the date that is nine months from the Execution Date, and (ii) the date that the EPA is terminated in accordance with its terms (the "Reference Date"), if the closing sale price per share on the Nasdaq Capital Market on the trading date preceding the Reference Date is higher than the closing sale price on the Issuance Reference Date, then Oasis Capital shall return to the Company a portion of the Commitment Shares equal to the amount of Commitment Shares required to be issued on the Execution Date minus the amount of Commitment Shares that would have been required to have been issued if the closing sale price per share on the Nasdaq Capital Market on the trading date preceding the Reference Date had been used to calculate the amount of Commitment Shares issuable on the Execution Date.

As of the date of this report, the Company has not drawn down any portion of this commitment, leaving the entire \$17,500,000 available under the equity line of credit, and for which the Company has agreed, pursuant to a registration rights agreement (the "Oasis Equity RRA"), to register the shares of common stock issuable further to the equity line of credit with the Securities and Exchange Commission (the "SEC"), before any such issuances. The actual number of shares that the Company may issue pursuant to the equity line of credit is not determinable as it is based on the market price of our common stock from time to time and the number of shares we desire to put to Oasis Capital.

During the 24-month term of the investment agreement, the Company may request a drawdown on the equity line of credit by delivering a "put notice" to Oasis Capital stating the dollar amount of shares the Company intends to sell to Oasis Capital. The Company may make either an Option 1 or Option 2 request to Oasis Capital. Under Option 1, the purchase price Oasis Capital is required to pay for the shares is the lesser of (i) the lowest traded price of our Common Stock on the Nasdaq Capital Market on the Clearing Date, which is the date on which Oasis Capital receives the put shares as DWAC shares in its brokerage account, or the average of the three lowest closing sale prices of our Common Stock on the Nasdaq Capital Market during the period of twelve consecutive trading days immediately preceding the Clearing Date. The maximum amount the Company may request in an Option 1 request is \$500,000. Under Option 2, the purchase price Oasis Capital is required to pay for the shares is the lesser of (i) 93% of the one (1) lowest traded price of our common stock on the Nasdaq Capital Market during the period of five (5) consecutive trading days



immediately preceding the put date, or (ii) 93% of the VWAP on the Clearing Date, or (iii) 93% of the closing bid price of the Company's common stock on the Nasdaq Capital Market on the Clearing Date. The maximum amount the Company may request in an Option 2 request is \$2,000,000.

#### **Anti-Takeover Provisions and Choice of Forum**

Certain provisions of Delaware law and our Sixth Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws could make the following more difficult:

- the acquisition of us by means of a tender offer;
- acquisition of control of us by means of a proxy contest or otherwise; and
- the removal of our incumbent officers and directors.

These provisions, summarized below, are expected to discourage certain types of coercive takeover practices and inadequate takeover bids and are designed to encourage persons seeking to acquire control of us to negotiate with our board of directors. We believe that the benefits of increased protection against an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging such proposals. Among other things, negotiation of such proposals could result in an improvement of their terms.

*Delaware Anti-Takeover Law.* We are subject to Section 203 of the Delaware General Corporation Law, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business acquisition" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless the "business acquisition" or the transaction in which the person became an interested stockholder is approved by our board of directors in a prescribed manner. Generally, a "business acquisition" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own, 15% or more of a corporation's voting stock. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

*Stockholder Meetings.* Under our bylaws, only the board of directors, the chairman of the board, the chief executive officer and the president, and stockholders holding an aggregate of 25% of our shares of our common stock may call special meetings of stockholders.

*No Cumulative Voting.* Our Sixth Amended and Restated Certificate of Incorporation and bylaws do not provide for cumulative voting in the election of directors.

*Action by Written Consent of Stockholders Prohibited.* Our Sixth Amended and Restated Certificate of Incorporation does not allow stockholders to act by written consent in lieu of a meeting, unless approved in advance by our board of directors.

*Undesignated Preferred Stock.* The authorization of undesignated preferred stock makes it possible for the board of directors without stockholder approval to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to obtain control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of us.

*Amendment of Provisions in the Sixth Amended and Restated Certificate of Incorporation.* The Sixth Amended and Restated Certificate of Incorporation will generally require the affirmative vote of the holders of at least 66 2/3% of the outstanding voting stock in order to amend any provisions of the Sixth Amended and Restated Certificate of Incorporation concerning, among other things:

- the required vote to amend certain provisions of the Sixth Amended and Restated Certificate of Incorporation;
- the reservation of the board of director's right to amend the Amended and Restated Bylaws, with all rights granted to stockholders being subject to this reservation;

- management of the business by the board of directors;
- number of directors and structure of the board of directors;
- removal and appointment of directors;
- director nominations by stockholders;
- prohibition of action by written consent of stockholders;
- personal liability of directors to us and our stockholders; and
- indemnification of our directors, officers, employees and agents.

*Choice of Forum.* Our Sixth Amended and Restated Certificate of Incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:

- any derivative action or proceeding brought on our behalf;
- any action asserting a breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders;
- any action asserting a claim against us or our directors, officers or other employees arising under the Delaware General Corporation Law, our Sixth Amended and Restated Certificate of Incorporation or our bylaws;
- any action or proceeding to interpret, apply, enforce or determine the validity of our Sixth Amended and Restated Certificate of Incorporation or our bylaws;
- any action or proceeding as to which the Delaware General Corporation Law confers jurisdiction to the Court of Chancery of the State of Delaware; or
- any action asserting a claim against us or our directors, officers or other employees that is governed by the “internal affairs doctrine” as that term is defined in Section 115 of the Delaware General Corporation Law, in all cases to the fullest extent permitted by law and subject to the court’s having personal jurisdiction over the indispensable parties named as defendants.

Our Sixth Amended and Restated Certificate of Incorporation further provides that unless the Company consents in writing to the selection of an alternative forum, the U.S. federal district courts have exclusive jurisdiction of the resolution of any complaint asserting a cause of action arising under the Securities Act. The enforceability of similar exclusive federal forum provisions in other companies’ organizational documents has been challenged in legal proceedings, and while the Delaware Supreme Court has ruled that this type of exclusive federal forum provision is facially valid under Delaware law, there is uncertainty as to whether other courts would enforce such provisions and that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. This exclusive forum provision does not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and to have consented to this exclusive forum provision of our Sixth Amended and Restated Certificate of Incorporation. This choice of forum provision may limit a stockholder’s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find this choice of forum provision in our Sixth Amended and Restated Certificate of Incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions. Additional costs associated with resolving an action in other jurisdictions could materially adversely affect our business, financial condition and results of operations.

### **Limitations on Directors' Liability and Indemnification**

Our Sixth Amended and Restated Certificate of Incorporation provides that our directors will not be personally liable to us or our stockholders for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

- any breach of their duty of loyalty to the corporation or its stockholders;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- payments of dividends or approval of stock repurchases or redemptions that are prohibited by Delaware law; or
- any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our Sixth Amended and Restated Certificate of Incorporation provides that we shall indemnify our directors, officers, employees and other agents to the fullest extent permitted by law, and our Amended and Restated Bylaws provide that we shall indemnify our directors and officers, and may indemnify our employees and other agents, to the fullest extent permitted by law. We believe that indemnification under our bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether Delaware law would permit indemnification.

We have entered into agreements to indemnify our directors and executive officers, in addition to the indemnification provided for in our Sixth Amended and Restated Certificate of Incorporation and bylaws. These agreements, among other things, provide for indemnification of our directors and officers for expenses, judgments, fines, penalties and settlement amounts incurred by any such person in any action or proceeding arising out of such person's services as a director or officer or at our request.

We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors and executive officers. There is no pending litigation or proceeding involving any of our directors, officers, employees or agents. We are not aware of any pending or threatened litigation or proceeding that might result in a claim for indemnification by a director, officer, employee or agent.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is VStock Transfer, LLC. VStock Transfer, LLC is also acting as the warrant agent for the pre-funded warrants. The telephone number of VStock Transfer, LLC is (212) 828-8436.

### **NasdaqCM Listing**

Our common stock and warrants are listed on the NasdaqCM under the symbols "DBGI" and "DBGIW", respectively.

## PLAN OF DISTRIBUTION

Each selling stockholder of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A selling stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Securityholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale;  
or
- any other method permitted pursuant to applicable law.

The selling stockholders may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the selling stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

In connection with the sale of the securities or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The selling stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The selling stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each selling stockholders has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the selling stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the shares of common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the selling stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the shares of Common Stock by the selling stockholders or any other person. We will make copies of this prospectus available to the selling stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

## LEGAL MATTERS

Manatt, Phelps & Phillips, LLP, Costa Mesa, California, will pass upon the validity of the shares of our common stock offered hereby.

## EXPERTS

The financial statements as of and for the years ended December 31, 2022 and 2021 of Digital Brands Group, Inc. (formerly Denim.LA, Inc.), and the financial statements of Sunnyside LLC, dba Sundry as of December 31, 2021, have been incorporated by reference and elsewhere in the registration statement in reliance on the report of dbbmckennon, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

No named experts under this section or under Legal Matters own any shares of our common stock.

## CHANGE IN CERTIFYING ACCOUNTANT

On May 4, 2023, dbbmckennon (“DBB”) informed the Company of their formal resignation as the Company’s independent registered public accounting firm.

The report of DBB on the Company’s consolidated financial statements for the fiscal years ended December 31, 2022 and December 31, 2021 did not contain an adverse opinion or a disclaimer of opinion, nor was it qualified or modified as to uncertainty, audit scope or accounting principle. The report had been prepared assuming that the Company would continue as a going concern and included an explanatory paragraph regarding the Company’s ability to continue as a going concern as result of net losses from inception, negative cash flow from operations, and lack of liquidity.

During the fiscal years ended December 31, 2022 and December 31, 2021 and the subsequent interim period through May 4, 2023, there were (a) no disagreements (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) between the Company and DBB on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which would have caused it to make reference to the subject matter of such a disagreement in connection with its audit reports on the Company’s consolidated financial statements for such years, and (b) no reportable events (as described in Item 304(a)(1)(v) of Regulation S-K), except the identification of a material weakness in the Company’s internal control over financial reporting.

The Company provided DBB with a copy of the foregoing disclosures and DBB has furnished a letter addressed to the SEC stating that it agrees with the statements made herein, a copy of which is included as Exhibit 16.1 to the registration statement of which this prospectus forms a part.

On May 5, 2023, the Company engaged Macias Gini & O’Connell LLP (“MGO”) as its new independent registered public accountant for the fiscal year ending December 31, 2023. The Audit Committee of the Company approved and authorized the engagement of MGO as the Company’s independent registered public accounting firm.

During the fiscal years ended December 31, 2022 and December 31, 2021 and the subsequent interim period through May 5, 2023, neither the Company nor anyone on its behalf consulted with MGO regarding (a) the application of accounting principles to a specified transaction, completed or proposed, or the type of audit opinion that might be rendered on the Company’s financial statements, and neither a written report nor oral advice was provided to the Company that MGO concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue, or (b) any matter that was either the subject of a disagreement (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) or a reportable event (as described in Item 304(a)(1)(v) of Regulation S-K).

**WHERE YOU CAN FIND MORE INFORMATION**

For further information with respect to our company and the securities being offered hereby, reference is hereby made to the registration statement, including the exhibits thereto and the financial statements, notes, and schedules filed as a part thereof.

No person is authorized to give you any information or make any representation other than those contained or incorporated by reference in this prospectus. Any such information or representation must not be relied upon as having been authorized. Neither the delivery of this prospectus nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in our affairs since the date of the prospectus.

We are subject to the informational requirements of the Exchange Act, and must file reports, proxy statements and other information with the SEC, such as current, quarterly and annual reports on Forms 8-K, 10-Q and 10-K. These filings will be a matter of public record and any person may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Further, the SEC maintains an Internet web site at <http://www.sec.gov> that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC's rules allow us to "incorporate by reference" information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, and subsequent information that we file with the SEC will automatically update and supersede that information. Any statement contained in this prospectus or a previously filed document incorporated by reference will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or a subsequently filed document incorporated by reference modifies or replaces that statement.

We incorporate by reference our documents listed below and any future filings made by us with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") between the date of this prospectus and the termination of the offering of the securities described in this prospectus. We are not, however, incorporating by reference any documents or portions thereof, whether specifically listed below or filed in the future, that are not deemed "filed" with the SEC, including any Compensation Committee report or any information furnished pursuant to Item 2.02 or 7.01 of Form 8-K or related exhibits furnished pursuant to Item 9.01 of Form 8-K.

This prospectus incorporates by reference the documents set forth below that have previously been filed with the SEC:

- Current Reports on Form 8-K, filed with the SEC on [September 5, 2023](#), [September 5, 2023](#), and on [September 14, 2023](#).

These reports contain important information about us, our financial condition and our results of operations.

All reports and other documents we subsequently file pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the termination of this offering, including all such documents we may file with the SEC after the date of the initial registration statement and prior to the effectiveness of the registration statement, but excluding any information furnished to, rather than filed with, the SEC, will also be incorporated by reference into this prospectus and deemed to be part of this prospectus from the date of the filing of such reports and documents.

You can obtain any of the documents incorporated by reference in this prospectus from the SEC through the SEC's website at [www.sec.gov](http://www.sec.gov), or at our website at [www.medmen.com](http://www.medmen.com). You may request a free copy of any of the documents incorporated by reference in this prospectus by writing or telephoning us at the following address:

Digital Brands Group Inc.  
1400 Lavaca Street,  
Austin, TX  
Phone: (209) 651-0172  
Attention: Corporate Secretary

Exhibits to the filings will not be sent, unless those exhibits have been specifically incorporated by reference in this prospectus.

You should rely only on the information contained in this prospectus. We have not authorized any person to provide you with any information that is different.

Please note that information contained in our website, whether currently posted or posted in the future, is not a part of this prospectus or the documents incorporated by reference in this prospectus.



**DIGITAL BRANDS GROUP, INC.**  
**FINANCIAL STATEMENTS**  
**JUNE 30, 2023 AND DECEMBER 31, 2022**

<a href="#">CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)</a>	F-2
<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)</a>	F-3
<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT) (UNAUDITED)</a>	F-4
<a href="#">CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)</a>	F-5
<a href="#">NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</a>	F-6

**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022 AND 2021**

<a href="#">REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM (PCAOB ID: 3501)</a>	F-22
<a href="#">CONSOLIDATED BALANCE SHEETS</a>	F-23
<a href="#">CONSOLIDATED STATEMENTS OF OPERATIONS</a>	F-24
<a href="#">CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)</a>	F-25
<a href="#">CONSOLIDATED STATEMENTS OF CASH FLOWS</a>	F-26
<a href="#">NOTES TO CONSOLIDATED FINANCIAL STATEMENTS</a>	F-27

**SUNNYSIDE, LLC, DBA SUNDRY**

**UNAUDITED FINANCIAL STATEMENTS**  
**FOR THE NINE MONTHS ENDED**  
**SEPTEMBER 30, 2022 AND 2021**

<a href="#">UNAUDITED BALANCE SHEETS</a>	F-60
<a href="#">UNAUDITED STATEMENTS OF OPERATIONS</a>	F-61
<a href="#">UNAUDITED STATEMENTS OF MEMBERS' EQUITY</a>	F-62
<a href="#">UNAUDITED STATEMENTS OF CASH FLOWS</a>	F-63
<a href="#">NOTES TO UNAUDITED FINANCIAL STATEMENTS</a>	F-64

**SUNNYSIDE, LLC, DBA SUNDRY**

**UNAUDITED FINANCIAL STATEMENTS**  
**FOR THE PERIOD ENDED**  
**DECEMBER 31, 2022**

<a href="#">UNAUDITED BALANCE SHEET</a>	F-70
<a href="#">UNAUDITED STATEMENT OF OPERATIONS</a>	F-71
<a href="#">UNAUDITED STATEMENT OF MEMBERS' EQUITY</a>	F-72
<a href="#">UNAUDITED STATEMENT OF CASH FLOWS</a>	F-73
<a href="#">NOTES TO UNAUDITED FINANCIAL STATEMENTS</a>	F-74

**SUNNYSIDE, LLC, DBA SUNDRY**

**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2021**

<a href="#">INDEPENDENT AUDITOR'S REPORT – DBBMCKENNON</a>	F-81
<a href="#">BALANCE SHEET</a>	F-83
<a href="#">STATEMENT OF OPERATIONS</a>	F-84
<a href="#">STATEMENT OF MEMBERS' EQUITY</a>	F-85
<a href="#">STATEMENT OF CASH FLOWS</a>	F-86
<a href="#">NOTES TO FINANCIAL STATEMENTS</a>	F-87

**DIGITAL BRANDS GROUP, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

	<b>June 30, 2023</b>	<b>December 31, 2022</b>
	<b>Unaudited</b>	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 335,470	\$ 1,275,616
Accounts receivable, net	196,919	583,368
Due from factor, net	438,142	839,400
Inventory	4,771,271	5,122,564
Prepaid expenses and other current assets	872,142	766,901
Assets per discontinued operations, current	—	241,544
Total current assets	<u>6,613,944</u>	<u>8,829,394</u>
Property, equipment and software, net	98,170	104,512
Goodwill	8,973,501	8,973,501
Intangible assets, net	11,421,311	12,906,238
Deposits	106,547	193,926
Right of use asset	339,085	102,349
Assets per discontinued operations.	—	2,628,136
Total assets	<u>\$ 27,552,558</u>	<u>\$ 33,738,056</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current liabilities:		
Accounts payable	\$ 8,143,991	\$ 8,016,173
Accrued expenses and other liabilities	5,038,937	3,936,920
Deferred revenue	—	—
Due to related parties	472,790	555,217
Contingent consideration liability	—	12,098,475
Convertible note payable, net	100,000	2,721,800
Accrued interest payable	1,779,274	1,561,795
Note payable - related party	—	—
Loans payable, current	1,190,405	1,829,629
Promissory notes payable, net	5,613,839	9,000,000
Right of use liability, current portion	312,226	102,349
Liabilities per discontinued operations, current	—	1,071,433
Total current liabilities	<u>22,651,462</u>	<u>40,893,792</u>
Loans payable, net of current portion	443,635	150,000
Right of use liability	33,501	—
Liabilities per discontinued operations	—	147,438
Total liabilities	<u>23,128,598</u>	<u>41,191,230</u>
Commitments and contingencies		
Stockholders' deficit:		
Undesignated preferred stock, \$0.0001 par, 10,000,000 shares authorized, 0 shares issued and outstanding as of both June 30, 2023 and December 31, 2022	—	—
Series A preferred stock, \$0.0001 par, 1 share authorized, no shares issued and outstanding as of June 30, 2023 and December 31, 2022	—	—
Series A convertible preferred stock, \$0.0001 par, 6,800 shares designated, 6,300 shares issued and outstanding as of both June 30, 2023 and December 31, 2022	1	1
Series C convertible preferred stock, \$0.0001 par, 5,671 shares designated, 5,671 and 0 shares issued and outstanding as of June 30, 2023 and December 31, 2022, respectively	1	—
Common stock, \$0.0001 par, 1,000,000,000 shares authorized, 316,906 and 178,758 shares issued and outstanding as of June 30, 2023 and December 31, 2022, respectively	31	18
Additional paid-in capital	109,263,332	96,294,123
Accumulated deficit	(104,839,404)	(103,747,316)
Total stockholders' deficit	<u>4,423,960</u>	<u>(7,453,174)</u>
Total liabilities and stockholders' deficit	<u>\$ 27,552,558</u>	<u>\$ 33,738,056</u>

See the accompanying notes to the unaudited condensed consolidated financial statements

DIGITAL BRANDS GROUP, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(UNAUDITED)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
		Restated		Restated
Net revenues	\$ 4,493,424	\$ 2,649,432	\$ 8,869,803	\$ 5,278,562
Cost of net revenues	2,157,349	1,536,703	4,540,488	3,552,396
Gross profit	2,336,075	1,112,729	4,329,315	1,726,166
Operating expenses:				
General and administrative	4,074,051	4,243,031	8,380,063	8,073,621
Sales and marketing	1,097,326	1,372,568	2,036,677	2,230,087
Distribution	242,214	221,925	512,399	424,773
Change in fair value of contingent consideration	(10,698,475)	5,920,919	(10,698,475)	7,121,240
Total operating expenses	(5,284,884)	11,758,443	230,664	17,849,721
Income (loss) from operations	7,620,959	(10,645,714)	4,098,651	(16,123,555)
Other income (expense):				
Interest expense	(1,086,889)	(2,173,769)	(2,951,487)	(3,730,612)
Loss on disposition of business	—	—	—	—
Other non-operating income (expenses)	2,240	3,336,963	(676,749)	2,653,375
Total other income (expense), net	(1,084,649)	1,163,194	(3,628,236)	(1,077,237)
Income tax benefit (provision)	—	—	—	—
Net income (loss) from continuing operations	6,536,310	(9,482,520)	470,415	(17,200,792)
Income (loss) from discontinued operations, net of tax	(1,492,050)	(51,404)	(1,562,503)	(166,074)
Net income (loss)	\$ 5,044,260	\$ (9,533,924)	\$ (1,092,088)	\$ (17,366,866)
Weighted average common shares outstanding— basic	246,809	14,329	236,824	9,836
Weighted average common shares outstanding— diluted	834,604	14,329	824,619	9,836
Net income (loss) from continuing per common share— basic	\$ 26.48	\$ (661.78)	\$ 1.99	\$ (1,748.68)
Net income (loss) from continuing per common share— diluted	\$ 7.83	\$ (661.78)	\$ 0.57	\$ (1,748.68)

See the accompanying notes to the unaudited condensed consolidated financial statements

DIGITAL BRANDS GROUP, INC.

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT  
(UNAUDITED)

	Series A Convertible Preferred Stock		Series B Preferred Stock		Series C Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
<b>Balances at December 31, 2021</b>	—	\$ —	—	\$ —	—	\$ —	521	\$ 0	\$ 58,614,173	\$ (65,703,954)	\$ (7,089,781)
Conversion of notes into common stock	—	—	—	—	—	—	350	—	1,201,582	—	1,201,582
Stock-based compensation	—	—	—	—	—	—	—	—	139,093	—	139,093
Net loss	—	—	—	—	—	—	—	—	—	(7,832,942)	(7,832,942)
<b>Balances at March 31, 2022</b>	—	\$ —	—	\$ —	—	\$ —	870	\$ 0	\$ 59,954,848	\$ (73,536,896)	\$ (13,582,048)
Issuance of common stock in public offering	—	—	—	—	—	—	14,956	1	9,347,449	—	9,347,450
Offering costs	—	—	—	—	—	—	—	—	(1,930,486)	—	(1,930,486)
Conversion of notes and derivative liability into common stock	—	—	—	—	—	—	644	—	600,790	—	600,790
Warrants issued in connection with note	—	—	—	—	—	—	—	—	98,241	—	98,241
Stock-based compensation	—	—	—	—	—	—	—	—	119,759	—	119,759
Net loss	—	—	—	—	—	—	—	—	—	(9,533,924)	(9,533,924)
<b>Balances at June 30, 2022</b>	—	\$ —	—	\$ —	—	\$ —	16,470	\$ 2	\$ 68,190,600	\$ (83,070,820)	\$ (14,880,218)
<b>Balances at December 31, 2022</b>	6,300	\$ 1	—	\$ —	—	\$ —	178,758	\$ 18	\$ 96,294,123	\$ (103,747,316)	\$ (7,453,174)
Issuance of common stock pursuant to private placement	—	—	—	—	—	—	50,890	5	4,999,998	—	5,000,003
Offering costs	—	—	—	—	—	—	—	—	(536,927)	—	(536,927)
Shares issued for services	—	—	—	—	—	—	4,756	—	499,338	—	499,338
Shares and warrants issued with notes	—	—	—	—	—	—	4,400	—	658,494	—	658,494
Stock-based compensation	—	—	—	—	—	—	—	—	105,594	—	105,594
Net loss	—	—	—	—	—	—	—	—	—	(6,136,349)	(6,136,349)
<b>Balances at March 31, 2023</b>	6,300	\$ 1	—	\$ —	—	\$ —	238,803	23	\$ 102,020,620	\$ (109,883,665)	\$ (7,863,022)
Conversion of notes into preferred stock	—	—	—	—	5,761	—	1	—	5,759,177	—	5,759,177
Issuance of Series B preferred stock	—	—	1	—	—	—	—	—	25,000	—	25,000
Issuance of common stock pursuant to disposition	—	—	—	—	—	—	78,103	8	1,357,035	—	1,357,043
Stock-based compensation	—	—	—	—	—	—	—	—	101,500	—	101,500
Net income	—	—	—	—	—	—	—	—	—	5,044,260	5,044,261
<b>Balances at June 30, 2023</b>	6,300	\$ 1	1	\$ —	5,761	\$ 1	316,906	\$ 31	\$ 109,263,332	\$ (104,839,404)	\$ 4,423,960

See the accompanying notes to the unaudited condensed consolidated financial statements

DIGITAL BRANDS GROUP, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(UNAUDITED)

	Six Months Ended	
	June 30,	
	2023	2022
<b>Cash flows from operating activities:</b>		
Net loss	\$ (1,092,088)	\$ (17,366,866)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,765,619	1,113,188
Amortization of loan discount and fees	1,611,433	2,818,174
Loss on extinguishment of debt	689,100	—
Loss on disposition of business	1,523,940	—
Stock-based compensation	207,094	258,852
Shares issued for services	499,338	—
Change in credit reserve	344,140	(5,053)
Change in fair value of warrant liability	—	(18,223)
Change in fair value of derivative liability	—	(880,388)
Forgiveness of Payroll Protection Program	—	(1,760,755)
Change in fair value of contingent consideration	(10,698,475)	7,121,240
Discontinued Operation	7,666	—
Changes in operating assets and liabilities:		
Accounts receivable, net	375,685	(100,662)
Due from factor, net	(96,955)	202,787
Inventory	454,011	(128,255)
Prepaid expenses and other current assets	(44,213)	(395,781)
Accounts payable	92,494	435,110
Accrued expenses and other liabilities	1,346,068	1,461,572
Deferred revenue	(183,782)	(55,034)
Accrued interest	217,479	690,624
Net cash used in operating activities	(2,981,446)	(6,609,470)
<b>Cash flows from investing activities:</b>		
Deposits	(18,192)	—
Purchase of property, equipment and software	(27,855)	—
Deposits	87,378	—
Net cash provided by (used in) investing activities	41,331	—
<b>Cash flows from financing activities:</b>		
Proceeds (repayments) from related party advances	(57,427)	(172,036)
Advances (repayments) from factor	154,073	(142,436)
Issuance of loans and notes payable	4,194,799	548,808
Repayments of convertible notes and loans payable	(6,604,552)	(3,068,750)
Issuance of convertible notes payable	—	2,301,250
Issuance of common stock in public offering	5,000,003	9,347,450
Offering costs	(686,927)	(1,930,486)
Net cash provided by financing activities	1,999,969	6,883,800
<b>Net change in cash and cash equivalents</b>	(940,146)	274,330
Cash and cash equivalents at beginning of period	1,275,616	528,394
Cash and cash equivalents at end of period	\$ 335,470	\$ 802,724
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for income taxes	\$ —	\$ —
Cash paid for interest	\$ 686,071	\$ 191,152
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Conversion of notes into common stock	\$ —	\$ 1,802,372
Conversion of notes into preferred stock	\$ 5,759,177	—
Right of use asset	\$ 467,738	\$ 201,681
Warrant and common shares issued with notes.	\$ —	\$ 98,241

See the accompanying notes to the unaudited condensed consolidated financial statements

**NOTE 1: NATURE OF OPERATIONS**

Digital Brands Group, Inc. (the “Company” or “DBG”), was organized on September 17, 2012 under the laws of Delaware as a limited liability company under the name Denim.LA LLC. The Company converted to a Delaware corporation on January 30, 2013 and changed its name to Denim.LA, Inc. Effective December 31, 2020, the Company changed its name to Digital Brands Group, Inc. (DBG).

The Company is a curated collection of lifestyle brands, including Bailey, DSTLD, Harper & Jones, Stateside and ACE Studios, that offers a variety of apparel products through direct-to-consumer and wholesale distribution.

On February 12, 2020, Denim.LA, Inc. entered into an Agreement and Plan of Merger with Bailey 44, LLC (“Bailey”), a Delaware limited liability company. On the acquisition date, Bailey, LLC became a wholly owned subsidiary of the Company.

On May 18, 2021, the Company closed its acquisition of Harper & Jones, LLC (“H&J”) pursuant to its Membership Interest Stock Purchase Agreement with D. Jones Tailored Collection, Ltd. to purchase 100% of the issued and outstanding equity of Harper & Jones, LLC. On the acquisition date, H&J became a wholly owned subsidiary of the Company.

On August 30, 2021, the Company closed its acquisition of Mosbest, LLC dba Stateside (“Stateside”) pursuant to its Membership Interest Purchase Agreement with Moise Emquies to purchase 100% of the issued and outstanding equity of Stateside. On the acquisition date, Stateside became a wholly owned subsidiary of the Company.

On December 30, 2022, the Company closed its previously announced acquisition of Sunnyside, LLC dba Sundry (“Sundry”) pursuant to its Second Amended and Restated Membership Interest Purchase Agreement with Moise Emquies to purchase 100% of the issued and outstanding equity of Sundry. On the acquisition date, Sundry became a wholly owned subsidiary of the Company.

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the parties’ execution of the Settlement Agreement (i) the Company agreed to make an aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. (“D. Jones”), (ii) the Company issued 78,103 shares of common stock to D. Jones, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones. The H&J Settlement was accounted for a business disposition.

**NOTE 2: GOING CONCERN**

The accompanying condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has not generated profits since inception, has sustained net losses of \$1,092,088 and \$17,366,866 for the six months ended June 30, 2023 and 2022, respectively, and has incurred negative cash flows from operations for the six months ended June 30, 2023 and 2022. The Company has historically lacked liquidity to satisfy obligations as they come due and as of June 30, 2023, and the Company had a working capital deficit of \$16,037,518. These factors, among others, arise substantial doubt about the Company’s ability to continue as a going concern. The Company expects to continue to generate operating losses for the foreseeable future. The accompanying consolidated financial statements do not include any adjustments as a result of this uncertainty.

The Company’s ability to continue as a going concern for the next 12 months from the date the financial statements were available to be issued is dependent upon its ability to generate sufficient cash flows from operations to meet its obligations, which it has not been able to accomplish to date, and/or to obtain additional capital financing. Through the date the financial statements were available to be issued, the Company has been primarily financed through the issuance of capital stock and debt. In the event that the Company cannot generate sufficient revenue to sustain its operations, the Company will need to reduce expenses or obtain financing through the sale of debt and/or equity securities. The issuance of additional equity would result in dilution to existing shareholders. If the Company is unable to obtain additional funds when they are needed or if such funds cannot be obtained on terms acceptable to the Company, the Company would be unable to execute upon the business plan or pay costs and expenses as they are incurred, which would have a material, adverse effect on the business, financial condition and results of operations. No assurance can be given that the Company will be successful in these efforts.

### NOTE 3: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Basis of Presentation

The accounting and reporting policies of the Company conform to accounting principles generally accepted in the United States of America (“GAAP”).

#### Reverse Stock Split

On October 21, 2022, the Board of Directors approved a one-for-100 reverse stock split of its issued and outstanding shares of common stock and a proportional adjustment to the existing conversion ratios for each series of the Company’s preferred stock. The reverse stock split became effective as of November 3, 2022. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this reverse stock split and adjustment of the preferred stock conversion ratios.

#### Unaudited Interim Financial Information

The accompanying unaudited condensed consolidated balance sheet as of June 30, 2023, the unaudited condensed consolidated statements of operations for the six and six months ended June 30, 2023 and 2022 and of cash flows for the six months ended June 30, 2023 and 2022 have been prepared by the Company, pursuant to the rules and regulations of the SEC for the interim financial statements. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to rules and regulations. However, the Company believes that the disclosures are adequate to make the information presented not misleading. The unaudited interim consolidated financial statements have been prepared on a basis consistent with the audited consolidated financial statements and in the opinion of management, reflect all adjustments, consisting of only normal recurring adjustments, necessary for the fair presentation of the consolidated results for the interim periods presented and of the consolidated financial condition as of the date of the interim consolidated balance sheet. The results of operations are not necessarily indicative of the results expected for the year ended December 31, 2023.

The accompanying unaudited interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and the notes thereto for the year ended December 31, 2022 included in the Company’s Annual Form 10-K filed with SEC on April 17, 2023.

#### Principles of Consolidation

These condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries Bailey, H&J and Stateside from the dates of acquisition. All inter-company transactions and balances have been eliminated on consolidation. As of June 21, 2023, the Company no longer consolidated the assets, liabilities, revenues and expenses of H&J (see Note 4).

#### Use of Estimates

The preparation of the Company’s financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Significant estimates and assumptions reflected in these financial statements include, but are not limited to, inventory, impairment of long-lived assets, contingent consideration and derivative liabilities. The Company bases its estimates on historical experience, known trends and other market-specific or other relevant factors that it believes to be reasonable under the circumstances. On an ongoing basis, management evaluates its estimates when there are changes in circumstances, facts and experience. Changes in estimates are recorded in the period in which they become known. Actual results could differ from those estimates.

#### Reclassification of Previously Issued Financial Statements

Certain prior year accounts have been reclassified to conform with current year presentation pertaining to cost of net revenue and general and administrative expenses. The Company has reclassified \$297,696 and \$630,976 in general and administrative expenses per previously reported financial statements to cost of net revenues in the accompanying consolidated statements of operations for the

three and six months ended June 30, 2022, respectively. The reclassified costs from general and administrative expense to cost of net revenues are primarily personnel and warehouse related costs. The reclassification had no effect on the reported results of operations.

Certain prior year accounts have been reclassified to conform with current year presentation regarding income (loss) from discontinued operations. H&J's assets and liabilities as of December 31, 2022 have also been reclassified on the consolidated balance sheet. See Note 4.

**Cash and Equivalents and Concentration of Credit Risk**

The Company considers all highly liquid securities with an original maturity of less than six months to be cash equivalents. As of June 30, 2023 and December 31, 2022, the Company did not hold any cash equivalents. The Company's cash and cash equivalents in bank deposit accounts, at times, may exceed federally insured limits of \$250,000.

**Fair Value of Financial Instruments**

The Company's financial instruments consist of cash and cash equivalents, prepaid expenses, accounts payable, accrued expenses, due to related parties, related party note payable, and convertible debt. The carrying value of these assets and liabilities is representative of their fair market value, due to the short maturity of these instruments.

