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

FORM 10-Q

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **September 30, 2023**
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission file number: **001-40400**

DIGITAL BRANDS GROUP, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

46-1942864
(I.R.S. Employer
Identification No.)

**1400 Lavaca Street
Austin, TX 78701**
(Address of principal executive offices, including zip code)

Tel: (209) 651-0172
(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.0001 per share	DBGI	The Nasdaq Stock Market LLC
Warrants, each exercisable to purchase one share of common stock	DBGIW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See definition of "large accelerated filer," "accelerated filer," "smaller reporting company," and emerging growth company in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

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

As of November 14, 2023 the Company had 857,859 shares of common stock, \$0.0001 par value, issued and outstanding.

**DIGITAL BRANDS GROUP, NC.
FORM 10-Q
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PART I – FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

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

	September 30, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,067,259	\$ 1,275,616
Accounts receivable, net	419,125	583,368
Due from factor, net	258,825	839,400
Inventory	4,710,327	5,122,564
Prepaid expenses and other current assets	1,194,544	766,901
Assets per discontinued operations, current	—	241,544
Total current assets	7,650,080	8,829,393
Property, equipment and software, net	98,170	104,512
Goodwill	8,973,501	8,973,501
Intangible assets, net	10,701,764	12,906,238
Deposits	106,547	193,926
Right of use asset	207,745	102,349
Assets per discontinued operations	—	2,628,136
Total assets	\$ 27,737,807	\$ 33,738,055
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Accounts payable	\$ 8,273,340	\$ 8,016,173
Accrued expenses and other liabilities	4,781,632	3,936,920
Due to related parties	336,250	555,217
Contingent consideration liability	—	12,098,475
Convertible note payable, net	100,000	2,721,800
Accrued interest payable	1,888,014	1,561,795
Loan payable, current	1,878,023	1,829,629
Promissory note payable, net	4,899,018	9,000,000
Right of use liability, current portion	203,401	102,349
Liabilities per discontinued operations, current	—	1,071,433
Total current liabilities	22,359,678	40,893,791
Loan payable	150,000	150,000
Right of use liability	6,784	—
Liabilities per discontinued operations	—	147,438
Total liabilities	22,516,462	41,191,229
Commitments and contingencies		
Stockholders' equity (deficit):		
Undesignated preferred stock, \$0.0001 par, 10,000,000 shares authorized, 0 shares issued and outstanding as of both September 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 September 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 September 30, 2023 and December 31, 2022, respectively	1	—
Common stock, \$0.0001 par, 1,000,000,000 shares authorized, 578,090 and 317,502 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	58	18
Additional paid-in capital	115,496,683	96,294,123
Accumulated deficit	(110,275,397)	(103,747,316)
Total stockholders' equity (deficit)	5,221,345	(7,453,174)
Total liabilities and stockholders' equity (deficit)	\$ 27,737,807	\$ 33,738,055

See the accompanying notes to the unaudited condensed consolidated financial statements

DIGITAL BRANDS GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022 Restated	2023	2022 Restated
Net revenues	\$ 3,257,332	\$ 2,658,844	\$ 12,127,135	\$ 7,937,406
Cost of net revenues	1,554,044	1,700,547	6,094,532	5,252,943
Gross profit	1,703,288	958,298	6,032,603	2,684,464
Operating expenses:				
General and administrative	3,735,527	2,979,915	12,115,590	11,053,536
Sales and marketing	1,151,377	1,022,331	3,188,054	3,252,418
Distribution	238,546	97,737	750,945	522,510
Change in fair value of contingent consideration	—	(702,885)	(10,698,475)	6,418,355
Total operating expenses	5,125,450	3,397,098	5,356,114	21,246,820
Income (loss) from operations	(3,422,162)	(2,438,800)	676,489	(18,562,356)
Other income (expense):				
Interest expense	(1,956,080)	(2,271,548)	(4,907,567)	(6,002,160)
Other non-operating income (expenses)	(57,752)	(23,690)	(734,501)	2,629,685
Total other income (expense), net	(2,013,832)	(2,295,238)	(5,642,068)	(3,372,475)
Income tax benefit (provision)	—	—	—	—
Net loss from continuing operations	(5,435,994)	(4,734,038)	(4,965,579)	(21,934,831)
Income (loss) from discontinued operations, net of tax	—	(160,433)	(1,562,503)	(326,507)
Net loss	\$ (5,435,994)	\$ (4,894,471)	\$ (6,528,082)	\$ (22,261,338)
Weighted average common shares outstanding - basic and diluted	373,498	21,150	283,673	13,649
Net loss from continuing per common share - basic and diluted	\$ (14.55)	\$ (223.83)	\$ (17.50)	\$ (1,607.05)