The following tables present information about the Company's financial assets and liabilities measured at fair value on a recurring basis and indicates the level of the fair value hierarchy used to determine such fair values:

	Fair Value Measurements as of June 30, 2023 Using:			
	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Contingent consideration	\$ —	\$ —	\$ —	\$ —
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

  

	Fair Value Measurements as of December 31, 2022 Using:			
	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Contingent consideration	\$ —	\$ —	\$ 12,098,475	\$ 12,098,475
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 12,098,475</u>	<u>\$ 12,098,475</u>

*Contingent Consideration*

The Company recorded a contingent consideration liability relating to stock price guarantees included in its acquisitions of Bailey44 and H&J. The estimated fair value of the contingent consideration was recorded using significant unobservable measures and other fair value inputs and was therefore classified as a Level 3 financial instrument.

The Company estimates and records the acquisition date fair value of contingent consideration as part of purchase price consideration for acquisitions. Additionally, each reporting period, the Company estimates changes in the fair value of contingent consideration and recognizes any change in fair in the consolidated statement of operations. The estimate of the fair value of contingent consideration requires very subjective assumptions to be made of future operating results, discount rates and probabilities assigned to various potential operating result scenarios. Future revisions to these assumptions could materially change the estimate of the fair value of contingent consideration and, therefore, materially affect the Company's future financial results. The contingent consideration liability is to be settled with the issuance of shares of common stock once contingent provisions set forth in respective acquisition agreements have been achieved. Upon achievement of contingent provisions, respective liabilities are relieved and offset by increases to common stock and additional paid-in capital in the stockholders' equity section of the Company's consolidated balance sheets.



Norwest Waiver

On June 21, 2023, the Company, on the one hand, and Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP (together, the “Norwest Investors”), on the other hand, executed a Waiver and Amendment (the “Norwest Amendment”) whereby the Norwest Investors agreed to waive and terminate certain true up rights of the Norwest Investors under the Agreement and Plan of Merger, dated February 12, 2020 (the “Bailey Merger Agreement”), among the Company, Bailey 44, LLC, Norwest Venture Partners XI, LP, and Norwest Venture Partners XII, LP and Denim.LA Acquisition Corp. This transaction is known as the “Norwest Waiver”. As a result of the Norwest Waiver, the Company recorded a fair value of \$0 pertaining to the contingent consideration contemplated under the Bailey Merger Agreement, resulting in a gain in the change in fair value of contingent consideration of \$10,698,475.

H&J Settlement Agreement

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby the Company transferred 100% of its membership interests in H&J to D. Jones (the “H&J Seller”). Pursuant to the Settlement Agreement, the Company agreed to make an aggregate cash payment of \$229,000 to the H&J Seller and the Company issued 78,103 shares of common stock to the H&J Seller. In connection with the Settlement Agreement, the parties agreed that no further shares were owed to the H&J Seller resulting from the stock price guarantee pursuant to the May 2021 H&J acquisition. As a result, the Company recorded a fair value of \$0 pertaining to the H&J contingent consideration, resulting in a gain in the change in fair value of contingent consideration of \$1,400,000. The change in fair value was include in loss from discontinued operations in the consolidated statements of operations. See Note 4 for further detail.

The detail of contingent consideration by company is as follows:

	June 30, 2023	December 31, 2022
Bailey	\$ —	\$ 10,698,475
Harper & Jones	—	1,400,000
	<u>\$ —</u>	<u>\$ 12,098,475</u>

Inventory

Inventory is stated at the lower of cost or net realizable value and accounted for using the weighted average cost method for DSTLD and first-in, first-out method for Bailey, Stateside and Sundry. The inventory balances as of June 30, 2023 and December 31, 2022 consist substantially of finished good products purchased or produced for resale, as well as any raw materials the Company purchased to modify the products and work in progress.

Inventory consisted of the following:

	June 30, 2023	December 31, 2022
Raw materials	\$ 1,508,416	\$ 1,611,134
Work in process	653,412	888,643
Finished goods	2,609,443	2,725,505
Inventory	<u>\$ 4,771,271</u>	<u>\$ 5,225,282</u>

Goodwill

Goodwill and identifiable intangible assets that have indefinite useful lives are not amortized, but instead are tested annually for impairment and upon the occurrence of certain events or substantive changes in circumstances. The annual goodwill impairment test allows for the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. An entity may choose to perform the qualitative assessment on none, some or all of its reporting units or an entity may bypass the qualitative assessment for any reporting unit and proceed directly to step one of the quantitative impairment test. If it is determined, on the basis of qualitative factors, that the fair value of a reporting unit is, more likely than not, less than its carrying value, the quantitative impairment test is required.

Annual Impairment

At December 31, 2022, management determined that certain events and circumstances occurred that indicated that the carrying value of the Company's brand name assets, and the carrying amount of the reporting units, pertaining to Bailey44 and Harper & Jones may not be recoverable. The qualitative assessment was primarily due to reduced or stagnant revenues of both entities as compared to the Company's initial projections at the time of each respective acquisition, as well as the entities' liabilities in excess of assets. As such, the Company compared the estimated fair value of the brand names with its carrying value and recorded an impairment loss of \$3,667,000 in the consolidated statements of operations. Additionally, the Company compared the fair value of the reporting units to the carrying amounts and recorded an impairment loss of \$11,872,332 pertaining to goodwill in the consolidated statements of operations.

Net Loss per Share

Net earnings or loss per share is computed by dividing net income or loss by the weighted-average number of common shares outstanding during the period, excluding shares subject to redemption or forfeiture. The Company presents basic and diluted net earnings or loss per share. Diluted net earnings or loss per share reflect the actual weighted average of common shares issued and outstanding during the period, adjusted for potentially dilutive securities outstanding. Potentially dilutive securities are excluded from the computation of the diluted net loss per share if their inclusion would be anti-dilutive.

The following table sets forth the computation of basic and diluted net income (loss) per share:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2023	2022	2023	2022
<b>Numerator:</b>				
Net income (loss) from continuing operations	\$ 6,536,310	\$ (9,482,520)	\$ 470,415	\$ (17,200,792)
Income (loss) from discontinued operations, net of tax	(1,492,050)	(51,404)	(1,562,503)	(166,074)
Net income (loss)	<u>\$ 5,044,260</u>	<u>\$ (9,533,924)</u>	<u>\$ (1,092,088)</u>	<u>\$ (17,366,866)</u>
<b>Denominator:</b>				
Weighted average common shares outstanding - basic	246,809	14,329	236,824	9,836
Weighted average common shares outstanding - diluted	834,604	14,329	824,619	9,836
Net income (loss) from continuing operations per share - basic	\$ 26.48	\$ (661.78)	\$ 1.99	\$ (1,748.68)
Net income (loss) from continuing operations per share - diluted	\$ 7.83	\$ (661.78)	\$ 0.57	\$ (1,748.68)
Net income (loss) from discontinued operations per common share – basic	\$ (6.05)	\$ (3.59)	\$ (6.60)	\$ (16.88)
Net income (loss) from discontinued operations per common share – diluted	\$ (6.05)	\$ (3.59)	\$ (6.60)	\$ (16.88)
Net income (loss) per share – basic	\$ 20.44	\$ (665.36)	\$ (4.61)	\$ (1,765.57)
Net income (loss) per share – diluted	\$ 6.04	\$ (665.36)	\$ (4.61)	\$ (1,765.57)

The following table sets forth the a) the dilutive items included in the weighted average common shares – diluted amount above as of June 30, 2023 and b) the number of potential common shares excluded from the calculations of net loss per diluted share because their inclusion would be anti-dilutive as of June 30, 2022:

	June 30,	
	2023	2022
Convertible notes	—	18,496
Series A convertible preferred stock	27,097	—
Series C convertible preferred stock	321,395	—
Common stock warrants	237,746	2,533
Stock options	<u>1,558</u>	<u>1,558</u>
	<u>587,795</u>	<u>22,588</u>

The stock options and warrants above are out-of-the-money as of June 30, 2023 and 2022.

Recent Accounting Pronouncements

In April 2019, the FASB issued ASU 2019-04, Codification Improvements to Topic 326, Financial Instruments-Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments, which amends and clarifies several provisions of Topic 326. In May 2019, the FASB issued ASU 2019-05, Financial Instruments-Credit Losses (Topic 326): Targeted Transition Relief, which amends Topic 326 to allow the fair value option to be elected for certain financial instruments upon adoption. ASU 2019-10 extended the effective date of ASU 2016-13 until December 15, 2022. The Company adopted this new guidance, including the subsequent updates to Topic 326, on January 1, 2023 and the adoption did not have a material impact on the Company's condensed consolidated financial statements and related disclosures.

Management does not believe that any other recently issued, but not yet effective, accounting standards could have a material effect on the accompanying financial statements. As new accounting pronouncements are issued, the Company will adopt those that are

Unaudited Pro Forma Financial Information

The following unaudited pro forma financial information presents the Company's financial results as if the Sundry acquisition had occurred as of January 1, 2022. The unaudited pro forma financial information is not necessarily indicative of what the financial results actually would have been had the acquisitions been completed on this date. In addition, the unaudited pro forma financial information is not indicative of, nor does it purport to project, the Company's future financial results. The following unaudited pro forma financial information includes incremental property and equipment depreciation and intangible asset amortization as a result of the acquisitions. The pro forma information does not give effect to any estimated and potential cost savings or other operating efficiencies that could result from the acquisition:

	<b>Six Months Ended June 30, 2022</b>
Net revenues	\$ 14,728,296
Net loss	\$ (16,907,152)
Net loss per common share	\$ (1,718.83)

**NOTE 4: DISCONTINUED OPERATIONS**

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the "Settlement Agreement") whereby contemporaneously with the parties' execution of the Settlement Agreement (i) the Company agreed to make an aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. ("D. Jones"), (ii) the Company issued 78,103 shares of common stock to D. Jones, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company's membership interest in H&J to D. Jones. This transaction is known as the "H&J Settlement".

The H&J Settlement was accounted for a business disposition in accordance with ASC 810-40-40-3A. As of June 21, 2023, the Company no longer consolidated the assets, liabilities, revenues and expenses of H&J. The components of the disposition are as follows:

Cash payment due to H&J Seller	\$ (229,000)
Common shares issued to H&J Seller*	(1,357,043)
Total fair value of consideration received (given)	<u>\$ (1,586,043)</u>
Carrying amount of assets and liabilities	
Cash and cash equivalents	18,192
Accounts receivable, net	55,782
Prepaid expenses and other current assets	25,115
Goodwill	1,130,311
Intangible assets, net	1,246,915
Deposits	4,416
Accounts payable	(40,028)
Accrued expenses and other liabilities	(734,068)
Deferred revenue	(18,347)
Due to related parties	(1,008)
Contingent consideration	(1,400,000)
Loan payable	(219,894)
Note payable - related party	(129,489)
Total carrying amount of assets and liabilities	(62,103)
Loss on disposition of business	<u>\$ (1,523,940)</u>

\* Represents the fair value of 78,103 shares of common stock issued to D. Jones.

Through June 30, 2023, the Company has made payments to D. Jones totaling \$150,000. The remaining balance of \$79,000 is included in accrued expenses and other liabilities on the consolidated balance sheet.

The loss of disposition of business of \$1,523,940 was included in income (loss) from discontinued operations, net of tax in the consolidated statements of operations.

[Table of Contents](#)

In accordance with the provisions of ASC 205-20, the Company has excluded the results of discontinued operations from its results of continuing operations in the accompanying consolidated statements of operations for the three and six months ended June 30, 2023 and 2022. The results of the discontinued operations of HJ for the three and six months ended June 30, 2023 and 2022 consist of the following:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Net revenues	\$ 686,627	\$ 1,089,569	\$ 1,405,482	\$ 1,892,849
Cost of net revenues	292,107	328,915	565,621	605,413
Gross profit	394,520	760,654	839,861	1,287,436
Operating expenses:				
General and administrative	189,751	449,508	520,582	896,873
Sales and marketing	169,875	332,723	346,167	515,775
Distribution	—	—	—	—
Change in fair value of contingent consideration	—	—	—	—
Total operating expenses	359,626	782,231	866,749	1,412,648
Income (loss) from operations	34,894	(21,577)	(26,888)	(125,212)
Other income (expense):				
Interest expense	(3,003)	(29,828)	(11,675)	(40,862)
Loss on disposition of business	(1,523,940)	—	(1,523,940)	—
Other non-operating income (expenses)	—	—	—	—
Total other income (expense), net	(1,526,944)	(29,828)	(1,535,615)	(40,862)
Income tax benefit (provision)	—	—	—	—
Net income (loss) from discontinued operations	\$ (1,492,050)	\$ (51,404)	\$ (1,562,503)	\$ (166,074)
Weighted average common shares outstanding - basic	246,809	14,329	236,824	9,836
Weighted average common shares outstanding - diluted	834,604	14,329	824,619	9,836
Net income (loss) from discontinued operations per common share - basic	\$ (6.05)	\$ (3.59)	\$ (6.60)	\$ (16.88)
Net income (loss) from discontinued operations per common share - diluted	\$ (6.05)	\$ (3.59)	\$ (6.60)	\$ (16.88)

**NOTE 5: DUE FROM FACTOR**

Due to/from factor consist of the following:

	June 30, 2023	December 31, 2022
Outstanding receivables:		
Without recourse	\$ 787,542	\$ 1,680,042
With recourse	50,979	65,411
Matured funds and deposits	88,516	81,055
Advances	(478,753)	(632,826)
Credits due customers	(10,142)	(354,282)
	\$ 438,142	\$ 839,400

**NOTE 6: GOODWILL AND INTANGIBLE ASSETS**

The following is a summary of goodwill attributable to each business combination:

	June 30, 2023	December 31, 2022
Bailey	\$ 3,158,123	\$ 3,158,123
Stateside	2,104,056	2,104,056
Sundry	3,711,322	3,711,322
	<u>\$ 8,973,501</u>	<u>\$ 10,103,812</u>

In connection with the H&J disposition, the Company derecognized \$1,130,311 in goodwill.

The following table summarizes information relating to the Company's identifiable intangible assets as of June 30, 2023:

	Gross Amount	Accumulated Amortization	Carrying Value
<b>Amortized:</b>			
Customer relationships	\$ 9,734,560	\$ (4,155,129)	\$ 5,579,431
	<u>\$ 9,734,560</u>	<u>\$ (4,155,129)</u>	<u>\$ 5,579,431</u>
<b>Indefinite-lived:</b>			
Brand name	\$ 5,841,880	—	5,841,880
	<u>\$ 15,576,440</u>	<u>\$ (4,155,129)</u>	<u>\$ 11,421,311</u>

In connection with the H&J disposition, the Company derecognized \$1,246,915 in intangible assets.

The Company recorded amortization expense of \$804,924 and \$537,812 during the three months ended June 30, 2023 and 2022, and \$1,759,277 and \$1,075,625 during the six months ended June 30, 2023 and 2022, respectively, which is included in general and administrative expenses in the consolidated statements of operations.

**NOTE 7: LIABILITIES AND DEBT**

Accrued Expenses and Other Liabilities

The Company accrued expenses and other liabilities line in the consolidated balance sheets is comprised of the following as of June 30, 2023 and December 31, 2022:

	June 30, 2023	December 31, 2022
Accrued expenses	\$ 503,927	\$ 668,714
Reserve for returns	—	307,725
Payroll related liabilities	4,009,812	2,618,870
Sales tax liability	277,800	262,765
Other liabilities	247,398	78,845
	<u>\$ 5,038,937</u>	<u>\$ 3,936,920</u>

As of June 30, 2023, payroll liabilities included an aggregate of \$1,288,048 in payroll taxes due to remit to federal and state authorities. Of this amount, \$620,400 pertained to DBG and \$667,648 pertained to Bailey44. The amounts are subject to further penalties and interest. The amounts are subject to further penalties and interest.

As of June 30, 2023 and December 31, 2022, accrued expenses included \$35,000 in accrued common stock issuances pursuant to an advisory agreement for services performed in 2022. The 5,000 shares of common stock owed per the agreement are expected to be issued in the third quarter of 2023. At June 30, 2023, accrued expenses also includes \$500,000 in accrued common stock issuances

owed to Sundry executives based on their employment agreements with the Company, which is expected to be issued in the third quarter of 2023.

Convertible Debt

*2020 Regulation D Offering*

As of June 30, 2023 and December 31, 2022, there was \$100,000 remaining in outstanding principal that was not converted into equity.

*Convertible Promissory Note*

On December 29, 2022, the Company and various purchasers executed a Securities Purchase Agreement (“December Notes”) whereby the investors purchased from the Company convertible promissory notes in the aggregate principal amount of \$4,000,000, consisting of original issue discount of \$800,000. The Company received net proceeds of \$3,000,000. The December Notes were due and payable on February 15, 2023. If the December Notes are not repaid in full by the maturity date or if any other event of default occurs, (1) the face value of the December Notes will be automatically increased to 120%; (2) the Notes will begin generating an annual interest rate of 20%, which will be paid in cash monthly until the default is cured; and (3) if such default continues for 14 or more calendar days, at the investors’ discretion, the December Notes shall become convertible at the option of the investors into shares of the Company’s common stock at a conversion price equal to the closing price of the Company’s common stock on the date of the note conversion.

In connection with the December Notes, the Company issued to the investors an aggregate of 18,779 warrants to purchase common stock at an exercise price equal to \$106.50, and 2,400 shares of common stock. The Company recognized \$428,200 as a debt discount for the fair value of the warrants and common shares using the Black-Scholes option model, resulting in a total debt discount of \$1,378,200.

In February 2023, the principal of \$4,000,000 of the December Notes were fully repaid. The Company amortized \$689,100 of debt discount up until the repayment date, and then recognized a loss on extinguishment of debt of \$689,100 which is included in other non-operating income (expenses) on the consolidated statements of operations.

The following is a summary of the convertible notes for the six months ended June 30, 2023:

	<u>Principal</u>	<u>Unamortized Debt Discount</u>	<u>Convertible Note Payable, Net</u>
Balance, December 31, 2022	\$ 4,100,000	\$ (1,378,200)	\$ 2,721,800
Repayments of notes	(4,000,000)	—	(4,000,000)
Amortization of debt discount	—	689,100	689,100
Loss on extinguishment of debt	—	689,100	689,100
Balance, June 30, 2023	<u>\$ 100,000</u>	<u>\$ —</u>	<u>\$ 100,000</u>

During the six months ended June 30, 2022, the Company converted an aggregate of \$888,930 in outstanding principal into 350 shares of common stock.

During the six months ended June 30, 2023 and 2022, the Company amortized \$689,100 and \$1,724,291, respectively of debt discount to interest expense pertaining to convertible notes.

In January 2023, the Company issued 4,400 shares of common stock at a fair value of \$22,300 to a former convertible noteholder pursuant to default provisions. The amount was included in interest expense in the consolidated statements of operations.

Loan Payable — PPP and SBA Loan

As of both June 30, 2023 and December 31, 2022, Bailey had an outstanding PPP Loan balance of \$33,295 and matures in 2026.

**Merchant Advances**

In 2022, the Company obtained several merchant advances. These advances are, for the most part, secured by expected future sales transactions of the Company with expected payments on a weekly basis. As of December 31, 2022, \$896,334 remained outstanding. During the six months ended June 30, 2023, the Company received additional proceeds totaling \$1,692,748 and made repayments totaling \$2,331,972. As of June 30, 2023, the remaining principal outstanding was \$257,110. In connection with these advances, the Company granted 6,095 warrants to purchase common stock at an exercise price of \$131.25 to the lender in connection with its merchant advances.

In 2023, the Company obtained merchant advances totaling \$502,051 from Shopify Capital, and made repayments totaling \$208,416. As of June 30, 2023, the remaining principal outstanding was \$293,635. These advances are, for the most part, secured by expected future sales transactions of the Company with expected payments on a daily basis.

**Promissory Note Payable**

As of June 30, 2023 and December 31, 2022, the outstanding principal on the note to the sellers of Bailey was \$,500,000. The maturity date was December 31, 2022. On July 5, 2023, the parties agreed to extend the maturity date to June 30, 2024. Interest expense was \$105,000 and \$105,000 for the three months ended June 30, 2023 and 2022 and \$210,000 and \$210,000 for the six months ended June 30, 2023 and 2022, all respectively, which was accrued and unpaid as of June 30, 2023.

The Company issued a promissory note in the principal amount of \$5,500,000 to the Sundry Holders pursuant to the Sundry acquisition. The note bears interest at 8% per annum and matures on February 15, 2023. In February 2023, the parties verbally agreed to extend the maturity date to December 31, 2023. Interest expense was \$149,177 and \$259,177 for the three and six months ended June 30, 2023, respectively. On June 21, 2023, the Company and the Sundry Holders executed a Securities Purchase Agreement (the "Sundry SPA") whereby the Company issued 5,761 shares of Series C Convertible Preferred Stock to the Sundry Holders for \$1,000 per share (see Note 7). The shares were issued pursuant to the cancellation of the Sundry Holders' entire principal amount of \$5,500,000 and accrued interest of \$259,177.

In March 2023, the Company and various purchasers executed a Securities Purchase Agreement ("March 2023 Notes") whereby the investors purchased from the Company promissory notes in the aggregate principal amount of \$2,458,750, consisting of original issue discount of \$608,750. The Company received net proceeds of \$1,850,000 after additional fees. The March 2023 Notes are due and payable on September 30, 2023 (the "Maturity Date"). The Company will also have the option to prepay the Notes with no penalties at any time prior to the Maturity Date. If the Company completes a debt or equity financing of less than \$7,500,000, the Company is required to repay 50% of the remaining balance of the March 2023 Notes. Following such 50% repayment, the Company must also use any proceeds from any subsequent debt or equity financing to repay the March 2023 Notes. Upon the closing of any debt or equity financing of \$7,500,000 or greater, the Company is required to repay 100% of the Notes with no penalties. There is no additional interest after the 20% original interest discount. The Company recognized a debt discount of \$608,750, of which \$263,839 was amortized through June 30, 2023.

The following is a summary of promissory notes payable, net:

	June 30, 2023	December 31, 2022
Bailey Note	\$ 3,500,000	\$ 3,500,000
Sundry Note	—	5,500,000
March 2023 Notes - principal	2,458,750	—
March 2023 Notes - unamortized debt discount	(344,911)	—
Promissory note payable, net	<u>\$ 5,613,839</u>	<u>\$ 9,000,000</u>

**NOTE 8: STOCKHOLDERS' DEFICIT**

On January 11, 2023, the Company, entered into a Securities Purchase Agreement (the "Purchase Agreement") with a certain accredited investor (the "Investor"), pursuant to which the Company agreed to issue and sell, in a private placement (the "January Private Placement"), an aggregate of 19,000 shares (the "Shares") of the Company's common stock ("Common Stock"), and accompanying warrants (the "Common Warrants") to purchase 19,000 shares of Common Stock, at a combined purchase price of



\$97.875 per share and Common Warrant, and (ii) 32,086 pre-funded warrants (the “Pre-Funded Warrants” and together with the Common Warrants, the “Warrants” and together with the Shares and the shares of Common Stock underlying the Warrants, the “Securities”) exercisable for 32,086 shares of Common Stock, and accompanying Common Warrants to purchase 32,086 shares of Common Stock, at a combined purchase price of \$97.875 per Pre-Funded Warrant and accompanying Common Warrant, to the Investors, for aggregate gross proceeds from the Private Placement of approximately \$5 million before deducting placement agent fees and related offering expenses. As a result of the transaction, the Company issued 50,890 shares of common stock, including the 19,000 shares and the immediate exercise of 32,086 pre-funded warrants, for gross proceeds of \$5.0 million. The Company received net proceeds of \$4.3 million after deducting placement agent fees and offering expenses.

In January 2023, the Company issued 4,400 shares of common stock at a fair value of \$22,300 to a former convertible noteholder pursuant to default provisions. The amount was included in interest expense in the consolidated statements of operations.

In March 2023, the Company issued an aggregate of 4,756 shares of common stock to Sundry executives based on their employment agreements with the Company. The fair value of \$499,338, or \$4.20 per share as determined by the agreements, was included in general and administrative expenses in the consolidated statements of operations.

In June 2023, the Company issued 78,103 shares of common stock to D. Jones at a fair value of \$1,357,043 pursuant to the H&J Settlement Agreement.

During the six months ended June 30, 2022, the Company converted an aggregate of \$888,930 in outstanding principal into 350 shares of common stock.

#### *Series B Preferred Stock*

On May 30, 2023, the Company entered into a Subscription and Investment Representation Agreement (the “Subscription Agreement”) with John Hilburn Davis IV, its Chief Executive Officer pursuant to which the Company agreed to issue and sell 1 share of the Company’s Series B Preferred Stock, par value \$0.0001 per share (the “Series B Preferred Stock”) for \$25,000.

On May 30, 2023, the Company filed a certificate of designation (the “Certificate of Designation”) with the Secretary of State of the State of Delaware, effective as of the time of filing, designating the rights, preferences, privileges and restrictions of the share of Series B Preferred Stock. The Certificate of Designation provides that the Series B Preferred Stock will have 250,000,000 votes per share of Series B Preferred Stock and will vote together with the outstanding shares of the Company’s common stock, par value 0.0001 per share (the “Common Stock”) and Series A Convertible Preferred Stock, par value 0.0001 per share (the “Series A Convertible Preferred Stock”) as a single class exclusively with respect to any proposal to amend the Company’s Sixth Amended and Restated Certificate of Incorporation (as may be amended and/or restated from time to time, the “Restated Certificate”) to effect a reverse stock split of the Company’s common stock. The Series B Preferred Stock will be voted, without action by the holder, on any such proposal in the same proportion as shares of Common Stock and Series A Convertible Preferred Stock are voted. The Series B Preferred Stock otherwise has no voting rights.

The Series B Preferred Stock is not convertible into, or exchangeable for, shares of any other class or series of stock or other securities of the Company. The Series B Preferred Stock has no rights with respect to any distribution of assets of the Company, including upon a liquidation, bankruptcy, reorganization, merger, acquisition, sale, dissolution or winding up of the Company, whether voluntarily or involuntarily. The holder of the Series B Preferred Stock will not be entitled to receive dividends of any kind.

The outstanding share of Series B Preferred Stock shall be redeemed in whole, but not in part, at any time (i) if such redemption is ordered by the Board of Directors in its sole discretion or (ii) automatically upon the effectiveness of the amendment to the Restated Certificate implementing a reverse stock split. Upon such redemption, the holder of the Series B Preferred Stock will receive consideration of \$25,000 in cash.

#### *Series C Convertible Preferred Stock*

On June 21, 2023, the Company, on the one hand, and Moise Emquies, George Levy, Matthieu Leblan, Carol Ann Emquies, Jenny Murphy and Elodie Crichi (collectively, the “Sundry Investors”), on the other hand, executed a Securities Purchase Agreement (the “Sundry SPA”) whereby the Company issued 5,761 shares of Series C Convertible Preferred Stock, par value \$0.0001 per share (the “Series C Preferred Stock”) to the Sundry Investors at a purchase price of \$1,000 per share. The Series C Preferred Stock is

convertible into a number of shares of the Company's Common Stock equal to \$1,000 divided by an initial conversion price of \$17.925 which represents the lower of (i) the closing price per share of the Common Stock as reported on the Nasdaq on June 20, 2023, and (ii) the average closing price per share of Common Stock as reported on the Nasdaq for the five trading days preceding June 21, 2023. The shares of Series C Preferred Stock were issued in consideration for the cancellation of certain promissory notes issued by the Company to the Sundry Investors dated December 30, 2022 (the "Sundry Loan Documents"). The following is a summary of the rights and preferences of the Series C Convertible Preferred Stock.

On June 21, 2023, the Company filed the Certificate of Designation with the Secretary of State for the State of Delaware designating up to 5,761 shares out of the authorized but unissued shares of its preferred stock as Series C Convertible Preferred Stock. The following is a summary of the principal terms of the Series C Preferred Stock.

Except for stock dividends or distributions for which adjustments are to be made pursuant to the Certificate of Designation, the holders of the Series C Preferred Stock (the "Series C Holders") shall be entitled to receive, and the Company shall pay, dividends on shares of the Series C Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of the Series C Preferred Stock.

The Series C Holders are entitled to vote as a class as expressly provided in the Certificate of Designation. The Series C Holders are also entitled to vote with the holders of shares of Common Stock, voting together as one class, on all matters in which the Series C Holders are permitted to vote with the class of shares of Common Stock.

With respect to any vote with the class of Common Stock, each share of the Series C Preferred Stock shall entitle the Holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in the Certificate of Designation) using the record date for determining the stockholders of the Company eligible to vote on such matters as the date as of which the conversion price is calculated.

The Series C Preferred Stock shall rank (i) senior to all of the Common Stock; (ii) senior to Junior Securities; (iii) on parity with Parity Securities; and (iv) junior to Senior Securities, in each case, as to dividends or distributions of assets upon liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily. Subject to any superior liquidation rights of the holders of any Senior Securities of the Company and the rights of the Company's existing and future creditors, upon a Liquidation, each Holder shall be entitled to be paid out of the assets of the Company legally available for distribution to stockholders, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the Common Stock and Junior Securities and pari passu with any distribution to the holders of Parity Securities, an amount equal to the Stated Value (as defined in the Certificate of Designation) for each share of the Series C Preferred Stock held by such Holder and an amount equal to any accrued and unpaid dividends thereon, and thereafter the Series C Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Company the same amount that a holder of Common Stock would receive if the Series C Preferred Stock were fully converted (disregarding for such purposes any conversion limitations hereunder) to Common Stock which amounts shall be paid pari passu with all holders of Common Stock.

Each share of the Series C Preferred Stock shall be convertible, at any time and from time to time from and after June 21, 2023 at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of the Series C Preferred Stock (\$1,000 as of June 21, 2023) by the Conversion Price. The conversion price for each share of the Series C Preferred Stock is \$17.925, which is the lower of (a) the closing price per share of the Common Stock as reported on the Nasdaq Capital Market on June 20, 2023 (the trading day before the date of the Sundry SPA), and (b) the average closing price per share of Common Stock as reported on the Nasdaq Capital Market for the five trading days preceding the date of the Sundry SPA, subject to adjustment herein (the "Series C Conversion Price").

The Company has the option to redeem any or all of the then outstanding Series C Preferred Stock at 12% of the then Stated Value any time after June 21, 2023 and so long as there is an effective Registration Statement covering the shares issuable upon conversion of the Series C Preferred Stock.

#### **NOTE 9: RELATED PARTY TRANSACTIONS**

During the six months ended June 30, 2023 and 2022, the Company made net repayments for amounts due to related parties totaling \$7,427 and \$172,036, respectively. As of June 30, 2023 and December 31, 2022, amounts due to related parties were

\$472,790 and \$556,225, respectively. The advances are unsecured, non-interest bearing and due on demand. Amounts due to related parties consist of current and former executives, and a board member.

As of December 31, 2022, H&J had an outstanding note payable of \$29,489 owned by the H&J Seller. The balance was \$0 upon the H&J disposition in June 2023.

#### NOTE 10: SHARE-BASED PAYMENTS

##### Common Stock Warrants

In connection with the January Private Placement, the Company granted 32,086 pre-funded warrants which were immediately exercised for shares of common stock. The Company also granted an additional 51,086 warrants as part of the offering. Each warrant has an exercise price of \$95 per share, is immediately exercisable upon issuance and expires five years after issuance. The Company also granted the placement agent 3,831 warrants to purchase common stock at an exercise price of \$3,050.35 per share, which is immediately exercisable upon issuance and expires five years after issuance.

In connection with merchant advances (Note 6), the Company granted 6,095 warrants to purchase common stock at an exercise price of \$31.25. The warrants are immediately exercisable upon issuance and expire five years after issuance.

The following is a summary of warrant activity:

	Common Stock Warrants	Weighted Average Exercise Price
Outstanding - December 31, 2022	176,733	\$ 209
Granted	93,099	99.50
Exercised	(32,086)	97.88
Forfeited	—	—
Outstanding - June 30, 2023	<u>237,746</u>	<u>\$ 181.25</u>
Exercisable at December 31, 2022	<u>171,278</u>	<u>\$ 210.50</u>
Exercisable at June 30, 2023	<u>237,745</u>	<u>\$ 181.25</u>

##### Stock Options

As of June 30, 2023 and December 31, 2022, the Company had 1,558 stock options outstanding with a weighted average exercise price of \$362.11 per share. As of June 30, 2023, there were 1,439 options exercisable.

Stock-based compensation expense of \$101,500 and \$119,759 was recognized for the three months ended June 30, 2023 and 2022, respectively, and \$207,094 and \$258,852 was recognized for the six months June 30, 2023 and 2022, respectively. During the six months ended June 30, 2023 and 2022, \$28,798 and \$28,798 was recorded to sales and marketing expense, and all other stock compensation was included in general and administrative expense in the condensed consolidated statements of operations. Total unrecognized compensation cost related to non-vested stock option awards as of June 30, 2023 amounted to \$370,907 and will be recognized over a weighted average period of 0.9 years.

#### NOTE 11: LEASE OBLIGATIONS

In January 2023, the Company entered into a lease agreement extension for its corporate office and distribution center in Vernon, California that expires on December 31, 2023. The lease has monthly base rent payments of \$38,105. As a result of the extension, the Company recognized a right of use asset and liability of \$467,738 using a discount rate of 8.0%. As of June 30, 2023, the Company has \$949,071 in accounts payable for past rents due to the landlord pertaining to this lease.

In May 2023, the Company entered into a lease agreement extension for a showroom space in Los Angeles, California that commences in March 2023 and expires in January 2025. The original lease began in April 2018 and terminated in May 2020, at which point the lease was month to month. The lease has a monthly base rent of \$6,520 until January 31, 2025, at which point the base rent increases to \$6,781 until the end of the lease. As a result of the extension, the Company recognized a right of use asset and liability of

\$125,397 using a discount rate of 8.0%. As of June 30, 2023, the Company has \$214,626 in accounts payable for past rents due to the landlord pertaining to this lease.

Stateside and Sundry utilize a lease for a showroom in Los Angeles, California which is month to month.

Total rent expense for the three months ended June 30, 2023 and 2022 was \$7,580 and \$195,060, and \$210,265 and \$469,482 for the six months end June 30, 2023 and 2022, respectively.

#### **NOTE 12: CONTINGENCIES**

On March 21, 2023, a vendor filed a lawsuit against Digital Brands Group related to trade payables totaling approximately \$3,501. Such amounts include interest due, and are included in accounts payable, net of payments made to date, in the accompanying consolidated balance sheets. The Company does not believe it is probable that the losses in excess of such trade payables will be incurred.

On February 7, 2023, a vendor filed a lawsuit against Digital Brands Group related to trade payables totaling approximately \$82,400. Such amounts include interest due, and are included in accounts payable, net of payments made to date, in the accompanying consolidated balance sheets. The Company does not believe it is probable that the losses in excess of such trade payables will be incurred.

On November 9, 2022, a vendor filed a lawsuit against Digital Brand's Group related to prior services rendered. The claims (including fines, fees, and legal expenses) total an aggregate of \$50,190. The matter was settled in January 2023 and are on payment plans which will be paid off in April 2023.

In August 2020 and March 2021, two lawsuits were filed against Bailey by third-party's related to prior services rendered. The claims (including fines, fees, and legal expenses) total an aggregate of \$96,900. Both matters were settled in February 2022 and are on payment plans which will be paid off in July and September of 2023.

On December 21, 2020, a Company investor filed a lawsuit against DBG for reimbursement of their investment totaling \$100,000. Claimed amounts are included in short-term convertible note payable in the accompanying consolidated balance sheets and the Company does not believe it is probable that losses in excess of such short-term note payable will be incurred. The Company is actively working to resolve this matter.

A vendor filed a lawsuit against Bailey related to a retail store lease in the amount of \$1.5 million. The Company is disputing the claim for damages and the matter is ongoing. The vendor has recently updated the claim to now be \$450,968 after signing a long-term lease with another brand for this location. The Company is disputing this new amount after review of the lease.

All claims above, to the extent management believes it will be liable, have been included in accounts payable and accrued expenses and other liabilities in the accompanying consolidated balance sheet as of June 30, 2023.

Except as may be set forth above the Company is not a party to any legal proceedings, and the Company is not aware of any claims or actions pending or threatened against us. In the future, the Company might from time to time become involved in litigation relating to claims arising from its ordinary course of business, the resolution of which the Company does not anticipate would have a material adverse impact on our financial position, results of operations or cash flows.

#### **NOTE 13: INCOME TAXES**

The Company has historically calculated the provision for income taxes during interim reporting periods by applying an estimate of the annual effective tax rate for the full fiscal year to "ordinary" income or loss (pretax income or loss excluding unusual or infrequently occurring discrete items) for the reporting period. The Company has used a discrete effective tax rate method to calculate taxes for the fiscal three and six month periods ended June 30, 2023. The Company determined that since small changes in estimated "ordinary" income would result in significant changes in the estimated annual effective tax rate, the historical method would not provide a reliable estimate for the fiscal three and six-month periods ended June 30, 2023.

The Company recognizes deferred tax assets to the extent that it believes that these assets are more likely than not to be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of

existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. The Company assessed the need for a valuation allowance against its net deferred tax assets and determined a full valuation allowance is required due, cumulative losses through June 30, 2023, and no history of generating taxable income.

**NOTE 14: SUBSEQUENT EVENTS**

On July 5, 2023, the Company and the Bailey sellers agreed to extend the maturity date of the Bailey Note to June 30, 2024.

On August 21, 2023, the Company filed a Certificate of Amendment to our Certificate of Incorporation, as amended, to effect a one-for-twenty-five (1-for-25) reverse stock split effective August 22, 2023. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this reverse stock split and adjustment of the preferred stock conversion ratios.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders  
Digital Brands Group, Inc.

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Digital Brands Group, Inc. and subsidiaries (collectively, the “Company”) as of December 31, 2022 and 2021, and the related consolidated statements of operations, stockholders’ deficit, and cash flows for the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

### Emphasis of Matter – Correction of Error

As described in Note 2 to the consolidated financial statements, the Company corrected the classification of certain costs and expenses, and accordingly, restated amounts included in the 2021 consolidated statement of operations to conform with accounting principles generally accepted in the United States of America.

### Going Concern

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company’s net losses from inception, negative cash flow from operations, and lack of liquidity raise substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ dbbmckennon (Firm No. 3501)  
Newport Beach, California

April 17, 2023, except for the last two paragraphs of Note 14 Subsequent Events on page F59 for which the date is August 24, 2023

We have served as the Company’s auditor since 2018 until 2023.

**DIGITAL BRANDS GROUP, INC.**  
**CONSOLIDATED BALANCE SHEETS**

	December 31,	
	2022	2021
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 1,275,616	\$ 515,796
Accounts receivable, net	583,368	67,384
Due from factor, net	839,400	985,288
Inventory	5,122,564	2,660,203
Prepaid expenses and other current assets	766,901	288,474
Assets per discontinued operations, current	241,544	259,190
Total current assets	<u>8,829,394</u>	<u>4,776,334</u>
Deferred offering costs	—	367,696
Property, equipment and software, net	104,512	69,367
Goodwill	8,973,501	8,583,274
Intangible assets, net	12,906,238	9,263,131
Deposits	193,926	133,378
Right of use asset, net	102,349	—
Assets per discontinued operations	2,628,136	13,292,043
Total assets	<u>\$ 33,738,056</u>	<u>\$ 36,485,224</u>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current liabilities:		
Accounts payable	\$ 8,016,173	\$ 6,507,709
Accrued expenses and other liabilities	3,936,920	2,078,087
Due to related parties	555,217	256,274
Contingent consideration liability	12,098,475	12,179,476
Convertible note payable, net	2,721,800	100,000
Accrued interest payable	1,561,795	1,110,679
Venture debt, net of discount	—	6,001,755
Loan payable, current	1,829,629	2,279,768
Promissory note payable	9,000,000	3,500,000
Right of use liability, current portion	102,349	—
Liabilities per discontinued operations, current	1,071,433	1,033,518
Total current liabilities	<u>40,893,792</u>	<u>35,047,266</u>
Convertible note payable, net	—	5,723,846
Loan payable	150,000	342,050
Derivative liability	—	2,294,720
Warrant liability	—	18,223
Liabilities per discontinued operations	147,438	148,900
Total liabilities	<u>41,191,230</u>	<u>43,575,005</u>
Commitments and contingencies		
Stockholders' deficit:		
Undesignated preferred stock, \$0.0001 par, 10,000,000 shares authorized, 0 shares issued and outstanding as of both December 31, 2022 and 2021	—	—
Series A preferred stock, \$0.0001 par, 1 share authorized, no shares issued and outstanding as of December 31, 2022 or 2021	—	—
Series A convertible preferred stock, \$0.0001 par, 6,800 shares designated, 6,300 shares issued and outstanding as of December 31, 2022, none authorized or outstanding as of December 31, 2021	1	—
Common stock, \$0.0001 par, 1,000,000,000 shares authorized, 178,758 and 5,201 shares issued and outstanding as of December 31, 2022 and 2021, respectively	18	13
Additional paid-in capital	96,294,123	58,614,160
Accumulated deficit	(103,747,316)	(65,703,954)
Total stockholders' deficit	<u>(7,453,174)</u>	<u>(7,089,781)</u>
Total liabilities and stockholders' deficit	<u>\$ 33,738,056</u>	<u>\$ 36,485,224</u>

See the accompanying notes to the consolidated financial statements.

**DIGITAL BRANDS GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

	Year Ended December 31,	
	2022	2021 As Restated
Net revenues	\$ 10,333,558	\$ 5,764,963
Cost of net revenues	6,789,314	3,828,496
Gross profit	3,544,244	1,936,467
Operating expenses:		
General and administrative	14,067,681	16,149,510
Sales and marketing	4,018,985	3,269,710
Distribution	611,569	489,371
Impairment	5,503,095	3,400,000
Change in fair value of contingent consideration	564,303	8,764,460
Total operating expenses	24,765,633	32,073,050
Loss from operations	(21,221,389)	(30,136,583)
Other income (expense):		
Interest expense	(8,961,410)	(3,619,093)
Other non-operating income (expenses)	3,068,080	1,321,472
Total other income (expense), net	(5,893,330)	(2,297,621)
Income tax benefit (provision)	—	1,100,120
Net loss from continuing operations	(27,114,719)	(31,334,084)
Loss from discontinued operations, net of tax	(10,928,643)	(1,023,873)
Net loss	\$ (38,043,362)	\$ (32,357,957)
Weighted average common shares outstanding - basic and diluted	30,852	3,052
Net loss per common share - basic and diluted	\$ (878.87)	\$ (10,268.22)

See the accompanying notes to the consolidated financial statements.



## DIGITAL BRANDS GROUP, INC.

## CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT

	Series Seed Preferred Stock		Series A Preferred Stock		Series A-2 Preferred Stock		Series A-3 Preferred Stock		Series CF Preferred Stock		Series B Preferred Stock		Series A Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)		
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount					
<b>Balances at December 31, 2020</b>	20,714,518	\$ 2,071	5,654,072	\$ 565	5,932,742	\$ 593	9,032,330	\$ 904	836,331	\$ 83	20,754,717	\$ 2,075	—	\$ —	266	\$ —	\$27,482,061	\$ (33,345,997)	\$ (5,857,645)		
Conversion of preferred stock into common stock	(20,714,518)	(2,071)	(5,654,072)	(565)	(5,932,742)	(593)	(9,032,330)	(904)	(836,331)	(83)	(20,754,717)	(2,075)	—	—	1,611	—	6,291	—	—		
Issuance of common stock in public offering	—	—	—	—	—	—	—	—	—	—	—	—	—	—	964	—	10,000,002	—	10,000,002		
Offering costs	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(2,116,957)	—	(2,116,957)		
Exercise of over-allotment option, net of offering costs	—	—	—	—	—	—	—	—	—	—	—	—	—	—	145	—	1,364,997	—	1,364,997		
Conversion of debt into common stock	—	—	—	—	—	—	—	—	—	—	—	—	—	—	454	—	2,680,289	—	2,680,289		
Conversion of related party notes and payables into common stock	—	—	—	—	—	—	—	—	—	—	—	—	—	—	61	—	257,515	—	257,515		
Common stock issued in connection with business combination	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1,318	—	11,428,738	—	11,428,738		
Exercise of warrants	—	—	—	—	—	—	—	—	—	—	—	—	—	—	155	—	1,768,046	—	1,768,046		
Common stock issued pursuant to consulting agreement	—	—	—	—	—	—	—	—	—	—	—	—	—	—	97	—	595,500	—	595,500		
Issuance of common stock pursuant to equity line of credit	—	—	—	—	—	—	—	—	—	—	—	—	—	—	51	—	367,696	—	367,696		
Common stock and warrants issued in connection with notes	—	—	—	—	—	—	—	—	—	—	—	—	—	—	52	—	501,658	—	501,658		
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	—	—	29	—	4,278,337	—	4,278,337		
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(32,357,957)	(32,357,957)		
<b>Balances at December 31, 2021</b>	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5,201	—	58,614,173	(65,703,954)	(7,089,781)		
Issuance of common stock in public offering	—	—	—	—	—	—	—	—	—	—	—	—	—	—	14,956	1	9,347,449	—	9,347,450		
Issuance of common stock and exercise of pre-funded warrants in public offering	—	—	—	—	—	—	—	—	—	—	—	—	—	—	72,727	7	9,999,989	—	9,999,996		
Offering costs	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(2,921,646)	—	(2,921,646)		
Common stock issued in connection with business combination	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3,636	—	1,000,000	—	1,000,000		
Common stock issued pursuant to consulting agreement	—	—	—	—	—	—	—	—	—	—	—	—	—	—	30	—	123,000	—	123,000		
Warrant and common shares issued with notes	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2,400	—	1,368,741	—	1,368,741		
Conversion of notes and derivative liability into common stock	—	—	—	—	—	—	—	—	—	—	—	—	—	—	79,807	8	11,983,381	—	11,983,389		
Conversion of venture debt into Series A convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	—	—	6,300	1	—	6,299,999	—	6,300,000		
Stock-based compensation	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	479,038	—	479,038		
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	(38,043,362)	(38,043,362)		
<b>Balances at December 31, 2022</b>	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —	—	\$ —	6,300	\$ 1	178,758	\$ 17	\$96,294,123	\$ (103,747,316)	\$ (7,453,174)

See the accompanying notes to the consolidated financial statements.

**DIGITAL BRANDS GROUP, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended December 31,	
	2022	2021
<b>Cash flows from operating activities:</b>		
Net loss	\$ (38,043,362)	\$ (32,357,957)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,653,819	862,888
Amortization of loan discount and fees	6,506,384	1,382,222
Stock-based compensation	602,038	4,800,337
Fees incurred in connection with debt financings	568,149	560,309
Change in fair value of warrant liability	(18,223)	11,958
Change in fair value of derivative liability	(1,354,434)	(910,204)
Change in fair value of contingent consideration	564,303	8,764,460
Impairment of goodwill and intangible assets	5,503,095	3,400,000
Forgiveness of Payroll Protection Program	(1,760,755)	(407,994)
Change in credit reserve	(118,840)	36,893
Deferred offering costs	367,696	—
Loss from discontinued operations, net of tax	10,928,643	1,023,873
Deferred income tax benefit	—	(1,100,120)
Changes in operating assets and liabilities:		
Accounts receivable, net	(452,030)	150,288
Due from factor, net	655,708	(399,701)
Inventory	479,394	(911,293)
Prepaid expenses and other current assets	(445,798)	(151,917)
Accounts payable	892,120	456,690
Accrued expenses and other liabilities	1,631,512	834,489
Deferred revenue	—	4,882
Due to related parties	298,943	(63,550)
Accrued interest	984,358	461,113
Assets and liabilities of discontinued operations	(210,426)	(678,623)
Net cash used in operating activities	(10,767,706)	(14,230,957)
<b>Cash flows from investing activities:</b>		
Cash acquired (consideration) pursuant to business combination	(7,247,303)	(5,936,757)
Purchase of property, equipment and software	(61,286)	(43,179)
Deposits	(60,548)	(31,117)
Net cash used in investing activities	(7,369,137)	(6,011,053)
<b>Cash flows from financing activities:</b>		
Repayments of related party notes	—	—
Advances (repayments) from factor	(3,096)	(41,200)
Repayment of contingent consideration	(645,304)	—
Proceeds from venture debt	237,500	—
Issuance of loans payable	3,280,360	2,779,910
Repayments of convertible and promissory notes	(7,350,276)	(2,006,628)
Issuance of convertible notes payable	6,951,250	8,433,650
Proceeds from public offering	19,347,446	10,000,002
Exercise of over-allotment option with public offering, net	—	1,364,997
Exercise of warrants	—	1,768,046
Offering costs	(2,921,216)	(2,116,957)
Net cash provided by financing activities	18,896,664	20,181,820
<b>Net change in cash and cash equivalents</b>	<b>759,820</b>	<b>(60,190)</b>
Cash and cash equivalents at beginning of period	515,796	575,986
Cash and cash equivalents at end of period	<u>\$ 1,275,616</u>	<u>\$ 515,796</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for income taxes	\$ —	\$ —
Cash paid for interest	\$ 734,869	\$ 902,089
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Conversion of notes, warrants and derivatives into common stock	\$ 11,983,389	\$ 2,680,289
Right of use asset	\$ 102,349	\$ —
Warrant and common shares issued with notes	\$ 1,368,741	\$ —
Derivative liability in connection with convertible note	\$ 559,957	\$ 3,204,924
Conversion of venture debt into preferred stock	\$ 6,300,000	\$ —
Conversion of related party notes and payables into preferred and common stock	\$ —	\$ 257,515
Conversion of preferred stock into common stock	\$ —	\$ 6,291
Conversion of contingent consideration into common stock	\$ —	\$ 73,500
Common shares issued pursuant to equity line of credit	\$ —	\$ 367,696

See the accompanying notes to the consolidated financial statements.

**DIGITAL BRANDS GROUP, INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE 1: NATURE OF OPERATIONS**

Digital Brands Group, Inc. (the “Company” or “DBG”), was organized on September 17, 2012 under the laws of Delaware as a limited liability company under the name Denim.LA LLC. The Company converted to a Delaware corporation on January 30, 2013 and changed its name to Denim.LA, Inc. Effective December 31, 2020, the Company changed its name to Digital Brands Group, Inc. (DBG).

On February 12, 2020, Denim.LA, Inc. entered into an Agreement and Plan of Merger with Bailey 44, LLC (“Bailey”), a Delaware limited liability company. On the acquisition date, Bailey became a wholly owned subsidiary of the Company. See Note 4.

On May 18, 2021, the Company closed its acquisition of Harper & Jones, LLC (“H&J”) pursuant to its Membership Interest Stock Purchase Agreement with D. Jones Tailored Collection, Ltd. to purchase 100% of the issued and outstanding equity of Harper & Jones, LLC. On the acquisition date, H&J became a wholly owned subsidiary of the Company. See Note 4.

On August 30, 2021, the Company closed its acquisition of Mosbest, LLC dba Stateside (“Stateside”) pursuant to its Membership Interest Purchase Agreement with Moise Emquies to purchase 100% of the issued and outstanding equity of Stateside. On the acquisition date, Stateside became a wholly owned subsidiary of the Company. See Note 4.

On December 30, 2022, the Company closed its previously announced acquisition of Sunnyside, LLC dba Sundry (“Sundry”) pursuant to its Second Amended and Restated Membership Interest Purchase Agreement with Moise Emquies to purchase 100% of the issued and outstanding equity of Sundry. On the acquisition date, Sundry became a wholly owned subsidiary of the Company. See Note 4.

**Reverse Stock Split**

On May 12, 2021, the Board of Directors approved a one-for-15.625 reverse stock split of its issued and outstanding shares of common stock and a proportional adjustment to the existing conversion ratios for each series of the Company’s preferred stock (see Note 8). Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this reverse stock split and adjustment of the preferred stock conversion ratios.

On October 21, 2022, the Board of Directors approved a one-for-100 reverse stock split of its issued and outstanding shares of common stock and a proportional adjustment to the existing conversion ratios for each series of the Company’s preferred stock. The reverse stock split became effective as of November 3, 2022. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this reverse stock split and adjustment of the preferred stock conversion ratios.

**Initial Public Offering**

On May 13, 2021, the Company’s registration statement on Form S-1 relating to its initial public offering of its common stock (the “IPO”) was declared effective by the Securities and Exchange Commission (“SEC”). Further to the IPO, which closed on May 18, 2021, the Company issued and sold 964 shares of common stock at a public offering price of \$10,375 per share. Additionally, the Company issued warrants to purchase 1,111 shares, which includes 145 warrants sold upon the partial exercise of the over-allotment option. The aggregate net proceeds to the Company from the IPO, were \$8.6 million after deducting underwriting discounts and commissions of \$0.8 million and direct offering expenses of \$0.6 million. Concurrent with this offering, the Company acquired H&J (see Note 4). The Company incurred an additional \$0.6 million in offering costs related to the IPO that were not paid directly out of the proceeds from the offering.

## **NOTE 2: GOING CONCERN**

The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has not generated profits since inception, has sustained net losses of \$38,043,362 and \$32,357,957 for the years ended December 31, 2022 and 2021, respectively, and has incurred negative cash flows from operations for the years ended December 31, 2022 and 2021. The Company has historically lacked liquidity to satisfy obligations as they come due and as of December 31, 2022, and the Company had a working capital deficit of \$32,064,398. These factors, among others, arise substantial doubt about the Company's ability to continue as a going concern. The Company expects to continue to generate operating losses for the foreseeable future. The accompanying consolidated financial statements do not include any adjustments as a result of this uncertainty.

The Company's ability to continue as a going concern for the next 12 months from the date the financial statements were available to be issued is dependent upon its ability to generate sufficient cash flows from operations to meet its obligations, which it has not been able to accomplish to date, and/or to obtain additional capital financing. Through the date the financial statements were available to be issued, the Company has been primarily financed through the issuance of capital stock and debt. In the event that the Company cannot generate sufficient revenue to sustain its operations, the Company will need to reduce expenses or obtain financing through the sale of debt and/or equity securities. The issuance of additional equity would result in dilution to existing shareholders. If the Company is unable to obtain additional funds when they are needed or if such funds cannot be obtained on terms acceptable to the Company, the Company would be unable to execute upon the business plan or pay costs and expenses as they are incurred, which would have a material, adverse effect on the business, financial condition and results of operations. No assurance can be given that the Company will be successful in these efforts.

## **NOTE 3: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### **Basis of Presentation**

The accounting and reporting policies of the Company conform to accounting principles generally accepted in the United States of America ("GAAP").

### **H&J Disposition**

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the "Settlement Agreement") whereby contemporaneously with the parties' execution of the Settlement Agreement (i) the Company agreed to make an aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. ("D. Jones"), (ii) the Company issued 78,103 shares of common stock to D. Jones, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company's membership interest in H&J to D. Jones. This transaction is known as the "H&J Settlement". The H&J Settlement was accounted for a business disposition in accordance with ASC 810-40-40-3A.

In accordance with the provisions of ASC 205-20, the Company has excluded the results of discontinued operations from its results of continuing operations in the accompanying consolidated statements of operations for the three and six months ended June 30, 2023 and 2022 in its Form 10-Q Quarterly Report filed on August 21, 2023. Accordingly, the consolidated financial statements as of and for the years ended December 31, 2022 and 2021 have been adjusted retroactively to account for the discontinued operations classification of H&J.

### **Principles of Consolidation**

These consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries Bailey, H&J, Stateside and Sundry from the dates of acquisition. All inter-company transactions and balances have been eliminated on consolidation. H&J has been retroactively adjusted to be presented as discontinued operations (see above).

### **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Restatement of Previously Issued Financial Statements**

Certain prior year accounts have been reclassified to conform with current year presentation pertaining to cost of net revenue and general and administrative expenses. The Company has reclassified \$1,027,387 in general and administrative expenses per previously reported financial statements to cost of net revenues in the accompanying consolidated statements of operations for the year ended December 31, 2021.

The reclassified costs from general and administrative expense to cost of net revenues made in the fourth quarter of 2022 and 2021 are fixed in nature as they are personnel and warehouse related costs. The impact of the reclassification was approximately \$290,000 for each of the quarters ended March 31, 2022, June 30, 2022 and September 30, 2022. The impact of the reclassification was approximately \$255,000 for each of the quarters ended March 31, 2021, June 30, 2021 and September 30, 2021.

**Cash and Equivalents and Concentration of Credit Risk**

The Company considers all highly liquid securities with an original maturity of less than three months to be cash equivalents. As of December 31, 2022 and 2021, the Company did not hold any cash equivalents. The Company's cash and cash equivalents in bank deposit accounts, at times, may exceed federally insured limits of \$250,000.

**Fair Value of Financial Instruments**

FASB guidance specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement). The three levels of the fair value hierarchy are as follows:

Level 1 — Unadjusted quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. Level 1 primarily consists of financial instruments whose value is based on quoted market prices such as exchange-traded instruments and listed equities.

Level 2 — Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly (e.g., quoted prices of similar assets or liabilities in active markets, or quoted prices for identical or similar assets or liabilities in markets that are not active).

Level 3 — Unobservable inputs for the asset or liability. Financial instruments are considered Level 3 when their fair values are determined using pricing models, discounted cash flows or similar techniques and at least one significant model assumption or input is unobservable.

The Company's financial instruments consist of cash and cash equivalents, accounts receivable, due from factor, prepaid expenses, accounts payable, accrued expenses, deferred revenue, due to related parties, related party note payable, accrued interest, loan payable and convertible debt. The carrying value of these assets and liabilities is representative of their fair market value, due to the short maturity of these instruments.

The following tables present information about the Company's financial assets and liabilities measured at fair value on a recurring basis and indicates the level of the fair value hierarchy used to determine such fair values:

	<b>Fair Value Measurements as of December 31, 2022 Using:</b>			
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ —	\$ —	\$ —
Contingent consideration	—	—	12,098,475	12,098,475
Derivative liability	—	—	—	—
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 12,098,475</u>	<u>\$ 12,098,475</u>

	Fair Value Measurements as of December 31, 2021 Using:			
	Level 1	Level 2	Level 3	Total
<b>Liabilities:</b>				
Warrant liability	\$ —	\$ 18,223	\$ —	\$ 18,223
Contingent consideration	—	—	12,179,476	12,179,476
Derivative liability	—	—	2,294,720	2,294,720
	<u>\$ —</u>	<u>\$ 18,223</u>	<u>\$ 14,474,196</u>	<u>\$ 14,492,419</u>

*Warrant Liability*

Certain of the Company's common stock warrants are carried at fair value. As of December 31, 2020, the fair value of the Company's common stock warrant liabilities was measured under the Level 3 hierarchy using the Black-Scholes pricing model as the Company's underlying common stock had no observable market price (see Note 10). The warrant liability was valued using a market approach. Upon the IPO, the warrant liabilities were valued using quoted prices of identical assets in active markets, and was reclassified under the Level 2 hierarchy. Changes in common stock warrant liability during the years ended December 31, 2022 and 2021 are as follows:

	Warrant Liability
Outstanding as of December 31, 2020	\$ 6,265
Change in fair value	11,958
Outstanding as of December 31, 2021	18,223
Change in fair value	(18,223)
Outstanding as of December 31, 2022	<u>\$ —</u>

*Contingent Consideration*

The Company records a contingent consideration liability relating to stock price guarantees included in its acquisition and consulting agreements. The estimated fair value of the contingent consideration is recorded using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

The Company estimates and records the acquisition date fair value of contingent consideration as part of purchase price consideration for acquisitions. Additionally, each reporting period, the Company estimates changes in the fair value of contingent consideration and recognizes any change in fair in the consolidated statement of operations. The estimate of the fair value of contingent consideration requires very subjective assumptions to be made of future operating results, discount rates and probabilities assigned to various potential operating result scenarios. Future revisions to these assumptions could materially change the estimate of the fair value of contingent consideration and, therefore, materially affect the Company's future financial results. The contingent consideration liability is to be settled with the issuance of shares of common stock once contingent provisions set forth in respective acquisition agreements have been achieved. Upon achievement of contingent provisions, respective liabilities are relieved and offset by increases to common stock and additional paid-in capital in the stockholders' equity section of the Company's consolidated balance sheets.

The fair value of the contingent consideration liability related to the Company’s business combinations is valued using the Monte Carlo simulation model. The Monte Carlo simulation inputs include the stock price, volatility of common stock, timing of settlement and resale restrictions and limits. The fair value of the contingent consideration is then calculated based on guaranteed equity values at settlement as defined in the acquisition agreements. Changes in contingent consideration liability during the years ended December 31, 2022 and 2021 are as follows:

	<b>Contingent Consideration Liability</b>
Balance as of December 31, 2020	\$ —
Initial recognition in connection with acquisition of Harper & Jones	3,421,516
Stock price guarantee per consulting agreement	67,000
Conversion into shares	(73,500)
Change in fair value	8,764,460
Outstanding as of December 31, 2021	12,179,476
Repayments to Harper & Jones seller	(645,304)
Change in fair value	564,303
Outstanding as of December 31, 2022	<u>\$ 12,098,475</u>

During the year ended December 31, 2022, the Company utilized the following inputs for the fair value of the contingent consideration: volatilities of 79.3% and 88.9%, risk-free rate of 0.25%, expected share increase of 5% per annum, and the guaranteed stock price of \$828 for Bailey and \$10,375 for Harper & Jones.

The detail of contingent consideration by company is as follows:

	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
Bailey	\$ 10,698,475	7,935,016
Harper & Jones	1,400,000	4,244,460
	<u>\$ 12,098,475</u>	<u>\$ 12,179,476</u>

The contingent consideration liabilities were revalued for a final time as of May 18, 2022, the anniversary date of the Company’s initial public offering. As of the date of the issuance of these financial statements, the contingent consideration liabilities were not yet settled with shares.

In December 2022, the Company paid \$645,304 to the H&J Seller to partially reduce the contingent consideration balance owed. The Company and the H&J Seller are in the process of amending the May 2021 purchase agreement to determine the ultimate settlement of the Company’s common stock to the H&J Seller by May 16, 2023. Refer to Note 12.

*Derivative Liability*

In connection with the Company’s convertible notes, the Company recorded a derivative liability (see Note 7). The estimated fair value of the derivative liability is recorded using significant unobservable measures and other fair value inputs and is therefore classified as a Level 3 financial instrument.

The fair value of the derivative liability is valued using a multinomial lattice model. The multinomial lattice inputs include the underlying stock price, volatility of common stock and remaining term of the convertible note. Changes in derivative liability during the years ended December 31, 2022 and 2021 are as follows:

	<b>Derivative Liability</b>
Outstanding as of December 31, 2020	\$ —
Initial fair value on issuance of convertible note	3,204,924
Change in fair value	<u>(910,204)</u>
Outstanding as of December 31, 2021	2,294,720
Initial fair value on issuance of convertible note	559,957
Conversion of underlying notes into common stock	(1,500,243)
Change in fair value	<u>(1,354,434)</u>
Outstanding as of December 31, 2022	<u>\$ —</u>

During the year ended December 31, 2022, the Company utilized the following inputs for the fair value of the derivative liability: volatility of 70.9% - 96.7%, risk-free rate of 2.71% - 3.74%, and remaining term ranging from .08 years - 0.62 years.

The change in fair value of the derivative liability is included in other non-operating income (expense), net in the consolidated statements of operations.

#### Inventory

Inventory is stated at the lower of cost or net realizable value and accounted for using the weighted average cost method for DSTLD and H&J and first-in, first-out method for Bailey, Stateside and Sundry. The inventory balances as of December 31, 2022 and 2021 consist substantially of finished good products purchased or produced for resale, as well as any raw materials the Company purchased to modify the products and work in progress.

Inventory consisted of the following:

	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
Raw materials	\$ 1,508,416	\$ 292,167
Work in process	888,643	242,673
Finished goods	<u>2,725,505</u>	<u>2,220,519</u>
Inventory	<u>\$ 5,122,564</u>	<u>\$ 2,660,203</u>

#### Property, Equipment, and Software

Property, equipment, and software are recorded at cost. Depreciation/amortization is recorded for property, equipment, and software using the straight-line method over the estimated useful lives of assets. The Company reviews the recoverability of all long-lived assets, including the related useful lives, whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset might not be recoverable. The balances at December 31, 2022 and 2021 consist of software with three (3) year lives, property and equipment with three (3) to ten (10) year lives, and leasehold improvements which are depreciated over the shorter of the lease life or expected life.

Depreciation and amortization charges on property, equipment, and software are included in general and administrative expenses and amounted to \$75,126 and \$92,213 for the years ended December 31, 2022 and 2021, respectively.

#### Business Combinations

The Company accounts for acquisitions in which it obtains control of one or more businesses as a business combination. The purchase price of the acquired businesses is allocated to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values at the acquisition date. The excess of the purchase price over those fair values is recognized as goodwill. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments, in the period in which they are determined, to the assets acquired and liabilities assumed with the corresponding offset to goodwill. If the



assets acquired are not a business, the Company accounts for the transaction or other event as an asset acquisition. Under both methods, the Company recognizes the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquired entity. In addition, for transactions that are business combinations, the Company evaluates the existence of goodwill or a gain from a bargain purchase.

Goodwill represents the excess of the purchase price of an acquired entity over the fair value of identifiable tangible and intangible assets acquired and liabilities assumed in a business combination.

Intangible assets are established with business combinations and consist of brand names and customer relationships. Intangible assets with finite lives are recorded at their estimated fair value at the date of acquisition and are amortized over their estimated useful lives using the straight-line method. The estimated useful lives of amortizable intangible assets are as follows:

Customer relationships	3 years
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#### Impairment

##### *Long-Lived Assets*

The Company reviews its long-lived assets (property and equipment and amortizable intangible assets) for impairment whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable. If the sum of the expected cash flows, undiscounted, is less than the carrying amount of the asset, an impairment loss is recognized as the amount by which the carrying amount of the asset exceeds its fair value.

##### *Goodwill*

Goodwill and identifiable intangible assets that have indefinite useful lives are not amortized, but instead are tested annually for impairment and upon the occurrence of certain events or substantive changes in circumstances. The annual goodwill impairment test allows for the option to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. An entity may choose to perform the qualitative assessment on none, some or all of its reporting units or an entity may bypass the qualitative assessment for any reporting unit and proceed directly to step one of the quantitative impairment test. If it is determined, on the basis of qualitative factors, that the fair value of a reporting unit is, more likely than not, less than its carrying value, the quantitative impairment test is required.

The quantitative impairment test calculates any goodwill impairment as the difference between the carrying amount of a reporting unit and its fair value, but not to exceed the carrying amount of goodwill. It is our practice, at a minimum, to perform a qualitative or quantitative goodwill impairment test in the fourth quarter every year.

##### *Indefinite-Lived Intangible Assets*

Indefinite-lived intangible assets established in connection with business combinations consist of the brand name. The impairment test for identifiable indefinite-lived intangible assets consists of a comparison of the estimated fair value of the intangible asset with its carrying value. If the carrying value exceeds its fair value, an impairment loss is recognized in an amount equal to that excess.

##### *Annual Impairment Tests*

At December 31, 2021, management determined that certain events and circumstances occurred, primarily the continued reduction in revenues partially as a result of COVID-19, that indicated that the carrying value of the Company's brand name asset pertaining to Bailey44 may not be recoverable. As such, the Company compared the estimated fair value of the brand name with its carrying value and recorded an impairment loss of \$3,400,000 in the consolidated statements of operations.

At December 31, 2022, management determined that certain events and circumstances occurred that indicated that the carrying value of the Company's brand name assets, and the carrying amount of the reporting units, pertaining to Bailey44 and Harper & Jones may not be recoverable. The qualitative assessment was primarily due to reduced or stagnant revenues of both entities as compared to the Company's initial projections at the time of each respective acquisition, as well as the entities' liabilities in excess of assets. As such, the Company compared the estimated fair value of the brand names with its carrying value and recorded an impairment loss of \$3,667,000 in the consolidated statements of operations. Additionally, the Company compared the fair value of the reporting units to

the carrying amounts and recorded an impairment loss of \$11,872,332 pertaining to goodwill in the consolidated statements of operations. The following is a summary of goodwill and intangible impairment recorded pertaining to each entity:

	Year Ended December 31,	
	2022	2021
Bailey brand name (intangibles)	\$ 2,182,000	\$ 3,400,000
Bailey goodwill	3,321,095	—
Total impairment	\$ 5,503,095	\$ 3,400,000

In determining the fair value of the respective reporting units, management estimated the price that would be received to sell the reporting unit as a whole in an orderly transaction between market participants at the measurement date. This includes reviewing market comparables such as revenue multipliers and assigning certain assets and liabilities to the reporting units, such as the respective working capital deficits of each entity and debt obligations that would need to be assumed by a market participant buyer in an orderly transaction. The Company calculated the carrying amounts of each reporting unit by utilizing the entities' assets and liabilities at December 31, 2022, including the carrying value of the identifiable intangible assets and goodwill assigned to the respective reporting units.

Refer to Note 12 for the related developments with H&J.

#### Convertible Instruments

U.S. GAAP requires companies to bifurcate conversion options from their host instruments and account for them as free standing derivative financial instruments according to certain criteria. The criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable generally accepted accounting principles with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument. An exception to this rule is when the host instrument is deemed to be conventional as that term is described under applicable U.S. GAAP.

When the Company has determined that the embedded conversion options should not be bifurcated from their host instruments, the Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. Debt discounts under these arrangements are amortized over the term of the related debt to their stated date of redemption. The Company also records, when necessary, deemed dividends for the intrinsic value of conversion options embedded in preferred shares based upon the differences between the fair value of the underlying common stock at the commitment date of the transaction and the effective conversion price embedded in the preferred shares.