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			
Balances at December 31, 2021	—	\$ —	—	\$ —	—	\$ —	5,201	\$ 1	\$ 58,614,172	\$ (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)
Balances at March 31, 2022	—	\$ —	—	\$ —	—	\$ —	5,550	1	\$ 59,954,847	\$ (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)
Balances at June 30, 2022	—	—	—	—	—	—	21,150	2	\$ 68,190,600	\$ (83,070,820)	\$ (14,880,218)
Common stock issued pursuant to consulting agreement	—	—	—	—	—	—	30	—	123,000	—	123,000
Issuance of Series A preferred stock	—	—	—	—	—	—	—	—	25,000	—	25,000
Conversion of venture debt into Series A convertible preferred stock	6,300	1	—	—	—	—	—	—	6,299,999	—	6,300,000
Warrants issued in connection with note	—	—	—	—	—	—	—	—	692,299	—	692,299
Stock-based compensation	—	—	—	—	—	—	—	—	110,093	—	110,093
Net loss	—	—	—	—	—	—	—	—	—	(4,894,471)	(4,894,471)
Balances at September 30, 2022	6,300	1	—	—	—	—	21,180	2	\$ 75,440,991	\$ (87,965,292)	\$ (12,524,298)
Balances at December 31, 2022	6,300	\$ 1	—	\$ —	—	\$ —	178,758	\$ 18	\$ 96,294,123	\$ (103,747,316)	\$ (7,453,174)
Issuance of common stock pursuant to private placement, net of offering costs	—	—	—	—	—	—	51,086	5	4,463,071	—	4,463,076
Shares issued for services	—	—	—	—	—	—	4,756	—	499,337	—	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)
Balances at March 31, 2023	6,300	1	—	—	—	—	238,999	24	\$ 102,020,619	\$ (109,883,665)	\$ (7,863,021)
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	—	—	—	—	—	—	—	—	—	5,044,261	5,044,262
Balances at June 30, 2023	6,300	\$ 1	1	\$ —	5,761	\$ 1	317,102	\$ 32	\$ 109,263,331	\$ (104,839,403)	\$ 4,423,961
Cancellation of Series B preferred stock	—	—	(1)	—	—	—	—	—	(25,000)	—	(25,000)
Issuance of common stock pursuant to private placement, net of offering costs	—	—	—	—	—	—	32,000	3	3,832,302	—	3,832,305
Common stock issued for services	—	—	—	—	—	—	105,174	11	1,157,079	—	1,157,090
Exercise of warrants	—	—	—	—	—	—	123,814	12	1,167,554	—	1,167,566
Stock-based compensation	—	—	—	—	—	—	—	—	101,417	—	101,417
Net loss	—	—	—	—	—	—	—	—	—	(5,435,994)	(5,435,994)
Balances at September 30, 2023	6,300	\$ 1	—	\$ —	5,761	\$ 1	578,090	\$ 58	\$ 115,496,683	\$ (110,275,397)	\$ 5,221,345

See the accompanying notes to the unaudited condensed consolidated financial statements