#### Accounting for Preferred Stock

ASC 480, *Distinguishing Liabilities from Equity*, includes standards for how an issuer of equity (including equity shares issued by consolidated entities) classifies and measures on its balance sheet certain financial instruments with characteristics of both liabilities and equity.

Management is required to determine the presentation for the preferred stock as a result of the redemption and conversion provisions, among other provisions in the agreement. Specifically, management is required to determine whether the embedded conversion feature in the preferred stock is clearly and closely related to the host instrument, and whether the bifurcation of the conversion feature is required and whether the conversion feature should be accounted for as a derivative instrument.

If the host instrument and conversion feature are determined to be clearly and closely related (both more akin to equity), derivative liability accounting under ASC 815, *Derivatives and Hedging*, is not required. Management determined that the host contract of the preferred stock is more akin to equity, and accordingly, liability accounting is not required by the Company. The Company has presented preferred stock within stockholders' equity.

Costs incurred directly for the issuance of the preferred stock are recorded as a reduction of gross proceeds received by the Company, resulting in a discount to the preferred stock. The discount is not amortized.

#### Revenue Recognition

Revenues are recognized when performance obligations are satisfied through the transfer of promised goods to the Company's customers. Control transfers upon shipment of product and when the title has been passed to the customers. This includes the transfer of legal title, physical possession, the risks and rewards of ownership, and customer acceptance. The Company provides the customer the right of return on the product and revenue is adjusted based on an estimate of the expected returns based on historical rates. The Company considers the sale of products as a single performance obligation. Sales tax collected from customers and remitted to taxing authorities is excluded from revenue and is included in accrued expenses. Revenue is deferred for orders received for which associated shipments have not occurred.

The reserve for returns totaled \$307,725 and \$33,933 as of December 31, 2022 and 2021, respectively, and is included in accrued expenses and other liabilities in the accompanying consolidated balance sheets.

#### Cost of Revenues

Cost of revenues consists primarily of inventory sold and related freight-in. Cost of revenues includes direct labor pertaining to our inventory production activities and an allocation of overhead costs including rent and insurance. Cost of revenues also includes inventory write-offs and reserves.

#### Shipping and Handling

The Company recognizes shipping and handling billed to customers as a component of net revenues, and the cost of shipping and handling as distribution costs. Total shipping and handling billed to customers as a component of net revenues was approximately \$72,000 and \$23,000 for the years ended December 31, 2022 and 2021, respectively. Total shipping and handling costs included in distribution costs were approximately \$525,000 and \$423,000, respectively.

#### Advertising and Promotion

Advertising and promotional costs are expensed as incurred. Advertising and promotional expense for the years ended December 31, 2022 and 2021 amounted to approximately \$1,178,000 and \$240,000, respectively. The amounts are included in sales and marketing expense.

#### General and Administrative

General and administrative expenses consist primarily of compensation and benefits costs, professional services and information technology. General and administrative expenses also include payment processing fees, design and warehousing fees.

#### Common Stock Purchase Warrants and Other Derivative Financial Instruments

The Company accounts for derivative instruments in accordance with ASC 815, which establishes accounting and reporting standards for derivative instruments and hedging activities, including certain derivative instruments embedded in other financial instruments or contracts and requires recognition of all derivatives on the balance sheet at fair value, regardless of hedging relationship designation. Accounting for changes in fair value of the derivative instruments depends on whether the derivatives qualify as hedging relationships and the types of relationships designated are based on the exposures hedged. At December 31, 2022 and 2021, the Company did not have any derivative instruments that were designated as hedges.

#### Stock Option and Warrant Valuation

Stock option and warrant valuation models require the input of highly subjective assumptions. The fair value of stock-based payment awards was estimated using the Black-Scholes option model. For warrants and stock options issued to non-employees, the Company accounts for the expected life based on the contractual life of the warrants and stock options. For employees, the Company accounts for the expected life of options in accordance with the "simplified" method, which is used for "plain-vanilla" options, as defined in the accounting standards codification. The simplified method is based on the average of the vesting tranches and the contractual life of each grant. For stock price volatility, the Company uses comparable public companies as a basis for its expected volatility to calculate the fair value of options grants. The risk-free interest rate was determined from the implied yields of U.S. Treasury zero-coupon bonds with a remaining life consistent with the expected term of the options. The number of stock award forfeitures are recognized as incurred.

## Stock-Based Compensation

The Company accounts for stock-based compensation costs under the provisions of ASC 718, Compensation — Stock Compensation, which requires the measurement and recognition of compensation expense related to the fair value of stock-based compensation awards that are ultimately expected to vest. Stock based compensation expense recognized includes the compensation cost for all stock-based payments granted to employees, officers, and directors based on the grant date fair value estimated in accordance with the provisions of ASC 718. ASC 718 is also applied to awards modified, repurchased, or cancelled during the periods reported. Stock-based compensation is recognized as an expense over the employee's requisite vesting period and over the nonemployee's period of providing goods or services.

The Company measures employee stock-based awards at grant-date fair value and recognizes employee compensation expense on a straight-line basis over the vesting period of the award. Determining the appropriate fair value of stock-based awards requires the input of subjective assumptions, including the fair value of the Company's common stock, and for stock options, the expected life of the option, and expected stock price volatility. The Company used the Black-Scholes option pricing model to value its stock option awards. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. As a result, if factors change and management uses different assumptions, stock-based compensation expense could be materially different for future awards.

## Deferred Offering Costs

The Company complies with the requirements of ASC 340, Other Assets and Deferred Costs, with regards to offering costs. Prior to the completion of an offering, offering costs are capitalized. The deferred offering costs are charged to additional paid-in capital or as a discount to debt, as applicable, upon the completion of an offering or to expense if the offering is not completed. As of December 31, 2020, the Company had capitalized \$214,647 in deferred offering costs. Upon completion of the IPO in May 2021, all capitalized deferred offering costs were charged to additional paid-in capital. As of December 31, 2021, the Company capitalized \$367,696 in deferred offering costs pertaining to its equity line of credit agreement with Oasis (Note 8). In 2022, the Company wrote off these costs to general and administrative expenses in the consolidated statements of operations as the equity line of credit financing never occurred.

## Segment Information

In accordance with ASC 280, Segment Reporting ("ASC 280"), we identify our operating segments according to how our business activities are managed and evaluated. As of December 31, 2022 our operating segments included: DSTLD, Bailey, H&J, Stateside and Sundry. Each operating segment currently reports to the Chief Executive Officer. Each of our brands serve or are expected to serve customers through our wholesale, in store and online channels, allowing us to execute on our omni-channel strategy. We have determined that each of our operating segments share similar economic and other qualitative characteristics, and therefore the results of our operating segments are aggregated into one reportable segment. All of the operating segments have met the aggregation criteria and have been aggregated and are presented as one reportable segment, as permitted by ASC 280. We continually monitor and review our segment reporting structure in accordance with authoritative guidance to determine whether any changes have occurred that would impact our reportable segments.

## Income Taxes

The Company uses the liability method of accounting for income taxes as set forth in ASC 740, Income Taxes. Under the liability method, deferred taxes are determined based on the temporary differences between the financial statement and tax basis of assets and liabilities using tax rates expected to be in effect during the years in which the basis differences reverse. A valuation allowance is recorded when it is unlikely that the deferred tax assets will not be realized. We assess our income tax positions and record tax benefits for all years subject to examination based upon our evaluation of the facts, circumstances and information available at the reporting date. In accordance with ASC 740-10, for those tax positions where there is a greater than 50% likelihood that a tax benefit will be sustained, our policy will be to record the largest amount of tax benefit that is more likely than not to be realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where there is less than 50% likelihood that a tax benefit will be sustained, no tax benefit will be recognized in the financial statements.

## Net Loss per Share

Net earnings or loss per share is computed by dividing net income or loss by the weighted-average number of common shares outstanding during the period, excluding shares subject to redemption or forfeiture. The Company presents basic and diluted net

earnings or loss per share. Diluted net earnings or loss per share reflect the actual weighted average of common shares issued and outstanding during the period, adjusted for potentially dilutive securities outstanding. Potentially dilutive securities are excluded from the computation of the diluted net loss per share if their inclusion would be anti-dilutive. As all potentially dilutive securities are anti-dilutive as of December 31, 2022 and 2021, diluted net loss per share is the same as basic net loss per share for each year. Potentially dilutive items outstanding as of December 31, 2022 and 2021 are as follows:

	December 31,	
	2022	2021
Convertible notes	37,915	1,916
Series A convertible preferred stock	4,320	—
Common stock warrants	176,733	1,432
Stock options	1,558	1,558
Total potentially dilutive shares	<u>220,526</u>	<u>4,907</u>

The potentially dilutive shares pertaining to the Company's outstanding convertible notes were calculated based on the assumed conversion abilities as of December 31, 2022 and 2021. The ultimate number of shares for which the notes can convert into is indeterminable.

The stock options and warrants above are out-of-the-money as of December 31, 2022 and 2021.

#### Concentrations

The Company utilized three and two vendors that made up 30% and 40%, respectively, of all inventory purchases during the years ended December 31, 2022 and 2021. The loss of one of these vendors, may have a negative short-term impact on the Company's operations; however, we believe there are acceptable substitute vendors that can be utilized longer-term.

#### Leases

On January 1, 2022, the Company adopted ASC 842, *Leases*, as amended, which supersedes the lease accounting guidance under Topic 840, and generally requires lessees to recognize operating and finance lease liabilities and corresponding right-of-use (ROU) assets on the balance sheet and to provide enhanced disclosures surrounding the amount, timing and uncertainty of cash flows arising from lease arrangements. The Company adopted the new guidance using a modified retrospective method. Under this method, the Company elected to apply the new accounting standard only to the most recent period presented, recognizing the cumulative effect of the accounting change, if any, as an adjustment to the beginning balance of retained earnings. Accordingly, prior periods have not been recast to reflect the new accounting standard. The cumulative effect of applying the provisions of ASC 842 had no material impact on accumulated deficit.

The Company elected transitional practical expedients for existing leases which eliminated the requirements to reassess existing lease classification, initial direct costs, and whether contracts contain leases. Also, the Company elected to present the payments associated with short-term leases as an expense in statements of operations. Short-term leases are leases with a lease term of 12 months or less.

#### Recent Accounting Pronouncements

In February 2016, the FASB issued Accounting Standards Update ("ASU") 2016-02: *Leases (Topic 842)*. The new guidance generally requires an entity to recognize on its balance sheet operating and financing lease liabilities and corresponding right-of-use assets. The standard will be effective for the first interim period within annual reporting periods beginning after December 15, 2018 and early adoption is permitted. The new standard requires a modified retrospective transition for existing leases to each prior reporting period presented. The Company has elected to utilize the extended adoption period available to the Company as an emerging growth company and has not currently adopted this standard. This standard will be effective for the first interim period within annual reporting periods beginning after December 15, 2021. The Company has adopted ASU 2016-02 as of January 1, 2022. See Note 11.

Management does not believe that any other recently issued, but not yet effective, accounting standards could have a material effect on the accompanying financial statements. As new accounting pronouncements are issued, the Company will adopt those that are applicable under the circumstances.

**NOTE 4: BUSINESS COMBINATIONS AND DISPOSITION**

*2022 Acquisition*

Sundry

On December 30, 2022, the Company completed its previously announced acquisition (the “Sundry Acquisition”) of all of the issued and outstanding membership interests of Sunnyside, LLC, a California limited liability company (“Sundry”), pursuant to that certain Second Amended and Restated Membership Interest Purchase Agreement (the “Sundry Agreement”), dated October 13, 2022, by and among Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies (“Sundry Sellers”), George Levy as the Sundry Sellers’ representative, the Company as Buyer, and Sundry.

Pursuant to the Agreement, Sellers, as the holders of all of the outstanding membership interests of Sundry, exchanged all of such membership interests for (i) \$7.5 million in cash, (ii) \$5.5 million in promissory notes of the Company (the “Sundry Notes”), and (iii) a number of shares of common stock of the Company equal to \$1.0 million (the “Sundry Shares”), calculated in accordance with the terms of the Agreement, which consideration was paid or delivered to the Sellers, Jenny Murphy and Elodie Crichi. Each Sundry Note bears interest at eight percent (8%) per annum and matured on February 15, 2023 (see Note 7). The Company issued 3,636 shares of common stock to the Sundry Sellers on December 30, 2022 at a fair value of \$1,000,000.

The Company evaluated the acquisition of Sundry pursuant to ASC 805 and ASU 2017-01, Topic 805, Business Combinations. The acquisition method of accounting requires, among other things, that the assets acquired and liabilities assumed in a business combination be measured at their estimated respective fair values as of the closing date of the acquisition. Goodwill recognized in connection with this transaction represents primarily the potential economic benefits that the Company believes may arise from the acquisition.

Total fair value of the purchase price consideration was determined as follows:

Cash	\$ 7,500,000
Promissory notes payable	5,500,000
Common stock	1,000,000
Purchase price consideration	<u>\$ 14,000,000</u>

The Company has made an allocation of the purchase price in regard to the acquisition related to the assets acquired and the liabilities assumed as of the purchase date. The following table summarizes the purchase price allocation:

	Purchase Price Allocation
Cash and cash equivalents	\$ 252,697
Accounts receivable, net	63,956
Due from factor, net	387,884
Inventory	2,941,755
Prepaid expenses and other current assets	32,629
Property, equipment and software, net	48,985
Goodwill	3,711,322
Intangible assets	7,403,800
Accounts payable	(615,706)
Accrued expenses and other liabilities	(227,321)
Purchase price consideration	<u>\$ 14,000,000</u>

The customer relationships will be amortized on a straight-line basis over their estimated useful lives of three years. The brand name is indefinite-lived. The Company used the relief of royalty and income approach to estimate the fair value of intangible assets acquired.

Goodwill is primarily attributable to the go-to-market synergies that are expected to arise as a result of the acquisition and other intangible assets that do not qualify for separate recognition. The goodwill is not deductible for tax purposes. The results of Sundry have been included in the consolidated financial statements since the date of acquisition.

*Previous Acquisitions*

Bailey

On February 12, 2020, the Company acquired 100% of the membership interests of Bailey. The purchase price consideration included (i) an aggregate of 20,754,717 shares of Series B Preferred Stock of the Company (the “Parent Stock”) and (ii) a promissory note in the principal amount of \$5,500,000. The total purchase price consideration was \$15,500,000.

DBG agreed that if at that date which is one year from the closing date of the IPO, the product of the number of shares of Parent Stock issued under the Merger multiplied by the sum of the closing price per share of the common stock of the Company on such date, plus Sold Parent Stock Gross Proceeds (as that term is defined in the Merger Agreement), does not exceed the sum of \$11,000,000 less the value of any Holdback Shares cancelled further to the indemnification provisions of the Merger Agreement, then the Company shall issue to the Holders pro rata an additional aggregate number of shares of common stock of the Company equal to the valuation shortfall at a per share price equal to the then closing price per share of the common stock of the Company.

As of December 31, 2022 and 2021, the Company has a contingent consideration liability of \$0,698,475 and \$7,935,016, respectively, based on the valuation shortfall as noted above. See Note 3.

Harper & Jones

On May 18, 2021, the Company closed its acquisition of H&J pursuant to its previously disclosed Membership Interest Stock Purchase Agreement (as amended, the “Purchase Agreement”) with D. Jones Tailored Collection, Ltd. (the “Seller”), to purchase 100% of the issued and outstanding equity of Harper & Jones LLC. The purchase price consideration included (i) an aggregate of 87,711 shares of the Company’s common stock and (ii) \$500,000 financed from the proceeds of the IPO.

Pursuant to the H&J Purchase Agreement, the Seller, as the holder of all of the outstanding membership interests of H&J, exchanged all of such membership interests for a number of common stock of the Company equal to the lesser of (i) \$9.1 million at a per share price equal to the initial public offering price of the Company’s shares offered pursuant to its initial public offering or (ii) the number of Subject Acquisition Shares; “Subject Acquisition Shares” means the percentage of the aggregate number of shares of the Company’s common stock issued pursuant to the Agreement, which is the percentage that Subject Seller Dollar Value is in relation to Total Dollar Value. “Subject Seller Dollar Value” means \$9.1 million. If, at the one year anniversary of the closing date of the Company’s IPO, the product of the number of shares of the Company’s common stock issued at the closing of the acquisition multiplied by the average closing price per share of the shares of the Company’s common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date does not exceed the sum of \$9.1 million less the value of any shares of the Company’s common stock cancelled further to any indemnification claims made against the Seller then the Company shall issue to Seller an additional aggregate number of shares of the Company’s common stock equal to the valuation shortfall at a per share price equal to the then closing price per share of the Company’s common stock as quoted on the NasdaqCM.

The Company evaluated the acquisition of H&J pursuant to ASC 805 and ASU 2017-01, Topic 805, Business Combinations. The acquisition method of accounting requires, among other things, that the assets acquired and liabilities assumed in a business combination be measured at their estimated respective fair values as of the closing date of the acquisition. Goodwill recognized in connection with this transaction represents primarily the potential economic benefits that the Company believes may arise from the acquisition.

Total fair value of the purchase price consideration was determined as follows:

Cash	\$ 500,000
Common stock	8,025,542
Contingent consideration	<u>3,421,516</u>
Purchase price consideration	<u>\$ 11,947,058</u>

The Company has made an allocation of the purchase price in regard to the acquisition related to the assets acquired and the liabilities assumed as of the purchase date. The following table summarizes the purchase price allocation:

	<b>Purchase Price Allocation</b>
Cash and cash equivalents	\$ 24,335
Accounts receivable, net	49,472
Due from factor, net	—
Inventory	77,159
Prepaid expenses and other current assets	69,715
Property, equipment and software, net	83,986
Goodwill	9,681,548
Intangible assets	3,936,030
Accounts payable	(51,927)
Accrued expenses and other liabilities	(107,957)
Purchase price consideration	<u>\$ 11,947,058</u>

The customer relationships and will be amortized on a straight-line basis over their estimated useful lives of three years. The brand name is indefinite-lived. The Company used the relief of royalty approach to estimate the fair value of intangible assets acquired.

Goodwill is primarily attributable to the go-to-market synergies that are expected to arise as a result of the acquisition and other intangible assets that do not qualify for separate recognition. The goodwill is not deductible for tax purposes.

The Company recorded an initial contingent consideration liability at a fair value of \$421,516 based on the valuation shortfall noted above. As of December 31, 2022 and 2021, the H&J contingent consideration was valued at \$1,400,000 and \$4,244,460, respectively. See Note 3.

The results of H&J have been included in the consolidated financial statements since the date of acquisition. H&J's 2021 net revenue and net loss included in the consolidated financial statements since the acquisition date were approximately \$1,860,000 and \$390,000, respectively.

#### *June 2023 Disposition*

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the "Settlement Agreement") whereby contemporaneously with the parties' execution of the Settlement Agreement (i) the Company agreed to make an aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. ("D. Jones"), (ii) the Company issued 78,103 shares of common stock to D. Jones, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company's membership interest in H&J to D. Jones. This transaction is known as the "H&J Settlement". The H&J Settlement was accounted for a business disposition in accordance with ASC 810-40-40-3A.

In accordance with the provisions of ASC 205-20, the Company has excluded the results of discontinued operations from its results of continuing operations in the accompanying consolidated statements of operations for the three and six months ended June 30, 2023 and 2022 in its Form 10-Q Quarterly Report filed on August 21, 2023. Accordingly, the consolidated financial statements as of and for the years ended December 31, 2022 and 2021 have been adjusted retroactively to account for the discontinued operations classification of H&J.



Significant components of H&J’s assets and liabilities consist of the following:

	December 31,	
	2022	2021
Cash and cash equivalents	\$ 7,666	\$ 12,598
Inventory	102,718	95,155
Accounts receivable, net	45,018	22,010
Goodwill	1,130,310	9,681,548
Intangible assets, net	1,521,265	3,578,182
Other current and non-current assets	62,703	161,740
Accounts payable	81,991	54,981
Accrued expenses and other liabilities	520,195	381,290
Deferred revenue	202,129	276,397
Due to related parties	1,008	21,361
Note payable - related party	129,489	299,489
Loan payable	284,059	148,900

The results of the discontinued operations of H&J for the years ended December 31, 2022 and 2021 consist of the following:

	Year Ended December 31,	
	2022	2021
Net revenues	\$ 3,637,620	\$ 1,819,896
Cost of net revenues	1,241,594	1,888,091
Gross profit (loss)	2,396,026	(68,195)
Operating expenses:		
General and administrative	2,303,854	603,007
Sales and marketing	931,650	540,873
Impairment	10,036,238	—
Total operating expenses	13,271,742	1,143,880
Loss from operations	(10,875,716)	(1,212,075)
Other income (expense):		
Interest expense	(52,927)	(44,828)
Other non-operating income (expenses)	—	233,030
Total other income (expense), net	(52,927)	188,202
Income tax benefit (provision)	—	—
Net loss from discontinued operations	\$ (10,928,643)	\$ (1,023,873)
Weighted average common shares outstanding - basic and diluted	30,852	3,052
Net loss from discontinued operations per common share - basic	\$ (354.23)	\$ (335.52)

Stateside

On August 30, 2021, the Company entered into a Membership Interest Purchase Agreement (the “MIPA”) with Moise Emquies pursuant to which the Company acquired all of the issued and outstanding membership interests of MOSBEST, LLC, a California limited liability company (“Stateside” and such transaction, the “Stateside Acquisition”). Pursuant to the MIPA, Moise Emquies, as the holder of all of the outstanding membership interests of Stateside, exchanged all of such membership interests for \$5.0 million in cash and 44,062 shares of the Company’s common stock (the “Shares”), which number of Shares was calculated in accordance with the terms of the MIPA. Of such amount, \$375,000 in cash and a number of Shares equal to \$375,000, or 3,305 shares (calculated in

accordance with the terms of the MIPA), is held in escrow to secure any working capital adjustments and indemnification claims. The MIPA contains customary representations, warranties and covenants by Moise Emquies.

The Company evaluated the acquisition of Stateside pursuant to ASC 805 and ASU 2017-01, Topic 805, Business Combinations. The acquisition method of accounting requires, among other things, that the assets acquired and liabilities assumed in a business combination be measured at their estimated respective fair values as of the closing date of the acquisition. Goodwill recognized in connection with this transaction represents primarily the potential economic benefits that the Company believes may arise from the acquisition.

Total fair value of the purchase price consideration was determined as follows:

Cash	\$ 5,000,000
Common stock	3,403,196
Purchase price consideration	<u>\$ 8,403,196</u>

The Company has made an allocation of the purchase price in regard to the acquisition related to the assets acquired and the liabilities assumed as of the purchase date. The following table summarizes the purchase price allocation:

	Purchase Price Allocation
Cash and cash equivalents	32,700
Accounts receivable, net	154,678
Due from factor, net	371,247
Inventory	603,625
Prepaid expenses and other current assets	7,970
Deposits	9,595
Property, equipment and software, net	—
Goodwill	2,104,056
Intangible assets	5,939,140
Accounts payable	(374,443)
Accrued expenses and other liabilities	(445,372)
	<u>\$ 8,403,196</u>

The customer relationships and will be amortized on a straight-line basis over their estimated useful lives of three years. The brand name is indefinite-lived. The Company used the relief of royalty and income approach to estimate the fair value of intangible assets acquired.

Goodwill is primarily attributable to the go-to-market synergies that are expected to arise as a result of the acquisition and other intangible assets that do not qualify for separate recognition. The goodwill is not deductible for tax purposes.

Per the terms of the MIPA, a working capital adjustment of \$493,791 was recorded during the fourth quarter. Net amounts due to the seller are \$396,320 at December 31, 2021 (Note 7).

The results of Stateside have been included in the consolidated financial statements since the date of acquisition. Stateside's 2021 net revenue and net loss included in the consolidated financial statements since the acquisition date were approximately \$1,695,000 and \$285,000, respectively.

#### Unaudited Pro Forma Financial Information

The following unaudited pro forma financial information presents the Company's financial results as if the Bailey, H&J, Stateside and Sundry acquisitions had occurred as of January 1, 2021. The unaudited pro forma financial information is not necessarily indicative of what the financial results actually would have been had the acquisitions been completed on this date. In addition, the unaudited pro forma financial information is not indicative of, nor does it purport to project, the Company's future financial results. The following unaudited pro forma financial information includes incremental property and equipment depreciation and intangible

asset amortization as a result of the acquisitions. The unaudited pro forma information does not give effect to any estimated and potential cost savings or other operating efficiencies that could result from the acquisition:

	Year Ended December 31,	
	2022	2021
Net revenues	\$ 28,519,261	\$ 34,635,426
Net loss	\$ (42,001,415)	\$ (33,171,473)
Net loss per common share	\$ (1,361.50)	\$ (10,870.25)

**NOTE 5: DUE FROM FACTOR**

The Company, via its subsidiaries, Bailey, Stateside and Sundry, assigns a portion of its trade accounts receivable to third-party factoring companies, who assumes the credit risk with respect to the collection of non-recourse accounts receivable. The Company may request advances on the net sales factored at any time before their maturity date, and up to 50% of eligible finished goods inventories based on the terms of one of our agreements that terminated in 2021. The factor charges a commission on the net sales factored for credit and collection services. For one factoring company, interest on advances is charged as of the last day of each month at a rate equal to the LIBOR rate plus 2.5% for Bailey. For Stateside and Sundry, should total commission and fees payable be less than \$30,000 in a single year, then the factor shall charge the difference between the actual fees in said year and \$0,000 to the Company. Interest on advances is charged as of the last day of each month at a rate equal to the greater of either, (a) the Chase Prime Rate + (2.0)% or (b) (4.0)% per annum. For another factoring company, interest is charged at one-thirty-third (1/33) of one percent per day, such rate to increase or decrease in accordance with changes in the "Prime Rate", which such prime rate to be deemed to be 4.25% on the date of the agreement.

Advances are collateralized by a security interest in substantially all of the companies' assets.

Due to/from factor consist of the following:

	December 31,	
	2022	2021
Outstanding receivables:		
Without recourse	\$ 564,548	\$ 579,295
With recourse	352,379	361,584
Advances	118,521	121,617
Credits due customers	(196,048)	(77,208)
	<u>\$ 839,400</u>	<u>\$ 985,288</u>

**NOTE 6: GOODWILL AND INTANGIBLE ASSETS**

*Goodwill*

The Company recorded goodwill from each of its business combinations. The following is a summary of goodwill by entity for the years ended December 31, 2022 and 2021:

	Bailey	Stateside	Sundry	Total
Balances at December 31, 2020	\$ 6,479,218	\$ —	\$ —	\$ 6,479,218
Business combination	—	2,104,056	—	2,104,056
Impairment	—	—	—	—
Balances at December 31, 2021	6,479,218	2,104,056	—	8,583,274
Business combination	—	—	3,711,322	3,711,322
Impairment	(3,321,095)	—	—	(3,321,095)
Balances at December 31, 2022	<u>\$ 3,158,123</u>	<u>\$ 2,104,056</u>	<u>\$ 3,711,322</u>	<u>\$ 8,973,501</u>

Refer to Note 3 for discussion on the goodwill impairment recorded in 2022.

As of December 31, 2022, there was approximately \$3.2 million for Bailey in goodwill that relates to liabilities in excess of assets.

*Intangible Assets*

The following table summarizes information relating to the Company's identifiable intangible assets as of December 31, 2022 and 2021:

<b>December 31, 2022</b>	<b>Gross Amount</b>	<b>Accumulated Amortization</b>	<b>Carrying Value</b>
<b>Amortized:</b>			
Customer relationships	\$ 9,734,560	(2,670,202)	\$ 7,064,358
	<u>9,734,560</u>	<u>(2,670,202)</u>	<u>7,064,358</u>
<b>Indefinite-lived:</b>			
Brand name	\$ 5,841,880	—	5,841,880
	<u>\$ 15,576,440</u>	<u>\$ (2,670,202)</u>	<u>\$ 12,906,238</u>
<b>December 31, 2021</b>			
<b>Amortized:</b>			
Customer relationships	\$ 4,736,080	(1,091,509)	\$ 3,644,571
	<u>4,736,080</u>	<u>(1,091,509)</u>	<u>3,644,571</u>
<b>Indefinite-lived:</b>			
Brand name	\$ 5,618,560	—	5,618,560
	<u>\$ 10,354,640</u>	<u>\$ (1,091,509)</u>	<u>\$ 9,263,131</u>

Due to the effects of COVID-19 and revenue levels not recovering as quickly as anticipated and related uncertainty which affected Bailey's results and near-term demand for its products, the Company determined that there were indications for further impairment analysis in both 2022 and 2021. Due to Harper's revenue levels lower as compared to initial projects, the Company determined that there were indications for further impairment analysis in 2022. Refer to Note 3 for discussion on the intangible asset impairment recorded in 2022 and 2021.

Management determined circumstances existed that indicated the carrying value may not be recoverable. The impairment analysis was based on the relief from royalty method using projected revenue estimates and discounts rates believed to be appropriate. Fair value determinations require considerable judgment and are sensitive to changes in underlying assumptions, estimates and market factors. The discount rate, revenue assumptions and terminal growth rate of our reporting unit were the material assumptions utilized in the model used to estimate the fair value of the Bailey unit. The analysis requires estimates, assumptions and judgments about future events. Our analysis uses our internally generated long-range plan. The long-range plan reflects management judgment, which includes observation of expected industry trends.

The Company recorded amortization expense of \$1,653,819 and \$1,128,524 during the years ended December 31, 2022 and 2021, respectively, which is included in general and administrative expenses in the consolidated statements of operations.

Future amortization expense at December 31, 2022 is as follows:

<b>Year Ending December 31,</b>	
2023	2,924,020
2024	2,474,178
2025	1,666,160
	<u>\$ 7,064,358</u>

**NOTE 7: LIABILITIES AND DEBT**

## Accrued Expenses and Other Liabilities

The Company accrued expenses and other liabilities line in the consolidated balance sheets is comprised of the following as of December 31, 2022 and 2021:

	December 31,	
	2022	2021
Accrued expenses	\$ 668,714	\$ 178,819
Reserve for returns	307,725	33,933
Payroll related liabilities	2,618,870	1,183,598
Sales tax liability	262,765	225,804
Due to seller	—	396,320
Other liabilities	78,845	59,613
	<u>\$ 3,936,920</u>	<u>\$ 2,078,087</u>

As of December 31, 2022, payroll liabilities included an aggregate of \$1,074,316 in payroll taxes due to remit to federal and state authorities. Of this amount, \$539,839 pertained to DBG and \$534,477 pertained to Bailey44. The amounts are subject to further penalties and interest.

As of December 31, 2022, accrued expenses included \$535,000 in accrued common stock issuances pursuant to an advisory agreement for services performed in 2022. The 200 shares of common stock owed per the agreement are expected to be issued in the second quarter of 2023.

Due to seller represents amounts to the seller owed pursuant the Stateside Acquisition after certain purchase price adjustments were made in the fourth quarter of 2021, and repaid in 2022.

## Venture Debt

As of December 31, 2021, the gross loan balance with Black Oak Capital (“Black Oak”) pertaining to its senior credit agreement was \$6,001,755. In February 2022, the Company received \$237,500 in proceeds, including loan fees of \$12,500, from the existing venture debt lender under the same terms as the existing facility.

On September 29, 2022, the Company and Black Oak executed a Securities Purchase Agreement (the “Black Oak SPA”) whereby the Company issued 6,300 shares of Series A Convertible Preferred Stock to Black Oak for \$1,000 per share (see Note 7). The shares were issued pursuant to the conversion of Black Oak’s entire principal amount of \$6,251,755, and the Company recorded \$48,245 in interest as part of the conversion. Pursuant to the Black Oak SPA, all accrued interest remaining outstanding. Accrued interest was \$269,880 as of December 31, 2022.

For the year ended December 31, 2022 and 2021, \$12,500 and \$147,389 of loan fees and discounts from warrants were amortized to interest expense, leaving unamortized balance of \$0 as of December 31 2022. Interest expense was \$573,455 and \$825,219 for the years ended December 31, 2022 and 2021, respectively.

## Convertible Debt

*2020 Regulation CF Offering*

During the year ended December 31, 2020, the Company received gross proceeds of \$450,308 from a Regulation CF convertible debt offering. In 2021, the Company received additional gross proceeds of \$473,650. Interest was 6% per annum and the debt was due October 30, 2022. Upon closing of the IPO, the outstanding principal and accrued and unpaid interest of \$16,942 was converted into 12,786 shares of common stock based on the terms of the notes. Total issuances costs were \$69,627, which was recognized as a debt discount and was amortized in 2021 through the date of IPO when such debt converted. During the year ended December 31, 2021, \$27,894 of the debt discount was amortized to interest expense.

Concurrently with the offering above, in 2021 and 2020 the Company received gross proceeds of \$55,000 and \$800,000, respectively, from a Regulation D convertible debt offering. The debt accrued interest at a rate of 14% per annum with a maturity date

of nine months from the date of issuance. In addition, the Company issued 0.2 warrants to purchase common stock in connection with the notes. The issuance costs and warrants are recognized as a debt discount and were amortized in 2021 through the date of IPO when such debt converted. The fair value of the warrants was determined to be negligible.

Upon closing of the IPO, \$755,000 in outstanding principal and approximately \$185,000 of the accrued and unpaid interest was converted into 181 shares of common stock. As of December 31, 2022 and 2021, there was \$100,000 remaining in outstanding principal that was not converted into equity (see table below).

During the year ended December 31, 2021, \$100,000 of the debt discount was amortized to interest expense. The Company recorded an additional \$132,609 in default interest expense upon conversion of these notes.

#### *2019 Regulation D Offering*

For the year ended December 31, 2019, the Company received gross proceeds of \$799,280 from a Regulation D convertible debt offering. The debt accrued interest at a rate of 12% per annum with a maturity date of thirty-six months from the date of issuance. The debt was contingently convertible and contained both automatic and optional conversions.

Upon closing of the IPO, the outstanding principal was converted into 145 shares of common stock.

#### *Convertible Promissory Notes*

##### *2021 Notes*

On August 27, 2021, the Company entered into a Securities Purchase Agreement with Oasis Capital, LLC (“Oasis Capital”) further to which Oasis Capital purchased a senior secured convertible note (the “Oasis Note”), with an interest rate of 6% per annum, having a face value of \$5,265,000 for a total purchase price of \$5,000,000, secured by all assets of the Company.

The Oasis Note, in the principal amount of \$5,265,000, bears interest at 6% per annum and is due and payable 18 months from the date of issuance, unless sooner converted. The Oasis Note is convertible at the option of Oasis Capital into shares of the Company’s common stock at a conversion price (the “Oasis Conversion Price”) which is the lesser of (i) \$90.601, and (ii) 90% of the average of the two lowest volumed weighted average prices (“VWAPs”) during the five consecutive trading day period preceding the delivery of the notice of conversion. Oasis Capital is not permitted to submit conversion notices in any thirty day period having conversion amounts equaling, in the aggregate, in excess of \$500,000. If the Oasis Conversion Price set forth in any conversion notice is less than \$7,500 per share, the Company, at its sole option, may elect to pay the applicable conversion amount in cash rather than issue shares of its common stock.

On October 1, 2021, the Company entered into an Amended and Restated Securities Purchase Agreement with FirstFire Global Opportunities Fund, LLC (“FirstFire”) and Oasis Capital further to which FirstFire purchased a Senior Secured Convertible Promissory Note (the “First FirstFire Note”), with an interest rate of 6% per annum, having a face value of \$1,575,000 for a total purchase price of \$1,500,000, secured by all assets of the Company.

The First FirstFire Note, in the principal amount of \$1,575,000, bears interest at 6% per annum and is due and payable 18 months from the date of issuance, unless sooner converted. The First FirstFire Note is convertible at the option of FirstFire into shares of the Company’s common stock at a conversion price (the “First FirstFire Conversion Price”) which is the lesser of (i) \$9,880, and (ii) 90% of the average of the two lowest volume-weighted average prices during the five consecutive trading day period preceding the delivery of the notice of conversion.

On November 16, 2021, the Company entered into a Securities Purchase Agreement with FirstFire further to which FirstFire purchased a Senior Secured Convertible Promissory Note (the “Second FirstFire Note” and together with the First FirstFire Note, the “FirstFire Notes”), with an interest rate of 6% per annum, having a face value of \$2,625,000 for a total purchase price of \$2,500,000.

The Second FirstFire Note is convertible at the option of FirstFire into shares of the Company’s common stock at a conversion price (the “Second FirstFire Conversion Price”) which is the lesser of (i) \$10,700, and (ii) 90% of the average of the two lowest volume-weighted average prices during the five consecutive trading day period preceding the delivery of the notice of conversion.

The Company evaluated the terms of the conversion features of the Oasis and FirstFire Notes as noted above in accordance with ASC Topic No. 815 - 40, Derivatives and Hedging - Contracts in Entity’s Own Stock, and determined they are not indexed to the

Company's common stock and that the conversion features meet the definition of a liability. The notes contain an indeterminate number of shares to settle with conversion options outside of the Company's control. Therefore, the Company bifurcated the conversion feature and accounted for it as a separate derivative liability. Upon issuance of the Oasis and FirstFire Notes, the Company recognized a derivative liability at an aggregate fair value of \$3,204,924, which is recorded as a debt discount and was amortized over the life of the notes.

The original issue discount and issuance costs for the Oasis and FirstFire Notes totaled \$1,560,000, which were recognized as a debt discount and was amortized over the life of the notes.

As of December 31, 2021, the outstanding principal of the FirstFire and Oasis Notes was \$9,465,000. During the year ended December 31, 2022, the Company fully converted the outstanding principal of \$9,465,000 and accrued interest of \$533,242 into an aggregate of 79,807 shares of common stock. The Company recorded an additional \$484,904 in interest expense as a result of the conversions. As a result of the conversions, all terms and conditions under the notes were met and no further obligations exist.

#### 2022 Notes

On April 8, 2022, the Company and various purchasers executed a Securities Purchase Agreement ("April Notes") whereby the investors purchased from the Company convertible promissory notes in the aggregate principal amount of \$3,068,750, consisting of original issue discount of \$613,750. The Company received net proceeds of \$2,313,750 after the original issue discount and fees, resulting in a debt discount of \$755,000. Upon the Company's public offering in May 2022 (see below), the Company repaid \$3,068,750 to the investors and the debt discount was fully amortized.

In connection with the April Notes, the Company issued an aggregate of 503 warrants to purchase common stock at an exercise price of \$3.050 per share. The Company recognized \$98,241 as a debt discount for the fair value of the warrants using the Black-Scholes option model, which was fully amortized upon the notes' repayment in May.

On July 22 and July 28, 2022, the Company and various purchasers executed a Securities Purchase Agreement ("July Notes") whereby the investors purchased from the Company convertible promissory notes in the aggregate principal amount of \$1,875,000, consisting of original issue discount of \$375,000. The Company received net proceeds of \$1,450,000 after the original issue discount and fees.

In connection with the July 22 and July 28 notes, the Company issued an aggregate of 1,645 and 1,106 warrants to purchase common stock at an exercise price of \$380 and \$282.50 per share, respectively. The Company recognized \$692,299 as a debt discount for the fair value of the warrants using the Black-Scholes option model, which will be amortized to interest expense over the life of the notes.

If the July Notes are not repaid in full by the maturity date or if any other event of default occurs, (1) the face value of the notes will be automatically increased to 120%; (2) the notes will begin generating an annual interest rate of 20%, which will be paid in cash monthly until the default is cured; and (3) if such default continues for 14 or more calendar days, at the Investors' discretion, the notes shall become convertible at the option of the investors into shares of the Company's common stock at a conversion price equal to the closing price of the Company's common stock on the date of the note conversion.

The Company evaluated the terms of the conversion features of the July notes as noted above in accordance with ASC Topic No. 815 — 40 *Derivatives and Hedging — Contracts in Entity's Own Stock*, and determined they are not indexed to the Company's common stock and that the conversion features meet the definition of a liability. The notes contain an indeterminate number of shares to settle with conversion options outside of the Company's control. Therefore, the Company bifurcated the conversion feature and accounted for it as a separate derivative liability. Upon issuance of the July, the Company recognized a derivative liability at an aggregate fair value of \$559,957, which was recorded as a debt discount and will be amortized over the life of the notes.

In December 2022, the Company fully repaid the outstanding principal of \$1,875,000 pertaining to the July 22 and 28 notes, as well as an additional \$416,923 due to the default provisions noted above. This amount was included in interest expense in the consolidated statements of operations.

On December 29, 2022, the Company and various purchasers executed a Securities Purchase Agreement ("December Notes") whereby the investors purchased from the Company convertible promissory notes in the aggregate principal amount of \$4,000,000, consisting of original issue discount of \$800,000. The Company received net proceeds of \$3,000,000. The December Notes were due and payable on February 15, 2023. If the December Notes are not repaid in full by the maturity date or if any other event of default

occurs, (1) the face value of the December Notes will be automatically increased to 120%; (2) the Notes will begin generating an annual interest rate of 20%, which will be paid in cash monthly until the default is cured; and (3) if such default continues for 14 or more calendar days, at the investors' discretion, the December Notes shall become convertible at the option of the investors into shares of the Company's common stock at a conversion price equal to the closing price of the Company's common stock on the date of the note conversion. The December Notes were fully repaid in February 2023.

In connection with the December Notes, the Company issued to the investors an aggregate of 18,779 warrants to purchase common stock at an exercise price equal to \$106.50, and 2,400 shares of common stock. The Company recognized \$428,200 as a debt discount for the fair value of the warrants and common shares using the Black-Scholes option model, which will be amortized to interest expense over the life of the notes.

The following is a summary of the convertible notes for the years ended December 31, 2022 and 2021:

	Principal	Unamortized Debt Discount	Convertible Note Payable, Net
Balance, December 31, 2020	\$ 100,000	\$ —	\$ 100,000
Issuance of Oasis note, net of issuance costs	5,265,000	(715,000)	4,550,000
Issuance of FirstFire First note, net of issuance costs	1,575,000	(315,000)	1,260,000
Issuance of Second FirstFire note, net of issuance costs	2,625,000	(530,000)	2,095,000
Derivative liability in connection with notes	—	(3,204,924)	(3,204,924)
Amortization of debt discount	—	801,538	801,538
Balance, December 31, 2021	9,565,000	(3,963,386)	5,601,614
Proceeds from issuance of notes	8,943,750	(1,992,500)	6,951,250
Repayments of notes	(4,943,750)	—	(4,943,750)
Conversion of notes into common stock	(9,465,000)	—	(9,465,000)
Warrant and common shares issued with convertible notes	—	(1,368,741)	(1,368,741)
Derivative liability in connection with notes	—	(559,957)	(559,957)
Amortization of debt discount	—	6,506,384	6,506,384
Balance, December 31, 2022	<u>\$ 4,100,000</u>	<u>\$ (1,378,200)</u>	<u>\$ 2,721,800</u>

As of December 31, 2022, the December Notes remained outstanding with a principal of \$4,100,000 and unamortized debt discount of \$1,378,200, consisting of the original issue discount, \$50,000 in other financing fees, and the fair value of warrants and shares. The December Notes were fully repaid in February 2023 (see Note 14).

During the years ended December 31, 2022 and 2021, the Company amortized \$6,506,384 and \$801,538, respectively of debt discount to interest expense pertaining to all convertible notes. As of December 31, 2022, there was no remaining derivative liability outstanding pertaining to any convertible notes.

#### Loan Payable — PPP and SBA Loan

In December 2021, the Company received notification that both its PPP Loans of \$203,994 and \$204,000 were approved for full forgiveness. As such, \$407,994 was recorded as other non-operating income in the consolidated financial statements.

In April 2022, Bailey received notification of full forgiveness of its 2<sup>nd</sup> PPP Loan totaling \$1,347,050 and partial forgiveness of its 1<sup>st</sup> PPP Loan totaling \$413,705. As of December 31, 2022, Bailey had an outstanding PPP Loan balance of \$33,295 and matures in 2026.

As of December 31, 2022, the Company and H&J had outstanding loans under the EIDL program of \$150,000 and \$147,438, respectively. The EIDL Loans mature in thirty years from the effective date of the Loan and has a fixed interest rate of 3.75% per annum. The H&J loan was classified in liabilities per discontinued operations.

#### Loan Payable

In May 2021, H&J entered into a loan payable with a bank and received proceeds of \$75,000. The line bears interest at 7.76% and matures in December 2025. As of December 31, 2022 and 2021, the outstanding balance was \$73,187 and \$72,269, respectively. The H&J loan was classified in liabilities per discontinued operations.



In December 2021, H&J entered into a merchant advance loan for a principal amount of \$53,860 and received proceeds of \$140,000. The loan bears interest at 9.9% and matures in June 2023. As of December 31, 2021, the outstanding balance was \$49,962. The H&J loan was classified in liabilities per discontinued operations.

#### Note Payable – Related Party

As of December 31, 2022 and 2021, H&J had an outstanding note payable of \$29,489 and \$299,489, respectively owned by the H&J Seller. The note matured in July 2022 and bears interest at 12% per annum. The H&J loan was classified in liabilities per discontinued operations.

#### Merchant Advances

In 2022 and 2021, H&J entered into merchant advance loans for proceeds of \$47,267 and \$140,000, respectively. The loan bears interest at 9.9% per annum. As of December 31, 2022 and 2021, the outstanding principal of the loans was \$63,433 and \$149,962, respectively. The outstanding loan at December 31, 2022 matures in November 2023.

In 2022, the Company obtained several merchant advances for net proceeds of \$1,335,360 to fund operations. These advances are, for the most part, secured by expected future sales transactions of the Company with expected payments on a weekly basis. During 2022, the Company made repayments totaling \$1,078,385 and \$896,334 remained outstanding, which is expected to be repaid in 2023. As of the date of these financial statements, the Company was in compliance with these covenants.

#### Promissory Note Payable

As noted in Note 4, the Company issued a promissory note in the principal amount of \$5,500,000 to the Bailey Holders pursuant to the Bailey acquisition. Upon the IPO closing in May 2021, the Company repaid \$1,000,000 of the outstanding principal on this note in May 2021. In August 2021, the maturity date was further extended to December 31, 2022. The Company is required to make prepayments of \$2,000,000 to \$4,000,000 if the Company completes a secondary public offering. If a public offering is not consummated before October 31, 2021 and June 30, 2022, the Company shall repay 10% of the outstanding principal at each date. The Company did not make any payments in October 2021, and the Company and the lender agreed to defer these payments to the maturity date of the loan, December 31, 2022. As of the date of these financial statements, the parties are undergoing an extension of the maturity date, but is in technical default.

The note incurs interest at 12% per annum. As of December 31, 2022 and 2021, \$3,500,000 remained outstanding.

Interest expense was \$420,000 and \$494,000 for the years ended December 31, 2022 and 2021, respectively, all of which was accrued and unpaid as of December 31, 2022.

In April 2021, the Company entered into a promissory note in the principal amount of \$1,000,000. The Company received \$810,000 in proceeds, net of issuance costs and original issue discount. Additionally, the Company issued 48 warrants to the lender, which was recorded as a debt discount at the time of the loan. The fair value of the warrants and shares recorded as a debt discount was \$73,958. Upon the closing of the IPO, the note was repaid in full. The entire debt discount of \$263,958 was amortized to interest expense upon repayment of the note.

As noted in Note 4, the Company issued a promissory note in the principal amount of \$5,500,000 to the Sundry Holders pursuant to the Sundry acquisition. The note bears interest at 8% per annum and matures on February 15, 2023. In February 2023, the parties verbally agreed to extend the maturity date to December 31, 2023.

#### **NOTE 8: STOCKHOLDERS' DEFICIT**

##### *Amendments to Articles of Incorporation*

On October 13, 2022, the Company amended its Amended and Restated Certificate of Incorporation to increase the number of authorized shares of the Company's common stock from 200,000,000 to 1,000,000,000, and in conjunction therewith, to increase the aggregate number of authorized shares to 1,010,000,000 shares.

On October 21, 2022, the Board of Directors approved a one-for-100 reverse stock split of its issued and outstanding shares of common stock and a proportional adjustment to the existing conversion ratios for each series of the Company's preferred stock. The

reverse stock split became effective as of November 3, 2022. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this reverse stock split and adjustment of the preferred stock conversion ratios.

On May 18, 2021, the Company filed a Sixth Amended and Restated Certificate of Incorporation (the “Restated Certificate”) with the Secretary of State of the State of Delaware in connection with the Company’s IPO. The Company’s board of directors and stockholders previously approved the Restated Certificate to be effective immediately prior to the closing of the IPO.

The Restated Certificate amends and restates the Company’s amended and restated certificate of incorporation, as amended, in its entirety to, among other things: (i) increase the authorized number of shares of common stock to 200,000,000 shares; (ii) authorize 10,000,000 shares of preferred stock that may be issued from time to time by the Company’s board of directors in one or more series; (iii) provide that directors may be removed from office only for cause by the affirmative vote of the holders of at least 66⅔% in voting power of the Company’s outstanding capital stock then entitled to vote in an election of directors; (iv) eliminate the ability of the Company’s stockholders to take action by written consent in lieu of a meeting; and (v) designate the Court of Chancery of the State of Delaware to be the sole and exclusive forum for certain legal actions and proceedings against the Company.

The Restated Certificate also effected a 1-for-15.625 reverse stock split approved by the Company’s Board of Directors as described above.

#### *Series A Preferred Stock*

On August 31, 2022, the Company entered into a Subscription and Investment Representation Agreement with Hil Davis, its Chief Executive Officer, pursuant to which the Company agreed to issue 1 share of the Company’s Series A Preferred Stock to for \$25,000. The issuance of the preferred stock reduced the due to related party balance. The share of Series A Preferred Stock had 250,000,000 votes per share and voted together with the outstanding shares of the Company’s common stock as a single class exclusively with respect to any proposals to amend the Certificate of Incorporation to effect a reverse stock split of the Company’s common stock and to increase the authorized number of shares of the Company’s common stock. The terms of the Series A Preferred Stock provided that the outstanding share of Series A Preferred Stock would be redeemed in whole, but not in part, at any time: (i) if such redemption is ordered by the Board of Directors in its sole discretion or (ii) automatically upon the approval of Proposals 2 and 6 presented at the Company’s 2022 annual shareholders meeting. Following conclusion of the shareholders meeting, such share of the Company’s Series A Preferred Stock was redeemed. On October 13, 2022, the outstanding share of the Company’s Series A Preferred Stock was redeemed for \$25,000.

#### *Series A Convertible Preferred Stock*

On September 29, 2022, the Company filed the Certificate of Designation designating up to 6,800 shares out of the authorized but unissued shares of its preferred stock as Series A Convertible Preferred Stock.

Except for stock dividends or distributions for which adjustments are to be made pursuant to the Certificate of Designation, the holders of the Series A Preferred Stock (the “Holders”) shall be entitled to receive, and the Company shall pay, dividends on shares of the Series A Preferred Stock equal (on an as-if-converted-to-Common-Stock basis) to and in the same form as dividends actually paid on shares of the Common Stock when, as and if such dividends are paid on shares of the Common Stock. No other dividends shall be paid on shares of the Series A Preferred Stock.

With respect to any vote with the class of Common Stock, each share of the Series A Preferred Stock shall entitle the Holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible.

The Series A Preferred Stock shall rank (i) senior to all of the Common Stock; (ii) senior to any class or series of capital stock of the Company hereafter created specifically ranking by its terms junior to any Preferred Stock (“Junior Securities”); (iii) on parity with any class or series of capital stock of the Corporation created specifically ranking by its terms on parity with the Preferred Stock (“Parity Securities”); and (iv) junior to any class or series of capital stock of the Company hereafter created specifically ranking by its terms senior to any Preferred Stock (“Senior Securities”), in each case, as to dividends or distributions of assets upon liquidation, dissolution or winding up of the Company, whether voluntarily or involuntarily.

Each share of the Series A Preferred Stock shall be convertible, at any time and from time to time from and after September 29, 2022 at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of

such share of the Series A Preferred Stock (\$1,000 as of September 29, 2022) by the Conversion Price. The conversion price for each share of the Series A Preferred Stock is the closing price of the Common Stock on September 29, 2022, which was \$232.50.

*Common Stock*

The Company had 1,000,000,000 shares of common stock authorized with a par value of \$0.0001 as of December 31, 2022.

Common stockholders have voting rights of one vote per share. The voting, dividend, and liquidation rights of the holders of common stock are subject to and qualified by the rights, powers, and preferences of preferred stockholders.

*2022 Transactions*

During the year ended December 31, 2022, the Company issued an aggregate of 79,807 shares of common stock pursuant to the conversion of the FirstFire and Oasis Notes (see Note 7).

In September 2022, the Company issued 30 shares of common stock pursuant to a consultant agreement at a fair value of \$23,000.

As part of the Sundry acquisition (see Note 4), the Company issued 3,636 shares of common stock to the Sundry Sellers at a fair value of \$1,000,000.

In connection with the December Notes, the Company issued 2,400 shares of common stock with a fair value of \$264,000.

*Underwriting Agreements and Public Offerings*

On May 5, 2022, the Company entered into an underwriting agreement (the “Alexander Underwriting Agreement”) with Alexander Capital, L.P., acting as representative of the several underwriters named in the Alexander Underwriting Agreement (the “Alexander Underwriters”), relating to the Company’s underwritten offering pursuant to which the Company agreed to issue and sell 14,956 shares of the Company’s common stock. The shares were sold to the public at a combined public offering price of \$625 per share and were purchased by the Underwriters from the Company at a price of \$575 per share. The Company also granted the Alexander Underwriters a 45-day option to purchase up to an additional 2,243 shares of Common Stock at the same price, which expired and were not purchased.

The shares were sold in the Offering pursuant to a Registration Statement on Form S-1, as amended (File No. 333-264347) (the “Registration Statement”), a Registration Statement on Form S-1 pursuant to 462(b) of the Securities Act of 1933, as amended (File No. 333-264775), and a related prospectus filed with the Securities and Exchange Commission. The public offering closed on May 10, 2022 and the Company sold 14,956 shares of common stock for total gross proceeds of \$9.3 million. The Company received net proceeds of \$8.1 million after deducting underwriters’ discounts and commissions of \$0.7 million and direct offering expenses of \$0.5 million.

On November 29, 2022, the Company, entered into a Securities Purchase Agreement with investors pursuant to which the Company agreed to issue and sell, in an offering (i) an aggregate of 6,720 shares (the “Shares”) of the Company’s common stock, and accompanying Class B Warrants (the “Class B Warrants”) to purchase 6,720 shares of common stock and accompanying Class C Warrants (the “Class C Warrants”) to purchase 6,720 shares of Common Stock, at a combined public offering price of \$137.50 per share and Class B Warrant and Class C Warrant, and (ii) 66,007 pre-funded warrants (the “Pre-Funded Warrants” and together with the Class B Warrants and the Class C Warrants, the “Warrants” and together with the Shares and the shares of common stock underlying the Warrants, the “Securities”) exercisable for 66,007 shares of Common Stock, and accompanying Class B Warrants to purchase 66,007 shares of Common Stock and Class C Warrants to purchase 66,007 shares of Common Stock, at a combined public offering price of \$137.50, less the exercise price of \$0.0001, per Pre-Funded Warrant and accompanying Class B Warrant and Class C Warrant, to the Investors, for aggregate gross proceeds from the offering of approximately \$10 million before deducting placement agent fees and related offering expenses. As a result of the transaction, the Company issued 72,727 shares of common stock, including the 6,720 shares and the immediate exercise of 66,007 pre-funded warrants, for gross proceeds of \$10.0 million. The Company received net proceeds of \$9.0 million after deducting placement agent fees and offering expenses.

#### *2021 Transactions*

On May 13, 2021, the Company’s registration statement on Form S-1 relating to the IPO was declared effective by the SEC. In the IPO, which closed on May 18, 2021, the Company issued and sold 964 shares of common stock at a public offering price of \$0.375 per share. Additionally, the Company issued warrants to purchase 1,111 shares, which includes 145 warrants sold upon the partial exercise of the over-allotment option. The aggregate net proceeds to the Company from the were \$8.6 million after deducting underwriting discounts and commissions of \$0.8 million and direct offering expenses of \$0.6 million.

Upon the closing of the Company’s IPO on May 18, 2021, all then-outstanding shares of Preferred Stock converted into an aggregate of 1,611 shares of common stock according to their terms.

Upon closing of the Company’s IPO, the Company converted outstanding principal totaling \$2,680,289 and certain accrued and unpaid interest of the Company’s convertible debt into an aggregate of 454 shares of common stock. See Note 7.

Upon closing of the Company’s IPO, certain officers and directors converted balances due totaling \$257,515 into 61 shares of common stock and recorded \$233,184 in compensation expense for the shares issued in excess of accrued balances owed.

In connection with the H&J and Stateside acquisitions, the Company issued 877 and 441 shares of common stock to the respective sellers. See Note 4.

Pursuant to a consulting agreement, the Company issued 20 shares of common stock with a guaranteed equity value of \$50,000. In connection with the agreement, the Company recorded a contingent consideration liability of \$67,000. See Note 3. An additional 17 shares were issued upon settlement of the contingent liability.

In May 2021, an aggregate of 13 warrants were exercised for shares of common stock for proceeds of \$45,696. In July 2021, warrant holders exercised 142 warrants for proceeds of \$1,622,350.

On June 28, 2021, the Company’s underwriters purchased 145 shares of common stock at a public offering price of \$0.375 per share pursuant to the exercise of the remaining portion of their over-allotment option. The Company received net proceeds of approximately \$1.4 million after deducting underwriting discounts and commissions of \$0.1 million.

In connection with the execution of the Oasis Capital EPA, the Company issued Oasis Capital 51 shares of common stock (the “Commitment Shares”). Upon nine months from the Execution Date, Oasis may return a portion of the Commitment Shares. As of December 31, 2021, the Company recorded the fair value of the Commitment Shares of \$367,696 as deferred offering costs as no financings under the related EPA have occurred.

In connection with the Second FirstFire Note, in November 2021 the Company issued (a) 12 additional shares of common stock to FirstFire and (b) 40 additional shares of common stock to Oasis Capital, as set forth in the waivers and consents (the “Waivers”), dated November 16, 2021 executed by each of FirstFire and Oasis Capital (collectively, the “Waiver Shares”). The Company recorded interest expense of \$427,700 pertaining to the fair value of the Waiver Shares issued.

In December 2021, the Company issued 60 shares of common stock pursuant to a consulting agreement. The fair value of \$39,000 was based on the value of the Company's common stock on the date of grant and is included in general and administrative expenses in the consolidated statements of operations.

**NOTE 9: RELATED PARTY TRANSACTIONS**

As of December 31, 2022 and 2021, due to related parties includes advances from the former officer, Mark Lynn, who also serves as a director, totaling \$104,568 and \$104,568 respectively, and accrued salary and expense reimbursements of \$100,649 and \$126,706, respectively, to current officers. Upon closing of the IPO, 1,003 shares of common stock were issued to directors as conversion of balances owed.

In October 2022, the Company received advances from a director, Trevor Pettennude, totaling \$325,000. The advances are unsecured, non-interest bearing and due on demand. As of December 31, 2022, the amounts were outstanding.

The current CEO, Hil Davis, previously advanced funds to the Company for working capital. These prior advances were converted to a note payable totaling \$115,000. Upon closing of the IPO, 5,091 shares of common stock were issued to the CEO as conversion of the outstanding note payable and related accrued interest, accrued compensation and other consideration. As of a result of the transaction, the Company recorded an additional \$233,184 in stock compensation expense, which is included in general and administrative expenses in the consolidated statements of operations.

As of December 31, 2022 and 2021, H&J had an outstanding note payable of \$29,489 and \$299,489, respectively, owned by the H&J Seller. The note matured on December 10, 2022 and bears interest at 12% per annum. The note is in technical default. The H&J note was classified in liabilities per discontinued operations.

**NOTE 10: SHARE-BASED PAYMENTS**

Common Stock Warrants

*2022 Transactions*

In connection with the April note agreement, the Company granted warrants to acquire 503 shares of common stock at an exercise price of \$,050.00 per share expiring in April 2027.

On May 10, 2022, pursuant to the Underwriting Agreement, the Company issued the Underwriters' Warrants to purchase up to an aggregate of 598 shares of common stock. The Underwriters' Warrants may be exercised beginning on November 1, 2022 until May 5, 2027. The initial exercise price of each Underwriters' Warrant is \$812.50 per share, which represents 130% of the public offering price.

In connection with the July 22 and July 28 notes, the Company issued an aggregate of 1,645 and 1,106 warrants to purchase common stock at an exercise price of \$380 and \$282.50 per share, respectively. The warrants expire in July 2027.

In connection with the November public offering, the Company granted 66,007 pre-funded warrants which were immediately exercised for shares of common stock. The Company also granted an additional 72,727 Class B Warrants and 72,727 Class C Warrants as part of the offering. Each Class B Warrant has an exercise price of \$131.25 per share, is immediately exercisable upon issuance and expires five years after issuance. Each Class C Warrant has an exercise price of \$131.25 per share, is immediately exercisable upon issuance and expires thirteen months after issuance. The Company also granted the placement agent 5,455 warrants to purchase common stock at an exercise price of \$172 per share, which are exercisable 180 days after issuance and expire in five years.

In connection with the December Notes, the Company issued to the investors an aggregate of 18,779 warrants to purchase common stock at an exercise price equal to \$106.50 for a fair value of \$164,200. The warrants are immediately exercisable.

The Company granted 1,760 warrants to purchase common stock at an exercise price of \$25 to the lender in connection with its merchant advances.

*2021 Transactions*

In connection with the IPO, the Company issued 964 warrants and an additional 145 warrants to purchase common stock per the over-allotment option. Each warrant will have an exercise price of \$11,425 per share (equal to 110% of the offering price of the common stock), will be exercisable upon issuance and will expire five years from issuance.

On May 13, 2021, pursuant to the IPO Underwriting Agreement, the Company issued warrants to the underwriters to purchase up to an aggregate of 48 shares of common stock with an exercise price of \$12,975 per share. The warrants may be exercised beginning on November 13, 2021 and will expire five years from issuance.

In connection with the Company's April 2021 note financing, the Company issued warrants to the lender to purchase up to 48 shares of common stock. The warrants have an exercise price of \$10,375 per share and are exercisable immediately after issuance.

In May 2021, an aggregate of 13 warrants were exercised for shares of common stock for proceeds of \$45,696. In July 2021, warrant holders exercised 142 warrants for proceeds of \$1,622,350.

A summary of information related to common stock warrants for the years ended December 31, 2022 and 2021 is as follows:

	<b>Common Stock Warrants</b>	<b>Weighted Average Exercise Price</b>
Outstanding - December 31, 2020	366	\$ 6,650
Granted	1,205	11,450
Conversion of preferred stock warrants upon IPO	21	19,150
Exercised	(155)	11,425
Forfeited	(4)	19,150
Outstanding - December 31, 2021	1,432	\$ 10,300
Granted	241,308	140.36
Exercised	(66,007)	131.25
Forfeited	—	—
Outstanding - December 31, 2022	<u>176,733</u>	<u>\$ 209.23</u>
Exercisable at December 31, 2021	1,432	\$ 10,300
Exercisable at December 31, 2022	<u>171,278</u>	<u>\$ 210.41</u>

Preferred Stock Warrants

Upon the IPO, all outstanding preferred stock warrants converted into common stock warrants at a ratio of 39,075:1.

Stock Options

*2020 Incentive Stock Plan*

The Company has adopted a 2020 Omnibus Incentive Stock Plan (the "2020 Plan"). An aggregate of 33,000 shares of the Company's common stock is reserved for issuance and available for awards under the 2020 Plan, including incentive stock options granted under the 2020 Plan. The 2020 Plan administrator may grant awards to any employee, director, consultant or other person providing services to us or our affiliates. During 2021, 1,093 options were granted to executives and directors at an exercise price from \$9,625 to \$10,375 per share. As of December 31, 2022, 31,907 options were available for future issuance.

*2013 Incentive Stock Plan*

The Company has adopted the 2013 Stock Plan, as amended and restated (the "Plan"), which provides for the grant of shares of stock options, stock appreciation rights, and stock awards (performance shares) to employees, non-employee directors, and non-employee consultants. The number of shares authorized by the Plan was 479 shares as December 31, 2022 and 2021. The option exercise price generally may not be less than the underlying stock's fair market value at the date of the grant and generally have a term of ten years. The amounts granted each calendar year to an employee or non-employee is limited depending on the type of award.

Stock options comprise all of the awards granted since the Plan's inception. Shares available for grant under the Plan amounted to 13 and as of December 31, 2022. Vesting generally occurs over a period of immediately to four years.

A summary of information related to stock options under our 2013 and 2020 Stock Plan for the years ended December 31, 2022 and 2021 is as follows:

	Options	Weighted Average Exercise Price
Outstanding - December 31, 2020	485	\$ 5,850
Granted	1,093	10,375
Exercised	—	—
Forfeited	—	—
Outstanding - December 31, 2021	1,558	\$ 9,053
Granted	—	—
Exercised	—	—
Forfeited	—	—
Outstanding - December 31, 2022	1,558	\$ 9,053
Exercisable at December 31, 2021	1,266	\$ 8,975
Exercisable at December 31, 2022	1,389	\$ 10,125
Weighted average duration (years) to expiration of outstanding options at December 31, 2022	7.00	

The assumptions utilized for option grants during the years ended December 31, 2022 and 2021 are as follows:

	Year Ended December 31,	
	2022	2021
Risk Free Interest Rate	n/a	0.34% - 0.85 %
Expected Dividend Yield	n/a	0.00 %
Expected Volatility	n/a	58.00 %
Expected Life (years)	n/a	5.18

The total grant-date fair value of the options granted during the years ended December 31, 2021 was \$1,696,605. During the year ended December 31, 2022 and 2021, \$421,442 and \$3,325,897 was recorded to general and administrative expenses, and \$57,596 and \$551,948 was recorded to sales and marketing expense in the consolidated statements of operations, all respectively. Total unrecognized compensation cost related to non-vested stock option awards as of December 31, 2022 amounted to \$577,999 and will be recognized over a weighted average period of 1.56 years.

**NOTE 11: LEASE OBLIGATIONS**

In April 2021, the Company entered into a lease agreement for operating space in Los Angeles, California. The lease expires in June 2023 and has monthly base rent payments of \$17,257. The lease required a \$19,500 deposit. The Company adopted ASC 842 on January 1, 2021 and recognized a right of use asset and liability of \$250,244 using a discount rate of 6.0%. Under ASC 842, the lease was classified as an operating lease.

Stateside leases office and showroom facilities in Los Angeles, California. The leases expire at various dates through November 2022 with base rents ranging from \$3,100 to \$9,000.

Total rent expense for the years ended December 31, 2022 and 2021 was \$45,216 and \$816,790, respectively. Rent is classified by function on the consolidated statements of operations either as general and administrative, sales and marketing, or cost of revenue.

The Company determines whether an arrangement is or contains a lease at inception by evaluating potential lease agreements including services and operating agreements to determine whether an identified asset exists that the Company controls over the term

of the arrangement. Lease commencement is determined to be when the lessor provides access to, and the right to control, the identified asset.

The rental payments for the Company's leases are typically structured as either fixed or variable payments. Fixed rent payments include stated minimum rent and stated minimum rent with stated increases. The Company considers lease payments that cannot be predicted with reasonable certainty upon lease commencement to be variable lease payments, which are recorded as incurred each period and are excluded from the calculation of lease liabilities.

Management uses judgment in determining lease classification, including determination of the economic life and the fair market value of the identified asset. The fair market value of the identified asset is generally estimated based on comparable market data provided by third-party sources.

#### **NOTE 12: CONTINGENCIES**

On March 21, 2023, a vendor filed a lawsuit against Digital Brands Group related to trade payables totaling approximately \$3,501. Such amounts include interest due, and are included in accounts payable, net of payments made to date, in the accompanying consolidated balance sheets. The Company does not believe it is probable that the losses in excess of such trade payables will be incurred.

On February 7, 2023, a vendor filed a lawsuit against Digital Brands Group related to trade payables totaling approximately \$82,400. Such amounts include interest due, and are included in accounts payable, net of payments made to date, in the accompanying consolidated balance sheets. The Company does not believe it is probable that the losses in excess of such trade payables will be incurred.

On November 9, 2022, a vendor filed a lawsuit against Digital Brand's Group related to prior services rendered. The claims (including fines, fees, and legal expenses) total an aggregate of \$50,190. The matter was settled in January 2023 and are on payment plans which will be paid off in April 2023.

In August 2020 and March 2021, two lawsuits were filed against Bailey by third-party's related to prior services rendered. The claims (including fines, fees, and legal expenses) total an aggregate of \$96,900. Both matters were settled in February 2022 and are on payment plans which will be paid off in July and September of 2023

On December 21, 2020, a Company investor filed a lawsuit against DBG for reimbursement of their investment totaling \$100,000. Claimed amounts are included in short-term convertible note payable in the accompanying consolidated balance sheets and the Company does not believe it is probable that losses in excess of such short-term note payable will be incurred. The Company is actively working to resolve this matter.

On September 24, 2020 a Bailey's product vendor filed a lawsuit against Bailey for non-payment of trade payables totaling approximately \$481,000 and additional damages of approximately \$296,000. Claimed amounts for trade payables are included in accounts payable in the accompanying consolidated balance sheets, net of payments made. In December 2021, the Company reached a settlement; however, the settlement terms were not met and the Company received a judgement of \$496,000. The amount due has been paid, the lawsuit dismissed and there is no claim or amount due.

A vendor filed a lawsuit against Bailey related to a retail store lease in the amount of \$1.5 million. The Company is disputing the claim for damages and the matter is ongoing.



The Company has been involved in a dispute with the former owners of H&J regarding its obligation to “true up” their ownership interest in our Company further to that membership interest purchase agreement dated May 18, 2021 whereby we acquired all of the outstanding membership interests of H&J (the “H&J Purchase Agreement”). Further to the H&J Purchase Agreement, we agreed that if, at May 18, 2022, the one year anniversary of the closing date of our initial public offering, the product of the number of shares of our common stock issued at the closing of such acquisition multiplied by the average closing price per share of our shares of common stock as quoted on the NasdaqCM for the thirty (30) day trading period immediately preceding such date plus the gross proceeds, if any, of shares of our stock issued to such sellers and sold by them during the one year period from the closing date of the offering does not exceed the sum of \$9.1 million, less the value of any shares of common stock cancelled further to any indemnification claims or post-closing adjustments under the H&J Purchase Agreement, then we shall issue to the subject sellers an additional aggregate number of shares of common stock equal to any such valuation shortfall at a per share price equal to the then closing price per share of our common stock as quoted on the NasdaqCM. We did not honor our obligation to issue such shares and the former owner of H&J have claimed that they were damaged as a result. As part of a proposed settlement with such holders, the Company has tentatively agreed to the following: (i) to transfer all membership interests of H&J back to the original owners, (ii) to pay such owners the sum of \$229,000, (iii) issue the former owners of H&J an aggregate of \$1,400,000 worth of our common stock to be issued on May 16, 2023 based on the lower of (a) the stock closing price per share on May 15, 2023, and (b) the average common stock closing price based on the average of the 5 trading days preceding May 16, 2023, with the closing price on May 9, 2023. Such tentative terms are to be memorialized in definitive purchase agreements and as such there is no assurance that such arrangements will be finalized. As of the issuance date of these financial statements, the above terms and continued negotiations have been verbally approved by the Board.

All claims above, to the extent management believes it will be liable, have been included in accounts payable and accrued expenses and other liabilities in the accompanying consolidated balance sheet as of December 31, 2022.

Except as may be set forth above the Company is not a party to any legal proceedings, and the Company is not aware of any claims or actions pending or threatened against us. In the future, the Company might from time to time become involved in litigation relating to claims arising from its ordinary course of business, the resolution of which the Company does not anticipate would have a material adverse impact on our financial position, results of operations or cash flows.

**NOTE 13: INCOME TAXES**

Deferred taxes are recognized for temporary differences between the basis of assets and liabilities for financial statement and income tax purposes. The differences relate primarily to depreciable assets using accelerated depreciation methods for income tax purposes, share-based compensation expense, and for net operating loss carryforwards. As of December 31, 2022, and 2021, the Company had net deferred tax assets before valuation allowance of \$16,733,582 and \$13,103,268, respectively. The following table presents the deferred tax assets and liabilities by source:

	December 31,	
	2022	2021
Deferred tax assets:		
Net operating loss carryforwards	\$ 16,733,582	\$ 13,108,371
Deferred tax liabilities:		
Depreciation timing differences	—	(5,103)
Valuation allowance	<u>(16,733,582)</u>	<u>(13,103,268)</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

The Company recognizes deferred tax assets to the extent that it believes that these assets are more likely than not to be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax-planning strategies, and results of recent operations. The Company assessed the need for a valuation allowance against its net deferred tax assets and determined a full valuation allowance is required due, cumulative losses through December 31, 2022, and no history of generating taxable income. Therefore, valuation allowances of \$16,733,582 and \$13,103,268 were recorded as of December 31, 2022 and 2021, respectively. Valuation allowance increased by \$3,630,314 and \$3,081,497 during the years ended December 31, 2022 and 2021, respectively. Deferred tax assets were calculated using the Company’s combined effective tax rate, which it estimated to be approximately 28.0%. The effective rate is reduced to 0% for 2022 and 2021 due to the full valuation allowance on its net deferred tax assets. The Company has permanent differences, consisting of non-deductible impairments of goodwill and intangible assets of \$17.7 million and amortization of non-cash debt issuance costs of \$6.5 million.

The Company's ability to utilize net operating loss carryforwards will depend on its ability to generate adequate future taxable income. At December 31, 2022 and 2021, the Company had net operating loss carryforwards available to offset future taxable income in the amounts of approximately \$59,865,000 and \$46,896,000, for which losses from 2018 forward can be carried forward indefinitely.

As a result of prior operating losses, the Company has net operating loss, or "NOL," carryforwards for federal income tax purposes. The ability to utilize NOL carryforwards to reduce taxable income in future years could become subject to significant limitations under Section 382 of the Internal Revenue Code if the Company undergoes an ownership change. The Company would undergo an ownership change if, among other things, the stockholders who own, directly or indirectly, 5% or more of our common stock, or are otherwise treated as "5% shareholders" under Section 382 of the U.S. Internal Revenue Code and the regulations promulgated thereunder, increase their aggregate percentage ownership of the Company's stock by more than 50 percentage points over the lowest percentage of the stock owned by these stockholders at any time during the testing period, which is generally the three-year period preceding the potential ownership change.

The Company has evaluated its income tax positions and has determined that it does not have any uncertain tax positions. The Company will recognize interest and penalties related to any uncertain tax positions through its income tax expense.

The Company is not presently subject to any income tax audit in any taxing jurisdiction, though all tax years from 2018 on remain open to examination.

The Company recorded a tax benefit of \$1,100,120 for the year ended December 31, 2021 related to a full release of its valuation allowance pertaining to the acquisition of H&J (see Note 4). The acquisition of H&J created a deferred tax liability position, and those deferred tax liabilities can be used as a source of income for the Company's existing deferred tax assets.

#### **NOTE 14: SUBSEQUENT EVENTS**

On January 11, 2023, the Company, entered into a Securities Purchase Agreement (the "Purchase Agreement") with a certain accredited investor (the "Investor"), pursuant to which the Company agreed to issue and sell, in a private placement (the "Private Placement"), an aggregate of 19,000 shares (the "Shares") of the Company's common stock, par value \$0.0001 per share ("Common Stock"), and accompanying warrants (the "Common Warrants") to purchase 19,000 shares of Common Stock, at a combined purchase price of \$97.875 per share and Common Warrant, and (ii) 32,086 pre-funded warrants (the "Pre-Funded Warrants" and together with the Common Warrants, the "Warrants" and together with the Shares and the shares of Common Stock underlying the Warrants, the "Securities") exercisable for 32,086 shares of Common Stock, and accompanying Common Warrants to purchase 32,086 shares of Common Stock, at a combined purchase price of \$97.875, less the exercise price of \$0.0001, per Pre-Funded Warrant and accompanying Common Warrant, to the Investors, for aggregate gross proceeds from the Private Placement of approximately \$5 million.

Each Common Warrant has an exercise price of \$95 per share, will be immediately exercisable upon issuance and will expire five years from the date of issuance.

In February 2023, the Company fully repaid the December Notes for \$4.0 million.

In February 2023, the Company and the Sundry Sellers verbally agreed to extend the maturity date to December 31, 2023.

On April 7, 2023, the Company and various purchasers executed a Securities Purchase Agreement ("April 2023 Notes") whereby the investors purchased from the Company convertible promissory notes in the aggregate principal amount of \$2,208,750, consisting of original issue discount of \$408,750. The Company received net proceeds of \$1,800,000. The April 2023 Notes are due and payable on September 30, 2023. If the April 2023 Notes are not repaid in full by the maturity date or if any other event of default occurs, (1) the face value of the April Notes will be automatically increased to 120%; (2) the April 2023 Notes will begin generating an annual interest rate of 20%, which will be paid in cash monthly until the default is cured; and (3) if such default continues for 14 or more calendar days, at the investors' discretion, the April 2023 Notes shall become convertible at the option of the investors into shares of the Company's common stock at a conversion price equal to the closing price of the Company's common stock on the date of the note conversion.

On June 21, 2023, the Company and the former owners of H&J executed a Settlement Agreement and Release (the “Settlement Agreement”) whereby contemporaneously with the parties’ execution of the Settlement Agreement (i) the Company agreed to make an aggregate cash payment of \$229,000 to D. Jones Tailored Collection, Ltd. (“D. Jones”), (ii) the Company issued 78,103 shares of common stock to D. Jones, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company’s membership interest in H&J to D. Jones. The total estimated value of the common stock was approximately \$1.4 million. We accounted for the disposition as discontinued operations in the accompanying consolidated financial statements, and as a result, we retrospectively reflected certain adjustments to the years ended December 31, 2022 and 2021 in accordance with Accounting Standard Codification (ASC) 205-20 for reporting Discounting Operations.

On August 21, 2023, the Company filed a Certificate of Amendment to our Certificate of Incorporation, as amended, to effect a one-for-twenty-five (1-for-25) reverse stock split effective August 22, 2023. Accordingly, all share and per share amounts for all periods presented in the accompanying consolidated financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect this reverse stock split and adjustment of the preferred stock conversion ratios.

## SUNNYSIDE, LLC, DBA SUNDRY

BALANCE SHEETS  
UNAUDITED

	September 30, 2022 Restated	December 31, 2021
<b>ASSETS</b>		
Current assets:		
Cash	\$ 762,607	\$ 417,235
Accounts receivable, net of allowance	238,779	124,342
Due from factor	416,226	590,022
Inventory	3,207,105	4,917,128
Prepaid expenses and other current assets	170,602	219,902
Total current assets	4,795,319	6,268,628
Fixed assets, net	112,602	161,954
Deposits	9,612	19,742
Total assets	<u>\$ 4,917,533</u>	<u>\$ 6,450,324</u>
<b>LIABILITIES AND MEMBERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 1,345,197	\$ 1,142,671
Accrued liabilities	490,396	773,274
Loan payable, related party	495,000	—
Total liabilities	2,330,593	1,915,945
Commitments and contingencies (Note 7)		
Members' equity	2,586,939	4,534,379
Total members' equity	2,586,939	4,534,379
Total liabilities and members' equity	<u>\$ 4,917,533</u>	<u>\$ 6,450,324</u>

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

## SUNNYSIDE, LLC, DBA SUNDRY

STATEMENTS OF OPERATIONS  
UNAUDITED

	Nine Months Ended September 30,	
	2022 Restated	2021
Net revenues	\$ 11,868,420	\$ 18,151,326
Cost of goods sold	8,026,234	10,890,796
Gross profit	3,842,186	7,260,530
Operating expenses:		
General and administrative	2,682,642	2,286,956
Distribution	731,545	863,185
Sales and marketing	2,260,763	3,168,990
Total operating expenses	5,674,950	6,319,131
Income (loss) from operations	(1,832,764)	941,399
Other income (expense), net		
Other income	—	689,171
Interest expense	(43,876)	(50,510)
Total other income (expense), net	(43,876)	638,661
Provision for income taxes	800	800
Net income (loss)	\$ (1,877,440)	\$ 1,579,260

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

SUNNYSIDE, LLC, DBA SUNDRY  
STATEMENTS OF MEMBERS' EQUITY  
UNAUDITED

	<b>Members' Equity</b>
<b>Balances at December 31, 2020</b>	\$ 4,630,468
Distributions	(1,780,000)
Net income	1,579,260
<b>Balances at September 30, 2021</b>	<u>\$ 4,429,728</u>
<b>Balances at December 31, 2021</b>	\$ 4,534,379
Distributions	(70,000)
Net loss	(1,877,440)
<b>Balances at September 30, 2022</b>	<u>\$ 2,586,939</u>

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

SUNNYSIDE, LLC, DBA SUNDRY  
STATEMENTS OF CHANGES IN CASH FLOWS  
UNAUDITED

	Nine Months Ended September 30,	
	2022 Restated	2021
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ (1,877,440)	\$ 1,579,260
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	40,500	43,200
Bad debt	—	7,068
Other income - PPP forgiveness	—	(689,171)
Changes in operating assets and liabilities:		
Accounts receivable	(114,438)	(140,037)
Due from factor	1,181,097	721,984
Inventory	1,710,023	938,206
Prepaid expenses and other current assets	49,300	(109,952)
Accounts payable	202,526	(690,300)
Accrued liabilities	(282,878)	(629,131)
Net cash provided by operating activities	<u>908,690</u>	<u>1,031,127</u>
<b>Cash flows from investing activities:</b>		
Purchase of property and equipment	—	(5,000)
Proceeds from sale of property and equipment	8,852	—
Deposits	10,130	—
Net cash provided by (used in) investing activities	<u>18,982</u>	<u>(5,000)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from loans payable	—	630,637
Proceeds from loan payable, related party	995,000	—
Repayments to loan payable, related party	(500,000)	—
Factor advances (repayments), net	(1,007,300)	(185,000)
Distributions	(70,000)	(1,780,000)
Net cash used in financing activities	<u>(582,300)</u>	<u>(1,334,363)</u>
<b>Net change in cash and cash equivalents</b>	<u>345,372</u>	<u>(308,236)</u>
Cash at beginning of period	417,235	733,440
Cash at end of period	<u>\$ 762,607</u>	<u>\$ 425,204</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for income taxes	\$ 800	\$ 800
Cash paid for interest	\$ 43,876	\$ 50,510

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

SUNNYSIDE, LLC, DBA SUNDRY

NOTES TO THE UNAUDITED FINANCIAL STATEMENTS

**NOTE 1 — NATURE OF OPERATIONS**

Sunnyside, LLC, dba Sundry, (the “Company”) was formed on January 1, 2014, in the State of California.

The Company is headquartered in Los Angeles and its principal business activity is the design and manufacture of coastal casual women’s apparel. The Company sells predominantly to department and specialty stores located throughout the United States of America and internationally. The Company also sells directly to the consumer through its website.

**NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Basis of Presentation*

The financial statements of the Company are prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

*Unaudited Interim Financial Information*

The accompanying financial statements for the nine months ended September 30, 2022 and the related note disclosures are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in our opinion, reflect all adjustments, consisting of only normal recurring adjustments, necessary to present fairly our financial position as of September 30, 2022 and results of operations, and cash flows for the nine months ended September 30, 2022 and 2021. The results for the nine months ended September 30, 2022 are not necessarily indicative of the results to be expected for the year ending December 31, 2022 or for any other periods. These unaudited financial statements should be read in conjunction with the annual financial statements filed in the Digital Brands Group, Inc. prospectus on Form 424B4 on May 9, 2022.

*Restatement of Previously Issued Financial Statements*

As of September 30, 2022, the Company wrote off \$796,048 in inventories after assessing the estimated interim impact from the concluded inventory at December 31, 2022 upon the Company’s audit. Accordingly, the balance sheet was restated for this amount. The Company also restated the cost of goods sold in the statements of operations and the related impacts on the statements of cash flows.

*Use of Estimates*

Preparation of the financial statements in conformity with U.S. GAAP requires us to make certain estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could ultimately differ from these estimates. It is reasonably possible that changes in estimates may occur in the near term.

*Risks and Uncertainties*

On January 30, 2020, the World Health Organization declared the coronavirus outbreak a “Public Health Emergency of International Concern” and on March 10, 2020, declared it to be a pandemic. Actions taken around the world to help mitigate the spread of the coronavirus include restrictions on travel, and quarantines in certain areas, and forced closures for certain types of public places and businesses. While the majority of pandemic related restrictions have been lifted, the Company expects to continue to have periodic issues in 2022 and potentially beyond, that may be a result of lingering pandemic related issues, including but not limited to: supply chain delays, human capital hiring and retention, and remaining restrictions in geographical locations where we source products and services from.



### *Fair Value of Financial Instruments*

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants as of the measurement date. Applicable accounting guidance provides an established hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect our assumptions about the factors that market participants would use in valuing the asset or liability. There are three levels of inputs that may be used to measure fair value:

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

Level 2 — Include other inputs that are directly or indirectly observable in the marketplace.

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

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

Fair-value estimates discussed herein are based upon certain market assumptions and pertinent information available to us as of September 30, 2022 and December 31, 2021. Fair values of the Company's financial instruments were assumed to approximate carrying values because of the instruments' short-term nature.

### *Cash*

The Company maintains its cash in various commercial banks in the United States ("U.S."). Accounts at U.S. banks are insured by the Federal Deposit Insurance Corporation up to \$250,000. While the Company's accounts at these institutions, at times, may exceed the federally insured limits, management believes that the risk of loss is not significant and the Company has not experienced any losses in such accounts to date.

### *Accounts Receivable*

Accounts receivable are recorded at the invoiced amount and are non-interest-bearing. An allowance for doubtful accounts is maintained based on the length of time receivables are past due, the status of a customers' financial position, and other factors. As of September 30, 2022 and December 31, 2021, there was an allowance for doubtful accounts of \$19,000.

### *Inventory*

Inventory consists of raw materials purchased from the Company's suppliers, work in progress and finished goods. Inventory is valued at the lower of first-in, first-out, cost, or net realizable value. As of September 30, 2022 and December 31, 2021, there was an allowance for obsolescence of \$100,000.

### *Fixed Assets, Net*

Fixed assets are stated at cost less accumulated depreciation. The Company's fixed assets are depreciated using the straight-line method over the estimated useful life of three (3) to seven (7) years. Leasehold improvements are depreciated over the lesser of the term of the respective lease or estimated useful economic life. At the time of retirement or other disposition of property and equipment, the cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is reflected in operations.

### *Impairment of Long-Lived Assets*

The Company reviews its long-lived assets in accordance with Accounting Standards Codification ("ASC") 360-10-35 *Impairment or Disposal of Long-Lived Assets*. Under that directive, long-lived assets are grouped with other assets and liabilities at the

lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Such group is tested for impairment whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. When such factors and circumstances exist, the projected undiscounted future cash flows associated with the related asset or group of assets over their estimated useful lives are compared against their respective carrying amount. Impairment, if any, is based on the excess of the carrying amount over the fair value, based on market value when available, or discounted expected cash flows, of those assets and is recorded in the period in which the determination is made. For the nine months ended September 30, 2022 and 2021, there were no impairment charges.

#### *Revenue Recognition*

The Company recognizes revenue in accordance with ASC 606 - *Revenue from Contracts with Customers* (ASC 606). The Company determines revenue recognition through the following steps:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when or as the performance obligations are satisfied.

Revenue is recognized when control of the promised goods or services is transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. As a practical expedient, the Company does not adjust the transaction price for the effects of a significant financing component if, at contract inception, the period between customer payment and the transfer of goods or services is expected to be one year or less.

In accordance with ASC 606, the Company recognizes revenue via the sale of the Company's merchandise to its customers. Sales contracts (purchase orders) generally have a single performance obligation, which is satisfied upon shipment of merchandise at a point in time. Revenue is measured based on the consideration stated on an invoice, net of estimated returns, chargebacks, and allowances for other deductions based upon management's estimates and the Company's historical experience. The Company accepts product returns from customers in line with the Company's return policy, with each return depending on the underlying reason for and timing of the returned merchandise.

Wholesale revenues are recognized upon shipment of product to the customer. Revenues are recorded, net of expected returns, discounts and allowances. The Company reviews and refines these estimates using historical trends, seasonal results and current economic and market conditions.

E-commerce revenues of products ordered through the Company's website are recognized upon shipment to the customers. E-commerce revenues are also reduced by expected returns and discounts.

The Company evaluates the allowance for sales returns and allowances based on historical percentages, utilizing a multiple-month lookback period. As part of its evaluation, the Company considers actual returns and allowances to date that are in process and its actual sales within the past months that may result in returns and allowances in the future. The allowance for sales returns is recorded within accrued expenses and amounted to approximately \$66,000 and \$73,000 at September 30, 2022 and December 31, 2021, respectively. Under ASC 606, the Company also records an asset on the balance sheet within prepaid expenses and other current assets for the cost of the estimated returns of inventory, which amounted to approximately \$29,700 and \$30,000 at September 30, 2022 and December 31, 2021, respectively.

Utilizing the practical expedient provided for under ASC 606, the Company has elected to expense sales commissions related to product sales as incurred as the amortization period is generally one year or less for the time between customer purchase and utilization. These fees are recorded within sales and marketing expenses on the statement of operations.

*Cost of Goods Sold*

Cost of goods sold consist of the costs of inventory sold and inbound freight. The Company includes outbound freight associated with shipping goods to customers as a component of distribution expenses as noted below.

*Shipping and Handling Fees and Costs*

The Company includes shipping and handling fees billed to customers within revenues. The costs associated with shipping goods to customers are recorded within distribution expenses and amounted to approximately \$449,000 and \$580,000 for the nine months ended September 30, 2022 and 2021, respectively.

*Advertising*

The Company expenses advertising costs as incurred. Advertising costs expensed were approximately \$318,000 and \$594,000 for the nine months ended September 30, 2022 and 2021, respectively.

*Income Taxes*

The Company is a limited liability company (LLC) classified as a partnership for federal income tax purposes, which provides for profits and losses to be reported at the individual member level for income tax purposes. The Company pays the necessary amount of distributions in order to satisfy the member's estimated personal income tax liabilities arising from the Company's profits. The state of California imposes an annual fee on the LLC based on the level of gross revenue of the LLC. As of December 31, 2021 and 2020, the Company does not have any entity-level uncertain tax positions. The Company files income tax returns in the U.S. federal and California state jurisdictions. Generally, the Company is subject to examination by U.S. federal (or state and local) income tax authorities for three to four years from the filing of a tax return.

*Concentration of Credit Risk*

*Concentrations* — The Company had one customer which accounted for 61% of accounts receivable as September 30, 2022. During the nine months ended September 30, 2022, one customer accounted for 25% of the Company's revenues.

*Suppliers* — The Company relies on a small number of vendors for raw materials and inventory purchases. Management believes that the loss of one or more of these vendors would have a material impact on the Company's financial position, results of operations and cash flows. Purchases from two suppliers amounted to approximately 23% of total purchases for the nine months ended September 30, 2022. The Company had two suppliers which accounted for 23% of accounts payable as of September 30, 2022.

*Recent Accounting Pronouncements*

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The new standard establishes a right-of-use ("ROU") model that requires a lessee to record a ROU asset and a lease liability, measured on a discounted basis, the balance sheet for all leases with terms greater than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statements of operations. A modified retrospective transition approach is required for capital and operating leases existing at the date of adoption, with certain practical expedients available. The Company adopted the new guidance on January 1, 2022, but did not have any impact on its financial statements as the Company had no applicable leases.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments*, which changes the impairment model for most financial assets. Several amendments to this new guidance have also been issued by the FASB between 2016 and 2020. The new model uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. The Company is evaluating the impact of this guidance, which is effective for the Company beginning on January 1, 2023, although early adoption is permitted.

**NOTE 3 — DUE FROM FACTOR**

Pursuant to the terms of a continuing agreement between the Company and a factor, the Company sells a significant portion of its trade accounts receivable to a factor on a pre-approved, non-recourse basis. The price at which the accounts are sold is the invoice

amount reduced by the factor commission and all selling discounts. For accounts sold to the factor without recourse, the factor is responsible for collection, assumes all credit risk and obtains all of the rights and remedies against the Company's customers. For such accounts, payment is due from the factor upon the earlier of the payment of the receivable to the factor by the customer, or the maturity of the receivable. Certain receivables are subject to recourse in the event of non-payment by the customer.

The Company may request advances prior to the collection of accounts receivable. Advances are granted at the sole discretion of the factor and are payable upon demand. The factor charges interest on advances at the higher of the prime rate plus 2.00% or 4.00% per annum. The factoring agreement is collateralized by substantially all of the Company's assets.

Due from factor consists of the following:

	September 30, 2022	December 31, 2021
Outstanding receivables		
Without recourse	\$ 702,432	\$ 1,886,591
With recourse	580	11,000
	703,012	1,897,591
Advances	(202,000)	(1,209,300)
Credits due customers	(84,787)	(98,269)
Due from factor	<u>\$ 416,226</u>	<u>\$ 590,022</u>

**NOTE 4 — INVENTORY**

The Company had inventories consisting of the following:

	September 30, 2022	December 31, 2021
Raw materials	\$ 1,139,267	\$ 1,746,722
Work in progress	1,272,861	1,951,549
Finished goods	794,977	1,218,857
Inventory	<u>\$ 3,207,105</u>	<u>\$ 4,917,128</u>

**NOTE 5 — FIXED ASSETS, NET**

Fixed assets, net, are comprised of the following:

	September 30, 2022	December 31, 2021
Leasehold improvements and showrooms	\$ 198,658	\$ 198,658
Furniture and equipment	174,005	183,005
Automobiles	34,220	34,072
	406,883	415,735
Less: accumulated depreciation and amortization	(294,281)	(253,781)
Fixed assets, net	<u>\$ 112,602</u>	<u>\$ 161,954</u>

Depreciation and amortization expense was \$40,500 and \$43,200 for the nine months ended September 30, 2022 and 2021, respectively.

**NOTE 6 — DEBT**

On February 23, 2021, the Company received a second draw PPP loan for approximately \$631,000. The loan bore interest at 1% per annum and was to be repaid in full no later than five years from the disbursement date. The monthly payments were to be an amount equal to the amount necessary to fully amortize the then-outstanding principal balance at the specified interest rate and continue through maturity, if required. The second draw PPP was subject to the same forgiveness provisions as the first loan received in May 2020.

On June 28, 2021, the Company received full forgiveness of the Company's first PPP loan from the SBA, and on December 6, 2021, the Company received full forgiveness of the second draw PPP loan from the SBA. Accordingly, the Company recorded a gain of approximately \$689,000 during the nine months ended September 30, 2022.

See Note 9 for related party loan.

#### **NOTE 7 — COMMITMENTS AND CONTINGENCIES**

##### *Litigation*

The Company is not currently involved with, and does not know of any, pending or threatened litigation against the Company or any of its officers.

##### *Leases*

The Company leases its office and showroom facilities in Los Angeles, California. The leases expire at various dates through April 2022 with base rents ranging from \$4,000 to \$15,000. One of the lease agreements is guaranteed by a member of the Company. As of September 30, 2022, all leases are month-to-month and there are no future commitments.

Total rent expense for the nine months ended September 30, 2022 and 2021 amounted to approximately \$241,000 and \$274,000, respectively.

#### **NOTE 8 — MEMBERS' EQUITY**

During the nine months ended September 30, 2022 and 2021, member distributions totaled \$70,000 and \$1,780,000, respectively.

The debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the Company, and no member of the Company is obligated personally for any such debt, obligation, or liability.

#### **NOTE 9 — RELATED PARTY TRANSACTIONS**

During the nine months ended September 30, 2022, two members advanced the Company an aggregate of \$995,000, of which \$500,000 was repaid and \$495,000 remained outstanding as of September 30, 2022. The loans are unsecured, non-interest bearing, and are due on demand.

During the nine months ended September 30, 2022, the Company paid \$338,115 to a vendor that is owned by a Member of the Company for inventory production.

#### **NOTE 10 — SUBSEQUENT EVENTS**

The Company has evaluated subsequent events that occurred through January 27, 2022, the issuance date of these financial statements.

On December 30, 2022, Digital Brands Group, Inc. ("DBGI") completed its previously announced acquisition (the "Acquisition") of all of the issued and outstanding membership interests of the Company, pursuant to that certain Second Amended and Restated Membership Interest Purchase Agreement (the "Agreement"), dated October 13, 2022, by and among Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies ("Sellers"), George Levy as the Sellers' representative, the Company as Buyer, and Sundry.

Pursuant to the Agreement, Sellers, as the holders of all of the outstanding membership interests of Sundry, exchanged all of such membership interests for (i) \$7.5 million in cash, (ii) \$5.5 million in promissory notes of the DBGI (the "Notes"), and (iii) a number of shares of common stock of the DBGI equal to \$1.0 million (the "Shares"), calculated in accordance with the terms of the Agreement, which consideration was paid or delivered to the Sellers, Jenny Murphy and Elodie Crichi. Each Note bears interest at eight percent (8%) per annum and matures on February 15, 2023.

SUNNYSIDE, LLC, DBA SUNDRY

BALANCE SHEET  
UNAUDITED

	<u>December 30,</u> <u>2022</u>
<b>ASSETS</b>	
Current assets:	
Cash	\$ 179,441
Accounts receivable, net of allowance	63,956
Due from factor	387,884
Inventory	2,941,755
Prepaid expenses and other current assets	83,120
Total current assets	<u>3,656,156</u>
Fixed assets, net	48,985
Deposits	9,612
Total assets	<u>\$ 3,714,753</u>
<b>LIABILITIES AND MEMBERS' EQUITY</b>	
Current liabilities:	
Accounts payable	\$ 613,595
Accrued liabilities	633,672
Loan payable, related party	395,000
Total liabilities	<u>1,642,267</u>
Commitments and contingencies	
Members' equity	<u>2,072,486</u>
Total members' equity	<u>2,072,486</u>
Total liabilities and members' equity	<u>\$ 3,714,753</u>

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

SUNNYSIDE, LLC, DBA SUNDRY

STATEMENT OF OPERATIONS  
UNAUDITED

	Period Ended December 30, 2022
Net revenues	\$ 14,548,083
Cost of goods sold	9,694,857
Gross profit	4,853,226
Operating expenses:	
General and administrative	3,433,633
Distribution	913,052
Sales and marketing	2,736,181
Total operating expenses	7,082,866
Income (loss) from operations	(2,229,640)
Other income (expense), net	
Other income	13,878
Other expenses	(66,232)
Interest expense	(9,099)
Total other income (expense), net	(61,453)
Provision for income taxes	800
Net income (loss)	\$ (2,291,893)

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

SUNNYSIDE, LLC, DBA SUNDRY  
STATEMENT OF MEMBERS' EQUITY  
UNAUDITED

	Members' Equity
<b>Balances at December 31, 2021</b>	\$ 4,534,379
Distributions	(170,000)
Net loss	(2,291,893)
<b>Balances at December 30, 2022</b>	<u>\$ 2,072,486</u>

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



## SUNNYSIDE, LLC, DBA SUNDRY

STATEMENTS OF CASH FLOWS  
UNAUDITED

	Period Ended December 30, 2022
<b>Cash flows from operating activities:</b>	
Net loss	\$ (2,291,893)
Adjustments to reconcile net loss to net cash provided by operating activities:	
Depreciation and amortization	37,885
Changes in operating assets and liabilities:	
Accounts receivable	60,386
Due from factor	473,341
Inventory	1,975,373
Prepaid expenses and other current assets	136,781
Accounts payable	(529,075)
Accrued liabilities	(139,602)
Net cash used in operating activities	(276,805)
<b>Cash flows from investing activities:</b>	
Proceeds from sale of property and equipment	75,084
Deposits	10,130
Net cash provided by (used in) investing activities	85,214
<b>Cash flows from financing activities:</b>	
Proceeds from loans payable	—
Proceeds from loan payable, related party	995,000
Repayments to loan payable, related party	(600,000)
Factor advances (repayments), net	(271,203)
Distributions	(170,000)
Net cash used in financing activities	(46,203)
<b>Net change in cash</b>	(237,794)
Cash at beginning of period	417,235
Cash at end of period	\$ 179,441
<b>Supplemental disclosure of cash flow information:</b>	
Cash paid for income taxes	\$ 800
Cash paid for interest	\$ 9,099

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

SUNNYSIDE, LLC, DBA SUNDRY

NOTES TO THE UNAUDITED FINANCIAL STATEMENTS

NOTE 1 — NATURE OF OPERATIONS

Sunnyside, LLC, dba Sundry, (the “Company”) was formed on January 1, 2014, in the State of California.

The Company is headquartered in Los Angeles and its principal business activity is the design and manufacture of coastal casual women’s apparel. The Company sells predominantly to department and specialty stores located throughout the United States of America and internationally. The Company also sells directly to the consumer through its website.

On December 30, 2022, the Digital Brands Group, Inc. (“DBGI”) completed its previously announced acquisition (the “Sundry Acquisition”) of all of the issued and outstanding membership interests of Sundry, pursuant to that certain Second Amended and Restated Membership Interest Purchase Agreement (the “Sundry Agreement”), dated October 13, 2022, by and among Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies (“Sundry Sellers”), George Levy as the Sundry Sellers’ representative, the Company as Buyer, and Sundry.

Pursuant to the Agreement, Sellers, as the holders of all of the outstanding membership interests of Sundry, exchanged all of such membership interests for (i) \$7.5 million in cash, (ii) \$5.5 million in promissory notes of the Company (the “Sundry Notes”), and (iii) a number of shares of common stock of DBGI equal to \$1.0 million (the “Sundry Shares”), calculated in accordance with the terms of the Agreement, which consideration was paid or delivered to the Sellers, Jenny Murphy and Elodie Crichi. Each Sundry Note bears interest at eight percent (8%) per annum and matured on February 15, 2023. DBGI issued 3,636 shares of common stock to the Sundry Sellers on December 30, 2022 at a fair value of \$1,000,000.

NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

*Basis of Presentation*

The financial statements of the Company are prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

*Unaudited Interim Financial Information*

The accompanying financial statements for the period ended December 30, 2022 and the related note disclosures are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in our opinion, reflect all adjustments, consisting of only normal recurring adjustments, necessary to present fairly our financial position as of December 30, 2022 and results of operations, and cash flows for the period ended December 30, 2022. The results for the period ended December 30, 2022 are not necessarily indicative of the results to be expected for the year ending December 31, 2023 or for any other periods. These unaudited financial statements should be read in conjunction with the annual financial statements filed in the Digital Brands Group, Inc. Form 10-K on April 17, 2023.

*Use of Estimates*

Preparation of the financial statements in conformity with U.S. GAAP requires us to make certain estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could ultimately differ from these estimates. It is reasonably possible that changes in estimates may occur in the near term.

*Risks and Uncertainties*

On January 30, 2020, the World Health Organization declared the coronavirus outbreak a “Public Health Emergency of International Concern” and on March 10, 2020, declared it to be a pandemic. Actions taken around the world to help mitigate the spread of the coronavirus include restrictions on travel, and quarantines in certain areas, and forced closures for certain types of public places and businesses. While the majority of pandemic related restrictions have been lifted, the Company expects to continue to have periodic issues in 2022 and potentially beyond, that may be a result of lingering pandemic related issues, including but not limited to:

supply chain delays, human capital hiring and retention, and remaining restrictions in geographical locations where we source products and services from.

#### *Fair Value of Financial Instruments*

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants as of the measurement date. Applicable accounting guidance provides an established hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect our assumptions about the factors that market participants would use in valuing the asset or liability. There are three levels of inputs that may be used to measure fair value:

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

Level 2 — Include other inputs that are directly or indirectly observable in the marketplace.

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

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

Fair-value estimates discussed herein are based upon certain market assumptions and pertinent information available to us as of December 30, 2022. Fair values of the Company's financial instruments were assumed to approximate carrying values because of the instruments' short-term nature.

#### *Cash*

The Company maintains its cash in various commercial banks in the United States ("U.S."). Accounts at U.S. banks are insured by the Federal Deposit Insurance Corporation up to \$250,000. While the Company's accounts at these institutions, at times, may exceed the federally insured limits, management believes that the risk of loss is not significant and the Company has not experienced any losses in such accounts to date.

#### *Accounts Receivable*

Accounts receivable are recorded at the invoiced amount and are non-interest-bearing. An allowance for doubtful accounts is maintained based on the length of time receivables are past due, the status of a customers' financial position, and other factors. As of December 30, 2022, there was an allowance for doubtful accounts of \$19,000.

#### *Inventory*

Inventory consists of raw materials purchased from the Company's suppliers, work in progress and finished goods. Inventory is valued at the lower of first-in, first-out, cost, or net realizable value.

#### *Fixed Assets, Net*

Fixed assets are stated at cost less accumulated depreciation. The Company's fixed assets are depreciated using the straight-line method over the estimated useful life of three (3) to seven (7) years. Leasehold improvements are depreciated over the lesser of the term of the respective lease or estimated useful economic life. At the time of retirement or other disposition of property and equipment, the cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is reflected in operations.

### *Impairment of Long-Lived Assets*

The Company reviews its long-lived assets in accordance with Accounting Standards Codification (“ASC”) 360-10-35 *Impairment or Disposal of Long-Lived Assets*. Under that directive, long-lived assets are grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Such group is tested for impairment whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. When such factors and circumstances exist, the projected undiscounted future cash flows associated with the related asset or group of assets over their estimated useful lives are compared against their respective carrying amount. Impairment, if any, is based on the excess of the carrying amount over the fair value, based on market value when available, or discounted expected cash flows, of those assets and is recorded in the period in which the determination is made. For the period ended December 30, 2022, there were no impairment charges.

### *Revenue Recognition*

The Company recognizes revenue in accordance with ASC 606 - *Revenue from Contracts with Customers* (ASC 606). The Company determines revenue recognition through the following steps:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when or as the performance obligations are satisfied.

Revenue is recognized when control of the promised goods or services is transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. As a practical expedient, the Company does not adjust the transaction price for the effects of a significant financing component if, at contract inception, the period between customer payment and the transfer of goods or services is expected to be one year or less.

In accordance with ASC 606, the Company recognizes revenue via the sale of the Company’s merchandise to its customers. Sales contracts (purchase orders) generally have a single performance obligation, which is satisfied upon shipment of merchandise at a point in time. Revenue is measured based on the consideration stated on an invoice, net of estimated returns, chargebacks, and allowances for other deductions based upon management’s estimates and the Company’s historical experience. The Company accepts product returns from customers in line with the Company’s return policy, with each return depending on the underlying reason for and timing of the returned merchandise.

Wholesale revenues are recognized upon shipment of product to the customer. Revenues are recorded, net of expected returns, discounts and allowances. The Company reviews and refines these estimates using historical trends, seasonal results and current economic and market conditions.

E-commerce revenues of products ordered through the Company’s website are recognized upon shipment to the customers. E-commerce revenues are also reduced by expected returns and discounts.

The Company evaluates the allowance for sales returns and allowances based on historical percentages, utilizing a multiple-month lookback period. As part of its evaluation, the Company considers actual returns and allowances to date that are in process and its actual sales within the past months that may result in returns and allowances in the future. The allowance for sales returns is recorded within accrued expenses and amounted to approximately \$60,000 at December 30, 2022.

Utilizing the practical expedient provided for under ASC 606, the Company has elected to expense sales commissions related to product sales as incurred as the amortization period is generally one year or less for the time between customer purchase and utilization. These fees are recorded within sales and marketing expenses on the statement of operations.

*Cost of Goods Sold*

Cost of goods sold consist of the costs of inventory sold and inbound freight. The Company includes outbound freight associated with shipping goods to customers as a component of distribution expenses as noted below.

*Shipping and Handling Fees and Costs*

The Company includes shipping and handling fees billed to customers within revenues. The costs associated with shipping goods to customers are recorded within distribution expenses and amounted to approximately \$550,000 for the period ended December 30, 2022.

*Advertising*

The Company expenses advertising costs as incurred. Advertising costs expensed were approximately \$413,000 for the period ended December 30, 2022.

*Income Taxes*

The Company is a limited liability company (LLC) classified as a partnership for federal income tax purposes, which provides for profits and losses to be reported at the individual member level for income tax purposes. The Company pays the necessary amount of distributions in order to satisfy the member's estimated personal income tax liabilities arising from the Company's profits. The state of California imposes an annual fee on the LLC based on the level of gross revenue of the LLC. As of December 31, 2021 and 2020, the Company does not have any entity-level uncertain tax positions. The Company files income tax returns in the U.S. federal and California state jurisdictions. Generally, the Company is subject to examination by U.S. federal (or state and local) income tax authorities for three to four years from the filing of a tax return.

*Concentration of Credit Risk*

*Concentrations* — The Company had one customer which accounted for 60% of accounts receivable as December 30, 2022. During the period ended December 30, 2022, one customer accounted for 25% of the Company's revenues.

*Suppliers* — The Company relies on a small number of vendors for raw materials and inventory purchases. Management believes that the loss of one or more of these vendors would have a material impact on the Company's financial position, results of operations and cash flows. Purchases from two suppliers amounted to approximately 23% of total purchases for the period ended December 30, 2022. The Company had two suppliers which accounted for 23% of accounts payable as of December 30, 2022.

*Recent Accounting Pronouncements*

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The new standard establishes a right-of-use ("ROU") model that requires a lessee to record a ROU asset and a lease liability, measured on a discounted basis, the balance sheet for all leases with terms greater than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statements of operations. A modified retrospective transition approach is required for capital and operating leases existing at the date of adoption, with certain practical expedients available. The Company adopted the new guidance on January 1, 2022, but did not have any impact on its financial statements as the Company had no applicable leases.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments*, which changes the impairment model for most financial assets. Several amendments to this new guidance have also been issued by the FASB between 2016 and 2020. The new model uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. The Company is evaluating the impact of this guidance, which is effective for the Company beginning on January 1, 2023, although early adoption is permitted.

**NOTE 3 — DUE FROM FACTOR**

Pursuant to the terms of a continuing agreement between the Company and a factor, the Company sells a significant portion of its trade accounts receivable to a factor on a pre-approved, non-recourse basis. The price at which the accounts are sold is the invoice

amount reduced by the factor commission and all selling discounts. For accounts sold to the factor without recourse, the factor is responsible for collection, assumes all credit risk and obtains all of the rights and remedies against the Company's customers. For such accounts, payment is due from the factor upon the earlier of the payment of the receivable to the factor by the customer, or the maturity of the receivable. Certain receivables are subject to recourse in the event of non-payment by the customer.

The Company may request advances prior to the collection of accounts receivable. Advances are granted at the sole discretion of the factor and are payable upon demand. The factor charges interest on advances at the higher of the prime rate plus 2.00% or 4.00% per annum. The factoring agreement is collateralized by substantially all of the Company's assets.

Due from factor consists of the following:

	<b>December 30, 2022</b>
Outstanding receivables	
Without recourse	\$ 1,463,496
With recourse	8,533
	<u>1,472,029</u>
Advances	(938,097)
Credits due customers	(146,048)
Due from factor	<u>\$ 387,884</u>

#### NOTE 4 — INVENTORY

The Company had inventories consisting of the following:

	<b>December 30, 2022</b>
Raw materials	\$ 1,214,778
Work in progress	787,532
Finished goods	939,445
Inventory	<u>\$ 2,941,755</u>

#### NOTE 5 — FIXED ASSETS, NET

Fixed assets, net, are comprised of the following:

	<b>December 30, 2022</b>
Leasehold improvements and showrooms	\$ 108,383
Furniture and equipment	174,006
Automobiles	34,220
	<u>316,608</u>
Less: accumulated depreciation and amortization	(267,623)
Fixed assets, net	<u>\$ 48,985</u>

Depreciation and amortization expense was \$37,885 for the period ended December 30, 2022.

#### NOTE 6 — COMMITMENTS AND CONTINGENCIES

##### *Litigation*

The Company is not currently involved with, and does not know of any, pending or threatened litigation against the Company or any of its officers.

*Leases*

The Company leases its office and showroom facilities in Los Angeles, California. The leases expire at various dates through April 2022 with base rents ranging from \$4,000 to \$15,000. One of the lease agreements is guaranteed by a member of the Company. As of December 30, 2022, all leases are month-to-month and there are no future commitments.

Total rent expense for the period ended December 30, 2022 and 2021 amounted to approximately \$246,000.

**NOTE 7 — MEMBERS' EQUITY**

During the period ended December 30, 2022, member distributions totaled \$170,000.

The debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the Company, and no member of the Company is obligated personally for any such debt, obligation, or liability.

**NOTE 8 — RELATED PARTY TRANSACTIONS**

During the period ended December 30, 2022, two members advanced the Company an aggregate of \$995,000, of which \$600,000 was repaid and \$395,000 remained outstanding as of December 30, 2022. The loans are unsecured, non-interest bearing, and are due on demand.

During the period ended December 30, 2022, the Company paid \$674,562 to a vendor that is owned by a Member of the Company for inventory production.

**NOTE 9 — SUBSEQUENT EVENTS**

The Company has evaluated subsequent events that occurred through June 14, 2023, the issuance date of these financial statements.

**SUNNYSIDE, LLC, DBA SUNDRY  
FINANCIAL STATEMENT  
AS OF AND FOR THE YEAR ENDED DECEMBER 31, 2021**



## INDEPENDENT AUDITOR'S REPORT

To the Members' of Sunnyside LLC

### Opinion

We have audited the accompanying financial statements of Sunnyside LLC, dba Sundry (a California limited liability company, the "Company"), which comprise the balance sheet as of December 31, 2021 and the related statements of operations, members' equity, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Company and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, no such opinion is expressed.

[Table of Contents](#)

- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*/s/ dbbmckennon*

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Newport Beach, California  
April 18, 2022

SUNNYSIDE, LLC, DBA SUNDRY

BALANCE SHEET

	December 31, 2021
<b>ASSETS</b>	
Current assets	\$ 417,235
Cash	
Accounts receivable, net of allowance	124,342
Due from factor	590,022
Inventory	4,917,128
Prepaid expenses and other current assets	219,901
Total current assets	6,268,628
Fixed assets, net	161,954
Deposits	19,742
Total assets	<u>\$ 6,450,324</u>
<b>LIABILITIES AND MEMBERS' EQUITY</b>	
Current liabilities:	
Accounts payable	\$ 1,142,671
Accrued liabilities	773,274
Loan payable, current	—
Total current liabilities	1,915,945
Loan payable, net of current portion	—
Total liabilities	1,915,945
Commitments and contingencies (Note 7)	
Members' equity	4,534,379
Total members' equity	4,534,379
Total liabilities and members' equity	<u>\$ 6,450,324</u>

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

SUNNYSIDE, LLC, DBA SUNDRY

STATEMENT OF OPERATIONS

	Year Ended December 31, 2021
Net revenues	\$ 22,800,825
Cost of goods sold	13,638,553
Gross profit	9,162,272
Operating expenses:	
General and administrative	3,201,811
Distribution	1,080,964
Sales and marketing	4,374,667
Total operating expenses	8,657,442
Income from operations	504,830
Other income (expense), net Other income	1,319,899
Interest expense	(70,018)
Total other income (expense), net	1,249,881
Provision for income taxes	800
Net income	\$ 1,753,911

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

**SUNNYSIDE, LLC, DBA SUNDRY**  
**STATEMENT OF MEMBERS' EQUITY**

	<b>Members'</b> <b>Equity</b>
<b>Balances at December 31, 2020</b>	<u>\$ 4,630,468</u>
Distributions	(1,850,000)
Net income	1,753,911
<b>Balances at December 31, 2021</b>	<u>\$ 4,534,379</u>

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

## SUNNYSIDE, LLC, DBA SUNDRY

## STATEMENT OF CASH FLOWS

	Year Ended December 31, 2021
<b>Cash flows from operating activities:</b>	
Net income	\$ 1,753,911
Adjustments to reconcile net income to net cash provided by operating activities:	
Depreciation and amortization	53,851
Bad debt	9,976
Other income – PPP forgiveness	(1,319,808)
Changes in operating assets and liabilities:	
Accounts receivable	44,740
Due from factor	363,083
Inventory	830,698
Due from related party	—
Prepaid expenses and other current assets	(117,777)
Accounts payable	(258,122)
Accrued liabilities	(440,694)
Net cash provided by operating activities	<u>919,858</u>
<b>Cash flows from investing activities:</b>	
Purchase of property and equipment	—
Net cash used in investing activities	<u>—</u>
<b>Cash flows from financing activities:</b>	
Proceeds from loans payable	480,637
Factor advances (repayments), net	133,300
Distributions	(1,850,000)
Net cash used in financing activities	<u>(1,236,063)</u>
<b>Net change in cash and cash equivalents</b>	<b>(316,205)</b>
Cash and cash equivalents at beginning of year	<u>733,440</u>
Cash and cash equivalents at end of year	<u>\$ 417,235</u>
<b>Supplemental disclosure of cash flow information:</b>	
Cash paid for income taxes	\$ 800
Cash paid for interest	\$ 70,018

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

**SUNNYSIDE, LLC, DBA SUNDRY**  
**NOTES TO THE FINANCIAL STATEMENTS**

**NOTE 1 — NATURE OF OPERATIONS**

Sunnyside, LLC, dba Sundry, (the “Company”) was formed on January 17, 2014, in the State of California. The Company’s headquarters are located in Los Angeles, California.

The Company is headquartered in Los Angeles and its principal business activity is the design and manufacture of coastal casual women’s apparel. The Company sells predominantly to department and specialty stores located throughout the United States of America and internationally. The Company also sells directly to the consumer through its website.

**NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Basis of Presentation*

The financial statements of the Company are prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

*Use of Estimates*

Preparation of the financial statements in conformity with U.S. GAAP requires us to make certain estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could ultimately differ from these estimates. It is reasonably possible that changes in estimates may occur in the near term.

*Risks and Uncertainties*

On January 30, 2020, the World Health Organization declared the coronavirus outbreak a “Public Health Emergency of International Concern” and on March 10, 2020, declared it to be a pandemic. Actions taken around the world to help mitigate the spread of the coronavirus include restrictions on travel, and quarantines in certain areas, and forced closures for certain types of public places and businesses. The negative impact the global pandemic has had on the Company in 2021 and 2020 is significant, given revenue is linked to domestic and local locations and offices for operations ranging from production to shipment of goods to customers — all of which were forced to close for a duration of 2021 and 2020, per local requirements around continued operations for essential vs. non-essential businesses.

*Fair Value of Financial Instruments*

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants as of the measurement date. Applicable accounting guidance provides an established hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect our assumptions about the factors that market participants would use in valuing the asset or liability. There are three levels of inputs that may be used to measure fair value:

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

Level 2 — Include other inputs that are directly or indirectly observable in the marketplace.

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

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

Fair-value estimates discussed herein are based upon certain market assumptions and pertinent information available to us as of December 31, 2021 and 2020. Fair values of the Company's financial instruments were assumed to approximate carrying values because of the instruments' short-term nature.

#### *Cash*

The Company maintains its cash in various commercial banks in the United States ("U.S."). Accounts at U.S. banks are insured by the Federal Deposit Insurance Corporation up to \$250,000. While the Company's accounts at these institutions, at times, may exceed the federally insured limits, management believes that the risk of loss is not significant and the Company has not experienced any losses in such accounts to date.

#### *Accounts Receivable*

Accounts receivable are recorded at the invoiced amount and are non-interest-bearing. An allowance for doubtful accounts is maintained based on the length of time receivables are past due, the status of a customers' financial position, and other factors. As of December 31, 2021, there was an allowance for doubtful accounts of \$19,000.

#### *Inventory*

Inventory consists of raw materials purchased from the Company's suppliers, work in progress and finished goods. Inventory is valued at the lower of first-in, first-out, cost, or net realizable value. As of December 31, 2021, there was a reserve for obsolescence of \$100,000.

#### *Fixed Assets, Net*

Fixed assets are stated at cost less accumulated depreciation. The Company's fixed assets are depreciated using the straight-line method over the estimated useful life of three (3) to seven (7) years. Leasehold improvements are depreciated over the lesser of the term of the respective lease or estimated useful economic life. At the time of retirement or other disposition of property and equipment, the cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is reflected in operations.

#### *Impairment of Long-Lived Assets*

The Company reviews its long-lived assets in accordance with Accounting Standards Codification ("ASC") 360-10-35 *Impairment or Disposal of Long-Lived Assets*. Under that directive, long-lived assets are grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Such group is tested for impairment whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. When such factors and circumstances exist, the projected undiscounted future cash flows associated with the related asset or group of assets over their estimated useful lives are compared against their respective carrying amount. Impairment, if any, is based on the excess of the carrying amount over the fair value, based on market value when available, or discounted expected cash flows, of those assets and is recorded in the period in which the determination is made. For the year ended December 31, 2021, there were no impairment charges.

#### *Revenue Recognition*

The Company recognizes revenue in accordance with ASC 606 — *Revenue from Contracts with Customers* (ASC 606). The Company determines revenue recognition through the following steps:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when or as the performance obligations are satisfied.



Revenue is recognized when control of the promised goods or services is transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. As a practical expedient, the Company does not adjust the transaction price for the effects of a significant financing component if, at contract inception, the period between customer payment and the transfer of goods or services is expected to be one year or less.

In accordance with ASC 606, the Company recognizes revenue via the sale of the Company's merchandise to its customers. Sales contracts (purchase orders) generally have a single performance obligation, which is satisfied upon shipment of merchandise at a point in time. Revenue is measured based on the consideration stated on an invoice, net of estimated returns, chargebacks, and allowances for other deductions based upon management's estimates and the Company's historical experience. The Company accepts product returns from customers in line with the Company's return policy, with each return depending on the underlying reason for and timing of the returned merchandise.

Wholesale revenues are recognized upon shipment of product to the customer. Revenues are recorded, net of expected returns, discounts and allowances. The Company reviews and refines these estimates using historical trends, seasonal results and current economic and market conditions.

E-commerce revenues of products ordered through the Company's website are recognized upon shipment to the customers. E-commerce revenues are also reduced by expected returns and discounts.

The Company evaluates the allowance for sales returns and allowances based on historical percentages, utilizing a multiple-month lookback period. As part of its evaluation, the Company considers actual returns and allowances to date that are in process and its actual sales within the past months that may result in returns and allowances in the future. The allowance for sales returns is recorded within accrued expenses and amounted to approximately \$73,000 at December 31, 2021. Under ASC 606, the Company also records an asset on the balance sheet within prepaid expenses and other current assets for the cost of the estimated returns of inventory, which amounted to approximately \$30,000 and \$90,000 at December 31, 2021.

Utilizing the practical expedient provided for under ASC 606, the Company has elected to expense sales commissions related to product sales as incurred as the amortization period is generally one year or less for the time between customer purchase and utilization. These fees are recorded within sales and marketing expenses on the statement of operations.

#### *Cost of Goods Sold*

Cost of goods sold consist of the costs of inventory sold and inbound freight. The Company includes outbound freight associated with shipping goods to customers as a component of distribution expenses as noted below.

#### *Shipping and Handling Fees and Costs*

The Company includes shipping and handling fees billed to customers within revenues. The costs associated with shipping goods to customers are recorded within distribution expenses and amounted to approximately \$674,000 and \$686,000 for the years ended December 31, 2021 and 2020, respectively.

#### *Advertising*

The Company expenses advertising costs as incurred. Advertising costs expensed were approximately \$1,161,000 for the year ended December 31, 2021.

#### *Income Taxes*

The Company is a limited liability company (LLC) classified as a partnership for federal income tax purposes, which provides for profits and losses to be reported at the individual member level for income tax purposes. The Company pays the necessary amount of distributions in order to satisfy the member's estimated personal income tax liabilities arising from the Company's profits. The state of California imposes an annual fee on the LLC based on the level of gross revenue of the LLC. As of December 31, 2021, the Company does not have any entity-level uncertain tax positions. The Company files income tax returns in the U.S. federal and California state jurisdictions. Generally, the Company is subject to examination by U.S. federal (or state and local) income tax authorities for three to four years from the filing of a tax return.

### Concentration of Credit Risk

*Suppliers* — The Company relies on a small number of vendors for raw materials and inventory purchases. Management believes that the loss of one or more of these vendors would have a material impact on the Company's financial position, results of operations and cash flows. Purchases from three suppliers amounted to approximately \$3,045,000, or 22% of total purchases for the year ended December 31, 2021. Included in accounts payable at December 31, 2021 is approximately \$547,000 due to these suppliers.

### Recent Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The new standard establishes a right-of-use ("ROU") model that requires a lessee to record a ROU asset and a lease liability, measured on a discounted basis, the balance sheet for all leases with terms greater than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statements of operations. A modified retrospective transition approach is required for capital and operating leases existing at the date of adoption, with certain practical expedients available. The Company is currently in the process of evaluating the potential impact of this new guidance, which is effective for the Company beginning on January 1, 2022.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments-Credit Losses: Measurement of Credit Losses on Financial Instruments*, which changes the impairment model for most financial assets. Several amendments to this new guidance have also been issued by the FASB between 2016 and 2020. The new model uses a forward-looking expected loss method, which will generally result in earlier recognition of allowances for losses. The Company is evaluating the impact of this guidance, which is effective for the Company beginning on January 1, 2023, although early adoption is permitted.

### NOTE 3 — DUE FROM FACTOR

Pursuant to the terms of a continuing agreement between the Company and a factor, the Company sells a significant portion of its trade accounts receivable to a factor on a pre-approved, non-recourse basis. The price at which the accounts are sold is the invoice amount reduced by the factor commission and all selling discounts. For accounts sold to the factor without recourse, the factor is responsible for collection, assumes all credit risk and obtains all of the rights and remedies against the Company's customers. For such accounts, payment is due from the factor upon the earlier of the payment of the receivable to the factor by the customer, or the maturity of the receivable. Certain receivables are subject to recourse in the event of non-payment by the customer.

The Company may request advances prior to the collection of accounts receivable. Advances are granted at the sole discretion of the factor and are payable upon demand. The factor charges interest on advances at the higher of the prime rate plus 2.00% or 4.00% per annum. The factoring agreement is collateralized by substantially all of the Company's assets.

Due from factor consists of the following:

	December 31, 2021
Outstanding receivables	
Without recourse	\$ 1,886,591
With recourse	11,000
	<u>1,897,591</u>
Advances	(1,209,300)
Credits due customers	(98,269)
Due from factor	<u>\$ 590,022</u>

**NOTE 4 — INVENTORY**

The Company had inventories consisting of the following:

	<b>December 31, 2021</b>
Raw materials	\$ 1,746,722
Work in progress	1,951,549
Finished goods	1,218,857
Inventory	<u>\$ 4,917,128</u>

**NOTE 5 — FIXED ASSETS, NET**

Fixed assets, net, are comprised of the following:

	<b>December 31, 2021</b>
Leasehold improvements and showrooms	\$ 198,658
Furniture and equipment	183,005
Automobiles	34,072
	415,735
Less: accumulated depreciation and amortization	<u>(253,781)</u>
Fixed assets, net	<u>\$ 161,954</u>

Depreciation and amortization expense was \$53,851 for the year ended December 31, 2021.

**NOTE 6 — DEBT**

In May 2020, the Company entered into a loan with a lender in an aggregate principal amount of \$689,171 pursuant to the Paycheck Protection Program ("PPP") under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The PPP Loan was evidenced by a promissory note ("Note"). Subject to the terms of the Note, the PPP Loan bore interest at a fixed rate of one percent (1%) per annum, with the first six months of interest deferred, had an initial term of two years, and was unsecured and guaranteed by the Small Business Administration. The Company could apply to the Lender for forgiveness of the PPP Loan, with the amount which may be forgiven equal to the sum of payroll costs, covered rent, and covered utility payments incurred by the Company during the applicable forgiveness period, calculated in accordance with the terms of the CARES Act. The Note provided for customary events of default including, among other things, cross-defaults on any other loan with the lender.

On February 23, 2021, the Company received a second draw PPP loan for approximately \$631,000. The loan bore interest at 1% per annum and was to be repaid in full no later than five years from the disbursement date. The monthly payments were to be an amount equal to the amount necessary to fully amortize the then- outstanding principal balance at the specified interest rate and continue through maturity, if required. The second draw PPP was subject to the same forgiveness provisions as the first loan.

During 2021, the Company recognized forgiveness of the first and second PPP loans, based on full forgiveness received from the SBA. Accordingly, the Company recorded a gain of \$1,319,808, which is included in other income in the consolidated statements of operations.

In May 2020, the Company was granted an Economic Injury Disaster Loan (EIDL) by the SBA for \$150,000. The loan bore interest at 3.75% with no payments due for the first twelve months. Monthly payments of principal and interest of approximately \$700 began in June 2021 and were to continue through maturity in May 2050, if required. The loan was collateralized by substantially all assets of the Company. In December 2021, the entire outstanding principal was repaid.

**NOTE 7 — COMMITMENTS AND CONTINGENCIES**

*Litigation*

The Company is not currently involved with, and does not know of any, pending or threatened litigation against the Company or any of its officers.

*Leases*

The Company leases its office and showroom facilities in Los Angeles, California. The leases expired at various dates through January 2022 with base rents ranging from approximately \$4,000 to \$15,000. One of the lease agreements is guaranteed by a member of the Company. The following table shows the future annual minimum obligations under lease commitments in effect at December 31, 2021:

2022	\$ 15,516
	\$ 15,516

Total rent expense for the year ended December 31, 2021 amounted to approximately \$372,000.

**NOTE 8 — MEMBERS' EQUITY**

During the years ended December 31, 2021, member distributions totaled \$1,850,000.

The debts, obligations, and liabilities of the Company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the Company, and no member of the Company is obligated personally for any such debt, obligation, or liability.

**NOTE 9 — RELATED PARTY TRANSACTIONS**

During the year ended December 31, 2021, an entity owned by a member of the Company paid the Company \$910 and \$133,056, respectively, for showroom and personnel expenses.

During the years ended December 31, 2021, the Company paid approximately \$1,261,000 to a vendor that is owned by a Member of the Company for inventory production.

**NOTE 10 — SUBSEQUENT EVENTS**

On January 18, 2022, Digital Brands Group, Inc, a Delaware company ("DBGI") entered into a Membership Interest Purchase Agreement (the "Agreement") with Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies ("Sellers"), the Company and George Levy as the Sellers' representative, pursuant to which the DBGI will acquire all of the issued and outstanding membership interests of the Company (such transaction, the "Acquisition").

Pursuant to the Agreement, Sellers, as the holders of all of the outstanding membership interests of Sundry, will exchange all of such membership interests for (i) \$7.5 million of shares of DBGI's common stock at the volume-weighted average (rounded to the nearest \$0.0001) of the closing price of the DBGI's common stock on the Nasdaq Capital Market ("NasdaqCM") during the thirty (30) trading day period immediately prior to the closing, but in no event at a price less than \$1.59; and (ii) \$34.0 million in cash, \$20.0 million of which will be paid at the closing and the balance of which will be evidenced by promissory notes due December 31, 2022 ("Seller Notes"); provided, however, that if the audited aggregate net revenue of Sundry for the year ended December 31, 2021 (the "Audited Net Revenue") times 1.5 is greater than \$34.0 million, the DBGI will pay the difference in cash pro rata to the Sellers and if the Audited Net Revenue times 1.5 is less than \$34.0 million, the Seller Notes will be reduced pro rata for such difference. A portion of the purchase price will be paid to certain employees of Sundry who have a contractual right to receive a portion of the consideration payable in the Acquisition ("Payees").

Of the \$34.0 million in cash payable in the Acquisition, \$2.0 million will be held in escrow to cover possible indemnification claims. If the Seller Notes, plus all unpaid interest thereunder, are not repaid in full on or prior to March 31, 2022, then on March 31, 2022, DBGI will issue an additional \$2.5 million of shares of common stock pro rata to the Sellers and the Payees. If the Seller Notes, plus all unpaid interest thereunder remain outstanding after March 31, 2022 and are not repaid in full on or prior to June 30, 2022, then on June 30, 2022, DBGI will issue an additional \$2.5 million of shares of common stock pro rata to the Sellers and the Payees. If the Seller Notes, plus all unpaid interest thereunder remain outstanding after June 30, 2022 and are not repaid in full on or prior to September 30, 2022, then on September 30, 2022, DBGI will issue an additional \$2.5 million of shares of common stock pro rata to the Sellers and the Payees. Any shares issued on either March 31, June 30 or September 30, 2022 shall be issued at the closing price of the DBGI's common stock as quoted on the NasdaqCM as of the date immediately preceding the date of issuance but in no event at a price less than \$1.59.

The Company has evaluated subsequent events that occurred through April 18, 2022, the issuance date of these financial statements.

**PART II — INFORMATION NOT REQUIRED IN PROSPECTUS****Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the estimated expenses to be borne by the registrant in connection with the issuance and distribution of the shares of common stock being registered hereby.

SEC Filing Fee	\$ 1,961
Legal Fees and Expenses	\$ 26,000 *
Accounting Fees and Expenses	\$ 10,000 *
Miscellaneous Fees and Expenses	\$ 2,039 *
Total	\$ 40,000 *

\* Estimated expenses.

**Item 14. Indemnification of Directors and Officers.**

The Registrant is governed by the Delaware General Corporation Law, as the same exists or may hereafter be amended (the “General Corporation Law”). Section 145 of the General Corporation Law (“Section 145”) provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or Agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or Agent of another corporation or enterprise. The indemnification may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. Section 145 also provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys’ fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys’ fees) which such officer or director actually and reasonably incurred in connection therewith.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or Agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or Agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person’s status as such, whether or not the corporation would otherwise have the power to indemnify such person against such liability under Section 145.

The Registrant’s Sixth Amended and Restated Certificate of Incorporation provides that the Registrant may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer, employee or Agent of the Registrant or any predecessor of the Registrant, or serves or served at any other corporation, partnership, joint venture, trust or other enterprise as a director, officer, employee or Agent at the request of the Registrant or any predecessor of the Registrant.

The Registrant’s Amended and Restated Bylaws provide for mandatory indemnification of directors and officers (and permit the Registrant to indemnify non-officer employees and Agents at its option) to the fullest extent permitted by General Corporation Law against all expense, liability and loss including attorney’s fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlements, provided that the Registrant shall not be required to indemnify in connection with a proceeding initiated by such indemnitee unless the proceeding in which indemnification is sought was authorized in advance by the Registrant’s board of directors.

The Registrant’s Sixth Amended and Restated Certificate of Incorporation eliminates the liability of a director of the registrant to the fullest extent under applicable law. Pursuant to Section 102(b)(7) of the General Corporation Law, a corporation may eliminate the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director,

except for liabilities arising (i) from any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) from any transaction from which the director derived an improper personal benefit.

The Registrant's directors and executive officers are covered by insurance maintained by the Registrant against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). In addition, the Registrant has entered into contracts with its directors and executive officers providing indemnification of such directors and executive officers by the Registrant to the fullest extent permitted by law, subject to certain limited exceptions.

We have entered into indemnification agreements with each of our directors and intend to enter into such agreements with certain of our executive officers. These agreements provide that we will indemnify each of our directors, certain of our executive officers and, at times, their affiliates to the fullest extent permitted by Delaware law. We will advance expenses, including attorneys' fees (but excluding judgments, fines and settlement amounts), to each indemnified director, executive officer or affiliate in connection with any proceeding in which indemnification is available and we will indemnify our directors and officers for any action or proceeding arising out of that person's services as a director or officer brought on behalf of us or in furtherance of our rights. Additionally, certain of our directors or officers may have certain rights to indemnification, advancement of expenses or insurance provided by their affiliates or other third parties, which indemnification relates to and might apply to the same proceedings arising out of such director's or officer's services as a director referenced herein. Nonetheless, we have agreed in the indemnification agreements that our obligations to those same directors or officers are primary and any obligation of such affiliates or other third parties to advance expenses or to provide indemnification for the expenses or liabilities incurred by those directors are secondary.

#### **Item 15. Recent Sales of Unregistered Securities.**

The following information relates to all securities issued or sold by us within the past three years and not registered under the Securities Act. Each of the transactions described below was conducted in reliance upon the exemptions from registration provided in Section 4(a)(2) of the Securities Act and the rules and regulations promulgated thereunder. There were no underwriters employed in connection with any of the transactions set forth in this Item 15.

*On August 21, 2023, the Registrant filed a Certificate of Amendment to its Certificate of Incorporation, as amended, to effect a one-for-twenty-five (1-for-25) reverse stock split effective August 22, 2023. All share and per share information in this Item 15 has been adjusted to reflect this reverse stock split.*

Upon the closing of the IPO on May 18, 2021, all then-outstanding shares of preferred stock converted into an aggregate of 161,087 shares of common stock according to their terms.

Upon closing of the IPO, we converted outstanding principal totaling \$2,680,289 and certain accrued and unpaid interest of our convertible debt into an aggregate of 45,406 shares of common stock.

Upon closing of the IPO, certain officers and directors converted balances due totaling \$257,515 into 6,094 shares of common stock and recorded \$233,184 in compensation expense for the shares issued in excess of accrued balances owed.

In May 2021, in connection with the H&J acquisition, we issued 87,711 shares of common stock to the seller.

Pursuant to a consulting agreement, we issued 2,000 shares of common stock.

In May 2021, an aggregate of 1,275 warrants were exercised for shares of common stock for proceeds of \$145,696.

In July 2021, an aggregate of 14,200 warrants were exercised for shares of common stock for proceeds of \$1,622,350.

In August 2021, an aggregate of 44,062 shares of common stock were issued in exchange for 100% of the outstanding membership interests in Stateside.

In August 2021, in connection with the execution of the Oasis Capital equity purchase agreement, the Company issued 5,054 shares of common stock as commitment shares.

[Table of Contents](#)

In November 2021, we issued an aggregate 5,200 shares of common stock to Oasis Capital and FirstFire pursuant to waivers and consents in connection with the November note.

In December 2021, we issued an aggregate of 7,658 shares of common stock pursuant to consulting agreements.

During the year ended December 31, 2022, the Company issued an aggregate of 79,807 shares of common stock pursuant to the conversion of the FirstFire and Oasis Notes.

In April 2022, in connection with the April note agreement, the Company granted warrants to acquire 503 shares of common stock at an exercise price of \$3,050.00 per share expiring in April 2027.

On May 10, 2022, pursuant to an Underwriting Agreement, the Company issued Underwriters' Warrants to purchase up to an aggregate of 598 shares of common stock. The Underwriters' Warrants may be exercised beginning on November 1, 2022 until May 5, 2027. The initial exercise price of each Underwriters' Warrant is \$812.50 per share, which represents 130% of the public offering price.

In July 2022, in connection with the July 22 and July 28 notes, the Company issued an aggregate of 1,645 and 1,106 warrants to purchase common stock at an exercise price of \$380 and \$282.50 per share, respectively. The warrants expire in July 2027.

In September 2022, the Company issued 30 shares of common stock pursuant to a consultant agreement at a fair value of \$123,000.

In October 2022 the Company issued 6,300 shares of Series A Convertible Preferred Stock to a lender in satisfaction of \$6.25 million of indebtedness owed.

In November 2022, in connection with a November public offering, the Company granted 66,007 pre-funded warrants which were immediately exercised for shares of common stock. The Company also granted an additional 72,727 Class B Warrants and 72,727 Class C Warrants as part of the offering. Each Class B Warrant has an exercise price of \$131.25 per share, is immediately exercisable upon issuance and expires five years after issuance. Each Class C Warrant has an exercise price of \$131.25 per share, is immediately exercisable upon issuance and expires thirteen months after issuance. The Company also granted the placement agent 5,455 warrants, which are exercisable 180 days after issuance and expire in five years.

In November 2022, the Company granted 1,760 warrants to purchase common stock at an exercise price of \$125.00 to a lender in connection with its merchant advances.

As part of the Sundry acquisition, in December 2022, the Company issued 3,636 shares of common stock to the Sundry Sellers at a fair value of \$1,000,000.

In December 2022, in connection with the December Notes, the Company issued 2,400 shares of common stock.

In December 2022, in connection with the December Notes, the Company issued to the investors an aggregate of 18,779 warrants to purchase common stock at an exercise price equal to \$106.50. The warrants are immediately exercisable.

In May 2023, the Company issued one (1) share of Series B Preferred Stock to John Hilburn Davis IV for \$25,000. The Series B Preferred Stock by its terms was automatically redeemed on August 21, 2023. On September 13, 2023, the Company filed a 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.

In June 2023, the Company issued 78,103 shares of common stock in partial satisfaction of a settlement agreement regarding a dispute with the former owners of Harper & Jones LLC at a per share purchase price of \$17.925.

In June 2023, the Company issued 5,761 shares of Series C Preferred Stock to the former owners of Sunnyside LLC a lender in satisfaction of approximately \$5.8 million of indebtedness owed.

In September 2023, pursuant to the Company's 2023 Stock Plan, certain qualified employees of the Company entered into a Stock Purchase Agreement and purchased in aggregate 63,000 restricted shares of common stock at a purchase price of \$10.43 per share.



Unless otherwise stated, the sales of the below securities were deemed to be exempt from registration under the Securities Act in reliance upon Section 4 (a)(2) of the Securities Act (or Regulation D or Regulation S promulgated thereunder), or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions.

**Item 16. Exhibits and Financial Statement Schedules.**

**(a) Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
2.1	<a href="#">Membership Interest Purchase Agreement dated October 14, 2020 among D. Jones Tailored Collection, LTD and Digital Brands Group (formerly known as Denim.LA, Inc.) (incorporated by reference to Exhibit 2.1 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
2.2	<a href="#">First Amendment to Membership Interest Purchase Agreement dated December 31, 2020 among D. Jones Tailored Collection, LTD and Digital Brands Group (formerly known as Denim.LA, Inc) (incorporated by reference to Exhibit 2.2 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
2.3	<a href="#">Agreement and Plan of Merger with Bailey 44, LLC dated February 12, 2020 among Bailey 44, LLC, Norwest Venture Partners XI and Norwest Venture Partners XII, LP and Digital Brands Group (formerly known as Denim.LA, Inc) (incorporated by reference to Exhibit 2.3 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
2.4	<a href="#">Second Amendment to Membership Interest Purchase Agreement Dated May 10, 2021 among D. Jones Tailored Collection, LTD and Digital Brands Group (formerly known as Denim. LA, Inc.) (incorporated by reference to Exhibit 2.4 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
2.5	<a href="#">Membership Interest Purchase Agreement, dated August 30, 2021, by and between Moise Emquies and Digital Brands Group, Inc. (incorporated by reference to Exhibit 2.5 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
2.6	<a href="#">Membership Interest Purchase Agreement, dated January 18, 2022, by and among Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies, Sunnyside, LLC, and George Levy as the Sellers' representative (incorporated by reference to Exhibit 1.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 20, 2022).</a>
2.7	<a href="#">Amended and Restated Membership Interest Purchase Agreement, dated June 17, 2022, by and among Digital Brands Group, Inc. and Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies (incorporated by reference to Exhibit 2.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 23, 2022).</a>
2.8	<a href="#">Second Amended and Restated Membership Interest Purchase Agreement, dated October 13, 2022, by and among Digital Brands Group, Inc. and Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies (incorporated by reference to Exhibit 2.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 18, 2022).</a>
3.1	<a href="#">Sixth Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.3 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
3.2	<a href="#">Certificate of Designation of Series A Preferred Stock, dated August 31, 2022 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 31, 2022).</a>
3.3	<a href="#">Certificate of Designation of Series A Convertible Preferred Stock, dated September 29, 2022 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 5, 2022).</a>

<b>Exhibit Number</b>	<b>Description</b>
3.4	<a href="#">Certificate of Correction of Series A Convertible Preferred Stock, dated October 3, 2022 (incorporated by reference to Exhibit 3.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 5, 2022).</a>
3.5	<a href="#">Certificate of Amendment of Certificate of Incorporation of Digital Brands Group, Inc. dated October 13, 2022 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 18, 2022).</a>
3.6	<a href="#">Certificate of Amendment of Certificate of Incorporation of Digital Brands Group, Inc. dated October 21, 2022 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 26, 2022).</a>
3.7	<a href="#">Amended and Restated Bylaws of Registrant (incorporated by reference to Exhibit 3.5 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
3.8	<a href="#">Amendment No. 1 to the Amended and Restated Bylaws of Digital Brands Group, Inc., as amended (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 12, 2022).</a>
3.9	<a href="#">Amendment No. 2 to the Amended and Restated Bylaws of Digital Brands Group, Inc., as amended (incorporated by reference to Exhibit 3.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 31, 2022).</a>
3.10	<a href="#">Certificate of Designation of Series B Preferred Stock, dated May 30, 2023 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 1, 2023).</a>
3.11	<a href="#">Certificate of Designation of Series C Convertible Preferred Stock, dated June 21, 2023 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 27, 2023).</a>
3.12	<a href="#">Certificate of Amendment of Certificate of Incorporation of Digital Brands Group, Inc. dated August 21, 2023 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 23, 2023).</a>
3.13	<a href="#">Certificate of Cancellation of Series A Preferred Stock dated September 13, 2023 (incorporated by reference to Exhibit 3.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 14, 2023).</a>
3.14	<a href="#">Certificate of Cancellation of Series B Preferred Stock dated September 13, 2023 (incorporated by reference to Exhibit 3.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 14, 2023).</a>
4.1	<a href="#">Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.2	<a href="#">Warrant Agency Agreement, including Form of Warrant Certificate (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on May 18, 2021).</a>
4.3	<a href="#">Representative's Warrant Agreement (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on May 18, 2021).</a>
4.4	<a href="#">Form of Lender's Warrants (incorporated by reference to Exhibit 4.4 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.5	<a href="#">Form of 2019 Regulation D Convertible Note (incorporated by reference to Exhibit 4.10 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.6	<a href="#">Form of 2020 Regulation D Convertible Note (incorporated by reference to Exhibit 4.11 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>

<b>Exhibit Number</b>	<b>Description</b>
4.7	<a href="#">Form of Promissory Note, dated July 22, 2022, by Digital Brands Group, Inc. in favor each Investor (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on July 27, 2022).</a>
4.8	<a href="#">Form of Warrant, dated July 22, 2022, by Digital Brands Group, Inc. in favor each Investor (incorporated by reference to Exhibit 10.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on July 27, 2022).</a>
4.9	<a href="#">Form of Promissory Note, dated July 28, 2022, by Digital Brands Group, Inc. in favor the New Investor (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 2, 2022).</a>
4.10	<a href="#">Form of Warrant, dated July 28, 2022, by Digital Brands Group, Inc. in favor the New Investor (incorporated by reference to Exhibit 10.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 2, 2022).</a>
4.11	<a href="#">Form of Promissory Notes issued to each of the Sellers, Jenny Murphy and Elodie Crichi (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 18, 2022).</a>
4.12	<a href="#">Underwriter's Warrants issued to Alexander Capital L.P. on May 5, 2022 (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on May 10, 2022).</a>
4.13	<a href="#">Underwriter's Warrants issued to Revere Securities, LLC (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on May 10, 2022).</a>
4.14	<a href="#">Form of Class B Warrant (incorporated by reference to Exhibit 4.27 to the Registrant's Registration Statement on Form S-1/A, filed with the SEC on November 29, 2022 (File no. 333-268213)).</a>
4.15	<a href="#">Form of Class C Warrant (incorporated by reference to Exhibit 4.28 to the Registrant's Registration Statement on Form S-1/A, filed with the SEC on November 29, 2022 (File no. 333-268213)).</a>
4.16	<a href="#">Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.29 to the Registrant's Registration Statement on Form S-1/A, filed with the SEC on November 29, 2022 (File no. 333-268213)).</a>
4.17	<a href="#">Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.30 to the Registrant's Registration Statement on Form S-1/A, filed with the SEC on November 29, 2022 (File no. 333-268213)).</a>
4.18	<a href="#">Form of Common Warrant (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 11, 2023).</a>
4.19	<a href="#">Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 11, 2023).</a>
4.20	<a href="#">Form of Placement Agent Warrant(incorporated by reference to Exhibit 4.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 11, 2023).</a>
4.21	<a href="#">Promissory Note, dated April 5, 2020, between JPMorgan Chase Bank, N.A. and Bailey 44, LLC (incorporated by reference to Exhibit 10.18 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.22	<a href="#">Secured Promissory Note to Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP of Bailey 44, LLC (incorporated by reference to Exhibit 10.28 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.23	<a href="#">Senior Secured Convertible Promissory Note, dated August 27, 2021, by Digital Brands Group, Inc. in favor of Oasis Capital, LLC (incorporated by reference to Exhibit 10.32 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.24	<a href="#">Senior Secured Convertible Promissory Note, dated October 1, 2021, by Digital Brands Group, Inc. in favor of FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 10.35 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>

<b>Exhibit Number</b>	<b>Description</b>
4.25	<a href="#">Form of Promissory Note, dated December 29, 2022, by Digital Brands Group, Inc. in favor each Investor (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 4, 2023).</a>
4.26	<a href="#">Form of Warrant, dated December 29, 2022, by Digital Brands Group, Inc. in favor each Investor (incorporated by reference to Exhibit 10.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 4, 2023).</a>
4.27	<a href="#">Form of Promissory Note, dated April 7, 2023, by Digital Brands Group, Inc. in favor each Investor (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K/A filed with the SEC on April 18, 2023)</a>
4.28	<a href="#">Senior Secured Convertible Promissory Note, dated November 16, 2021, by Digital Brands Group, Inc. in favor of FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 10.41 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
4.29	<a href="#">Fourth Amendment to Promissory Note, dated as of July 5, 2023, by Digital Brands Group, Inc. in favor of Norwest Venture Partners XI, LP and Norwest Venture Partners XII, LP (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on July 7, 2023)</a>
4.30	<a href="#">Form of Series A Warrant, dated September 5, 2023, by Digital Brands Group, Inc. in favor the Investor (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
4.31	<a href="#">Form of Series B Warrant, dated September 5, 2023, by Digital Brands Group, Inc. in favor the Investor (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
4.33	<a href="#">Form of Pre-Funded Warrant, dated September 5, 2023, by Digital Brands Group, Inc. in favor the Investor (incorporated by reference to Exhibit 4.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
4.34	<a href="#">Form of Warrant Amendment, dated August 31, 2023, by Digital Brands Group, Inc. in favor the Investor (incorporated by reference to Exhibit 4.4 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
4.35	<a href="#">Form of Placement Agent Warrant, dated September 5, 2023, by Digital Brands Group, Inc. in favor the Investor (incorporated by reference to Exhibit 4.5 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
5.1*	<a href="#">Legal Opinion of Manatt, Phelps &amp; Phillips, LLP.</a>
10.1	<a href="#">Form of Indemnification Agreement between the Registrant and each of its directors and officers (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.2#	<a href="#">Form of Option Agreement with each of John "Hil" Davis, Laura Dowling and Reid Yeoman (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.3#	<a href="#">Form of Board of Directors Agreement, entered into by each of the Director Nominees (incorporated by reference to Exhibit 10.4 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.4#	<a href="#">Consulting Agreement dated as of April 8, 2021 between Alchemy Advisory LLC and Digital Brands Group, Inc. (incorporated by reference to Exhibit 10.6 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.5#	<a href="#">2013 Stock Plan (incorporated by reference to Exhibit 10.7 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>

<b>Exhibit Number</b>	<b>Description</b>
10.6	<a href="#">Promissory Note, dated April 10, 2020, between Digital Brands Group (formally known as Denim.LA, Inc.) and JPMorgan Chase Bank, N.A. (incorporated by reference to Exhibit 10.16 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.7	<a href="#">Loan dated June 25, 2020, between Digital Brands Group and The Small Business Administration, an Agency of the U.S. Government (incorporated by reference to Exhibit 10.17 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.8	<a href="#">Lease Agreement between 850-860 South Los Angeles Street LLC and Bailey 44, LLC, dated April 27, 2016 (incorporated by reference to Exhibit 10.23 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.9	<a href="#">Lease Agreement between 850-860 South Los Angeles Street LLC and Bailey 44, LLC, dated April 16, 2018 (incorporated by reference to Exhibit 10.24 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.10	<a href="#">Lease Agreement among 45th Street, LLC, Sister Sam, LLC and Bailey 44, LLC dated January 17, 2013 (incorporated by reference to Exhibit 10.25 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.11	<a href="#">Amendment to Lease Agreement among 45th Street, LLC, Sister Sam, LLC and Bailey 44, LLC dated February 20, 2018 (incorporated by reference to Exhibit 10.26 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.12	<a href="#">Securities Purchase Agreement, dated August 27, 2021, by and between Digital Brands Group, Inc. and Oasis Capital, LLC (incorporated by reference to Exhibit 10.31 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.13	<a href="#">Equity Purchase Agreement, dated August 27, 2021, by and between Digital Brands Group, Inc. and Oasis Capital, LLC (incorporated by reference to Exhibit 10.33 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.14	<a href="#">Amended and Restated Securities Purchase Agreement, dated October 1, 2021, by and among Digital Brands Group, Inc., Oasis Capital, LLC and FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 10.34 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.15	<a href="#">Security Agreement, dated August 27, 2021, by and between Digital Brands Group, Inc. and Oasis Capital, LLC (incorporated by reference to Exhibit 10.36 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.16	<a href="#">Joinder and Amendment to Security Agreement, dated October 1, 2021, by and among Digital Brands Group, Inc., Oasis Capital, LLC and FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 10.37 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.17	<a href="#">Registration Rights Agreement, dated August 27, 2021, by and between Digital Brands Group, Inc. and Oasis Capital, LLC (incorporated by reference to Exhibit 10.38 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.18	<a href="#">Amendment to Registration Rights Agreement, dated November 16, 2021, by and among Digital Brands Group, Inc., Oasis Capital, LLC and FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 10.39 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.19	<a href="#">Securities Purchase Agreement, dated November 16, 2021, by and among Digital Brands Group, Inc., Oasis Capital, LLC and FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 10.40 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>

<b>Exhibit Number</b>	<b>Description</b>
10.20	<a href="#">Waiver by FirstFire Global Opportunities Fund, LLC, dated November 16, 2021 (incorporated by reference to Exhibit 10.42 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.21	<a href="#">Waiver by Oasis Capital, LLC, dated November 16, 2021 (incorporated by reference to Exhibit 10.43 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.22	<a href="#">Registration Rights Agreement, dated April 8, 2022, by among Digital Brands Group, Inc. and the Investors (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Current Report on Form 8-K, filed with the SEC on April 12, 2022).</a>
10.23	<a href="#">Securities Purchase Agreement, dated April 8, 2022, by among Digital Brands Group, Inc. and the Investors (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Current Report on Form 8-K, filed with the SEC on April 12, 2022).</a>
10.24	<a href="#">Form of Warrant, dated April 8, 2022, by Digital Brands Group, Inc. in favor of the Investors (incorporated by reference to Exhibit 10.3 of Digital Brands Group Inc.'s Current Report on Form 8-K, filed with the SEC on April 12, 2022).</a>
10.25	<a href="#">Agreement for the Purchase and Sale of Future Receipts, dated March 21, 2022, between Digital Brands Group, Inc. and Advantage Platform Services Inc. d/b/a Advantage Capital Funding (incorporated by reference to Exhibit 10.45 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333- 264347), filed with the SEC on May 5, 2022).</a>
10.26	<a href="#">Agreement for the Purchase and Sale of Future Receipts, dated March 29, 2022, between Digital Brands Group, Inc. and Advantage Platform Services Inc. d/b/a Advantage Capital Funding (incorporated by reference to Exhibit 10.46 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333- 264347), filed with the SEC on May 5, 2022).</a>
10.27	<a href="#">First Amendment to Securities Purchase Agreement, dated July 28, 2022, by and among Digital Brands Group, Inc. and certain Investors (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 2, 2022).</a>
10.28	<a href="#">Securities Purchase Agreement, dated September 29, 2022, by and among Digital Brands Group, Inc. and the investor thereto (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 5, 2022).</a>
10.29	<a href="#">Form of Securities Purchase Agreement, by and between Digital Brands Group, Inc. and the purchasers party thereto (incorporated by reference to Exhibit 10.38 to the Registrant's Registration Statement on Form S-1/A, filed with the SEC on November 29, 2022 (File no. 333-268213)).</a>
10.30	<a href="#">Securities Purchase Agreement, dated December 29, 2022, by and among Digital Brands Group, Inc. and the Investors (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 4, 2023).</a>
10.31	<a href="#">Form of Securities Purchase Agreement, dated as of January 11, 2023, by and among the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 11, 2023).</a>
10.32	<a href="#">Form of Registration Rights Agreement, dated as of January 11, 2023, by and among the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 11, 2023).</a>
10.33	<a href="#">Form of Securities Purchase Agreement, dated April 7, 2023, by and among Digital Brands Group, Inc. and the Investors (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K/A filed with the SEC on April 18, 2023).</a>

<b>Exhibit Number</b>	<b>Description</b>
10.34	<a href="#">Subscription and Investment Representation Agreement, dated May 30, 2023, by and between Digital Brands Group, Inc. and the purchaser signatory thereto (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 1, 2023).</a>
10.35	<a href="#">Settlement Agreement and Release, dated June 21, 2023, by and among Drew Jones, D. Jones Tailored Collection, Ltd., Harper &amp; Jones, LLC, Digital Brands Group, Inc., and John Hilburn Davis IV (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 27, 2023).</a>
10.36	<a href="#">Waiver and Amendment Agreement, dated June 21, 2023, by and among Digital Brands Group, Inc. and the investors thereto (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 27, 2023).</a>
10.37	<a href="#">Securities Purchase Agreement, dated June 21, 2023, by and among Digital Brands Group, Inc. and the investors thereto (incorporated by reference to Exhibit 10.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on June 27, 2023).</a>
10.38	<a href="#">Form of Series Seed Preferred Stock Purchase Agreement (incorporated by reference to Exhibit 4.5 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.39	<a href="#">Form of Series A Preferred Stock Subscription Agreement (incorporated by reference to Exhibit 4.6 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.40	<a href="#">Form of Series A Class C Preferred Stock Subscription Agreement (incorporated by reference to Exhibit 4.7 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.41	<a href="#">Form of Series A-3 Preferred Stock Subscription Agreement (incorporated by reference to Exhibit 4.8 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.42	<a href="#">Form of Series CF Preferred Stock Purchase Agreement (incorporated by reference to Exhibit 4.9 of Digital Brands Group Inc.'s Registration Statement on Form S-1/A (Reg. No. 333-261865), filed with the SEC on January 6, 2022).</a>
10.43	<a href="#">Registration Rights Agreement, dated August 30, 2021, by and between Digital Brands Group, Inc. and Moise Emquies (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 31, 2021).</a>
10.44	<a href="#">Registration Rights Agreement, dated August 27, 2021, by and between Digital Brands Group, Inc. and Oasis Capital, LLC (Note) (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 31, 2021).</a>
10.45	<a href="#">Registration Rights Agreement, dated August 27, 2021, by and between Digital Brands Group, Inc. and Oasis Capital, LLC (ELOC) (incorporated by reference to Exhibit 4.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on August 31, 2021).</a>
10.46	<a href="#">Joinder and Amendment to Registration Rights Agreement, dated October 1, 2021, by and among Digital Brands Group, Inc., Oasis Capital, LLC and FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 6, 2021).</a>
10.47	<a href="#">Amendment to Registration Rights Agreement, dated November 16, 2021, by and among Digital Brands Group, Inc., Oasis Capital, LLC and FirstFire Global Opportunities Fund, LLC (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on November 19, 2021).</a>
10.48	<a href="#">Registration Rights Agreement, dated April 8, 2022, by and among Digital Brands Group, Inc. and certain Investors (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on April 12, 2022).</a>

Exhibit Number	Description
10.49	<a href="#">Registration Rights Agreement, dated July 22, 2022, by and among Digital Brands Group, Inc. and certain Investors (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on July 27, 2022).</a>
10.50	<a href="#">Registration Rights Agreement, dated September 29, 2022, by and among Digital Brands Group, Inc. and the Investor (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on October 5, 2022).</a>
10.51	<a href="#">Registration Rights Agreement, dated December 29, 2022, by and among Digital Brands Group, Inc. and the Investors (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 4, 2023).</a>
10.52	<a href="#">Registration Rights Agreement, dated December 30, 2022, by and among Digital Brands Group, Inc. and Moise Emquies, George Levy, Matthieu Leblan and Carol Ann Emquies (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on January 4, 2023).</a>
10.53	<a href="#">Form of Securities Purchase Agreement, dated August 31, 2023, by and among Digital Brands Group, Inc. and the Investor (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
10.54	<a href="#">Form of Registration Rights Agreement, dated August 31, 2023, by and among Digital Brands Group, Inc. and the Investor (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).</a>
10.55	<a href="#">Digital Brands Group, Inc. 2023 Stock Plan (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 14, 2023).</a>
10.56	<a href="#">Form of Stock Purchase Agreement under Digital Brands Group, Inc. 2023 Stock Plan (incorporated by reference to Exhibit 10.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 14, 2023).</a>
21.1*	<a href="#">List of Subsidiaries of the Registrant</a>
23.1*	<a href="#">Consent of dbbmckennon for Digital Brands Group, Inc.</a>
23.2*	<a href="#">Consent of dbbmckennon for Sunnyside LLC</a>
23.3*	<a href="#">Consent of Manatt, Phelps &amp; Phillips, LLP (contained in Exhibit 5.1 to this Registration Statement).</a>
24.1*	<a href="#">Power of Attorney (included in the signature page to this registration statement)</a>
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
104*	Cover Page Interactive Data File (embedded within the Inline XBRL document).
107*	<a href="#">Filing Fee Table</a>

\* Filed herewith

# Indicates management contract or compensatory plan or arrangement.

**(b) Financial Statement Schedules**

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.



**Item 17. Undertakings.**

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of shares of common stock offered (if the total dollar value of shares of common stock offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that (i) and (ii) do not apply if the registration statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by (i) and (ii) is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the shares of common stock offered therein, and the offering of such shares of common stock at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the shares of common stock being registered which remain unsold at the termination of the offering.

Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the shares of common stock being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-1 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, on September 18, 2023.

**DIGITAL BRANDS GROUP, INC.**

By: /s/ John Hilburn Davis IV  
John Hilburn Davis IV  
Director, President and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John Hilburn Davis IV as his or her true and lawful attorney-in-fact, with full power of substitution and resubstitution for him or her and in his or her name, place and stead, in any and all capacities to sign any and all amendments including pre- and post-effective amendments to this registration statement, any subsequent registration statement for the same offering which may be filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and pre- or post-effective amendments thereto, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorney-in-fact or his substitute, each acting alone, may lawfully do or cause to be done by virtue thereof.

As required under the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated:

<u>NAME</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ John Hilburn Davis IV</u> John Hilburn Davis IV	Director, President and Chief Executive Officer	September 18, 2023
<u>/s/ Reid Yeoman</u> Reid Yeoman	Chief Financial Officer (Principal financial and accounting officer)	September 18, 2023
<u>/s/ Mark T. Lynn</u> Mark T. Lynn	Director	September 18, 2023
<u>/s/ Trevor Pettennude</u> Trevor Pettennude	Director	September 18, 2023
<u>/s/ Jameeka Aaron Green</u> Jameeka Aaron Green	Director	September 18, 2023
<u>/s/ Huong "Lucy" Doan</u> Huong "Lucy" Doan	Director	September 18, 2023



September 18, 2023

Digital Brands Group, Inc.  
1400 Lavaca Street  
Austin, TX 78701

**Re: Registration Statement on Form S-1**

Ladies and Gentlemen:

We have acted as counsel to Digital Brands Group, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing of a Registration Statement on Form S-1 (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), including a related prospectus filed with the Registration Statement (the "Prospectus"), in connection with the resale or other disposition from time to time of up to an aggregate of 1,580,166 shares of our common stock, par value \$0.0001 per share (the "Common Stock"), of the Company, which consists of (i) 32,000 shares of Common Stock (the "Shares"), (ii) up to 481,875 shares of Common Stock issuable upon exercise of pre-funded warrants (the "Pre-Funded Warrants Shares"), (iii) up to 513,875 shares of Common Stock issuable upon exercise of Series A Warrants (the "Series A Warrant Shares") (iv) up to 513,875 shares of Common Stock issuable upon exercise of Series B Warrants (the "Series B Warrant Shares"), and (v) 38,541 shares of Common Stock issuable upon exercise of placement agent warrants (the "Placement Agent Warrant Shares" and together with the Pre-Funded Warrants Shares, Series A Warrant Shares, and Series B Warrant Shares, the "Warrant Shares"). This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

As such counsel and for purposes of our opinions set forth below, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, resolutions, certificates and instruments of the Company and corporate records furnished to us by the Company, certificates of public officials, statutes, records and such other instruments and documents as we have deemed necessary or appropriate as a basis for the opinion set forth below, including without limitation (i) the Sixth Amended and Restated Certificate of Incorporation of the Company dated May 18, 2021, and amended on October 13, 2022, October 21, 2022 and August 21, 2023, (ii) the Amended and Restated Bylaws of the Company, (iii) the pre-funded warrants, the Series A Warrants, the Series B Warrants and the placement agent warrants, and (iv) the Registration Statement.

695 Town Center Drive 14th Floor, Costa Mesa, California 92626 Telephone: 714.371.2500 Fax: 714.317.2550  
Albany | Boston | Chicago | Los Angeles | New York | Orange County | Sacramento | San Francisco |  
Silicon Valley | Washington, D.C.

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Digital Brands Group, Inc.

September 18, 2023

Page 2

In such examination and in rendering the opinions expressed below, we have assumed, without independent investigation or verification: (i) the genuineness of all signatures on all agreements, instruments, corporate records, certificates and other documents submitted to us, (ii) the legal capacity and authority of all persons or entities (other than the Company) executing all agreements, instruments, corporate records, certificates and other documents submitted to us, (iii) the authenticity and completeness of all agreements, instruments, corporate records, certificates and other documents submitted to us as originals, (iv) that all agreements, instruments, corporate records, certificates and other documents submitted to us as certified, electronic, facsimile, conformed, photostatic or other copies conform to authentic originals thereof, and that such originals are authentic and complete, (v) the due authorization, execution and delivery of all agreements, instruments, certificates and other documents by all parties thereto (other than the Company), (vi) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and other persons on which we have relied for the purposes of this opinion set forth below are true and correct, and (vii) that the officers and directors of the Company have properly exercised their fiduciary duties. We also have obtained from the officers of the Company certificates as to certain factual matters necessary for the purpose of this opinion and, insofar as this opinion is based on such matters of fact, we have relied solely on such certificates without independent investigation.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, we are of the opinion that (i) the Shares are validly issued, fully paid and nonassessable, and (ii) the Warrant Shares, when issued by the Company in accordance with the respective terms of the Pre-Funded Warrants, Series A Warrants, Series B Warrants or Placement Agent Warrants, will be validly issued, fully paid and nonassessable.

The opinions expressed in this opinion letter are limited to the General Corporation Law of the State of Delaware. We express no opinion as to whether the laws of any jurisdiction are applicable to the subject matter hereof. This opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company or the Common Stock. We are not rendering any opinion as to compliance with any federal or state law, rule or regulation relating to securities, or to the sale or issuance thereof.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement and the use of our name therein under the caption "Legal Matters." In giving this consent, we do not thereby admit that we are experts with respect to any part of the Registration Statement or the Prospectus within the meaning of the term "expert" as used in Section 11 of the Securities Act or the rules and regulations promulgated thereunder by the Commission, nor we do not admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission adopted under the Securities Act.

The opinions included herein are expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very truly yours,

/s/ Manatt, Phelps & Phillips, LLP

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## Subsidiaries of Digital Brands Group, Inc.

<u>Name of Subsidiary</u>	<u>Jurisdiction of Organization</u>
Bailey 44, LLC	Delaware
Mosbest LLC	California
Sunnyside, LLC	California

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the use, in this Registration Statement on Form S-1, of our report dated April 17, 2023, except for the last two paragraphs of Note 14 Subsequent Events on page F-59 for which the date is August 24, 2023, related to the consolidated financial statements of Digital Brands Group, Inc (the “Company”) as of December 31, 2022 and 2021, and for the years then ended, which includes an explanatory paragraph regarding the substantial doubt about the Company’s ability to continue as a going concern. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ dbbmckennon

Newport Beach, California  
September 18, 2023

20321 SW Birch Street, Suite 200 Newport Beach, California 92660-1756 P: 949.200.3280 F: 949.200.3281 www.dbbmckennon.com

Santa Monica

Newport Beach

San Diego

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**CONSENT OF INDEPENDENT AUDITORS**

We consent to the use, in this Registration Statement on Form S-1, of our report dated April 18, 2022 related to the financial statements of Sunnyside LLC dba Sundry (the "Company") as of December 31, 2021, and for the year then ended. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ dbbmckennon

Newport Beach, California  
September 18, 2023

20321 SW Birch Street, Suite 200 Newport Beach, California 92660-1756 P: 949.200.3280 F: 949.200.3281 www.dbbmckennon.com

Santa Monica

Newport Beach

San Diego

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**Calculation of Filing Fee Tables**  
Form S-1  
(Form Type)  
**Digital Brands Group, Inc.**  
(Exact Name of Registrant as Specified in its Charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount To Be Registered <sup>(1)</sup>	Maximum Offering Price Per Share	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
<b>Newly Registered Securities</b>								
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share	457(c)	32,000	\$11.26 <sup>(2)</sup>	\$360,320.00	0.00011020	\$39.71
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share, issuable upon exercise of pre-funded warrants	457(c)	481,875 <sup>(3)</sup>	\$11.26	\$5,425,912.50	0.00011020	\$597.94
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share, issuable upon exercise of series A warrants	457(c)	513,875 <sup>(4)</sup>	\$11.26	\$5,786,232.50	0.00011020	\$637.64
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share, issuable upon exercise of series B warrants	457(c)	513,875 <sup>(5)</sup>	\$11.26	\$5,786,232.50	0.00011020	\$637.64
Fees to Be Paid	Equity	Common Stock, par value \$0.0001 per share, issuable upon exercise of placement agent common stock purchase warrants	457(c)	38,541 <sup>(6)</sup>	\$11.26	\$433,971.66	0.00011020	\$47.82
Fees Previously Paid	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>Carry Forward Securities</b>								
Carry Forward Securities	N/A	N/A	N/A	N/A	N/A	N/A		
<b>Total Offering Amounts</b>						17,792,669.16		\$1,960.75
<b>Total Fees Previously Paid</b>								N/A
<b>Total Fee Offsets</b>								\$779.39
<b>Net Fee Due</b>								\$1,181.36

- (1) Represents the shares of Common Stock, \$0.0001 par value per share (the "Common Stock"), of Digital Brands Group, Inc. ("Registrant") that will be offered for resale by the selling stockholders pursuant to the prospectus contained in the registration statement to which this exhibit is attached. Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), the shares of Common Stock being registered hereunder include such indeterminate number of shares of Common Stock as may be issuable with respect to the shares of Common Stock being registered hereunder as a result of stock splits, stock dividends or similar transactions.



- (2) Pursuant to Rule 457(c) under the Securities Act, calculated on the basis of the average of the high and low prices per share of the Registrant's Common Stock reported on the Nasdaq Capital Market on September 14, 2023, a date within five business days prior to the initial filing of the registration statement to which this exhibit is attached.
- (3) Represents shares of Common Stock issuable upon the exercise of pre-funded warrants to purchase Common Stock at an exercise price of \$0.0001 per share issued by the Registrant on September 5, 2023.
- (4) Represents shares of Common Stock issuable upon the exercise of series A warrants to purchase Common Stock at an exercise price of \$9.43 per share issued by the Registrant on September 5, 2023.
- (5) Represents shares of Common Stock issuable upon the exercise of series B warrants to purchase Common Stock at an exercise price of \$9.43 per share issued by the Registrant on September 5, 2023.
- (6) Represents shares of Common Stock issuable upon the exercise of placement agent common stock purchase warrants to purchase Common Stock at an exercise price of \$12.16 per share issued by the Registrant on September 5, 2023.

Table 2—Fee Offset Claims and Sources

	Registrant or Filer Name	Form or Filing Type	File Number	Initial Filing Date	Filing Date	Fee Offset Claimed	Security Type Associated with Fee Offset Claimed	Security Title Associated with Fee Offset Claimed	Unsold Securities Associated with Fee Offset Claimed	Unsold Aggregate Offering Amount Associated with Fee Offset Claimed	Fee Paid with Fee Offset Source
							Rule 457(p)				
Fee Offset Claims	Digital Brands Group, Inc.	S-1	333-272965 <sup>(1)</sup>	June 28, 2023		\$760.38	Equity	Common Stock, par value \$0.0001 per share	N/A	\$6,900,000	
Fee Offset Claims	Digital Brands Group, Inc.	S-1	333-272965 <sup>(1)</sup>	June 28, 2023		\$19.01	Equity	Common Stock issuable upon exercise of Representative Warrants	N/A	\$172,500	
Fee Offset Sources	Digital Brands Group, Inc.	S-1	333-272965 <sup>(1)</sup>		June 28, 2023						\$779.39

- (1) The registrant withdrew the registration statement on Form S-1 (No. 333-272965) by filing a Form RW on September 5, 2023. The withdrawn registration statement on Form S-1 (No. 333-272965) was not declared effective and no securities were sold thereunder.