DIGITAL BRANDS GROUP, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (6,528,082)	\$ (22,261,338)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,485,166	1,669,782
Amortization of loan discount and fees	1,956,355	4,610,234
Loss on extinguishment of debt	689,100	—
Loss on disposition of business	1,523,940	—
Stock-based compensation	308,511	491,945
Shares issued for services	1,656,417	—
Change in credit reserve	354,282	(26,429)
Change in fair value of contingent consideration	(10,698,475)	6,418,355
Discontinued operations	7,666	—
Fees incurred in connection with debt financings	—	48,245
Change in fair value of warrant liability	—	(18,223)
Change in fair value of derivative liability	—	(794,477)
Forgiveness of Payroll Protection Program	—	(1,760,755)
Changes in operating assets and liabilities:		
Accounts receivable, net	153,479	(289,061)
Due from factor, net	72,220	433,671
Inventory	514,955	100,006
Prepaid expenses and other current assets	(366,615)	(522,434)
Accounts payable	182,242	382,943
Accrued expenses and other liabilities	1,088,763	1,715,221
Deferred revenue	(183,782)	119,977
Accrued interest	326,219	992,482
Net cash used in operating activities	<u>(6,457,638)</u>	<u>(8,689,857)</u>
Cash flows from investing activities:		
Cash disposed	(18,192)	—
Purchase of property, equipment and software	(27,855)	(5,533)
Deposits	87,378	—
Net cash provided by (used in) investing activities	<u>41,331</u>	<u>(5,533)</u>
Cash flows from financing activities:		
Proceeds (repayments) from related party advances	(218,967)	(162,692)
Advances (repayments) from factor	154,073	(60,735)
Proceeds from venture debt	—	237,500
Issuance of loans and note payable	5,799,989	248,858
Repayments of convertible and promissory notes	(8,840,092)	(3,068,750)
Issuance of convertible notes payable	—	3,751,250
Exercise of warrants	1,167,566	—
Issuance of common stock in public offering	10,000,003	9,347,450
Offering costs	(1,854,622)	(1,930,486)
Net cash provided by financing activities	<u>6,207,950</u>	<u>8,362,395</u>
Net change in cash and cash equivalents	<u>(208,357)</u>	<u>(332,995)</u>
Cash and cash equivalents at beginning of period	1,275,616	528,394
Cash and cash equivalents at end of period	<u>\$ 1,067,259</u>	<u>\$ 195,399</u>
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	\$ —	\$ —
Cash paid for interest	\$ 1,176,305	\$ 318,576
Supplemental disclosure of non-cash investing and financing activities:		
Conversion of notes into common stock	\$ —	\$ 1,802,372
Conversion of notes into preferred stock	\$ 5,759,177	\$ —
Right of use asset	\$ 467,738	\$ 152,387
Warrants issued in connection with note	\$ —	\$ 790,540
Derivative liability in connection with convertible note	\$ —	\$ 559,957
Conversion of related party notes and payables into preferred and common stock	\$ —	\$ 25,000
Conversion of venture debt into preferred stock	\$ —	\$ 6,300,000

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 44, 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 44, 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 1,952,580 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 \$6,528,082 and \$22,261,338 for the nine months ended September 30, 2023 and 2022, respectively, and has incurred negative cash flows from operations for the nine months ended September 30, 2023 and 2022. The Company has historically lacked liquidity to satisfy obligations as they come due and as of September 30, 2023, and the Company had a working capital deficit of \$14,709,598. 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.

On August 21, 2023, the Board of Directors approved a one-for-25 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 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.

Unaudited Interim Financial Information

The accompanying unaudited condensed consolidated balance sheet as of September 30, 2023, the unaudited condensed consolidated statements of operations for the three and nine months ended September 30, 2023 and 2022, statements of changes in stockholders’ equity (deficit) and of cash flows for the nine months ended September 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 Report on 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.

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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 \$916,693 in general and administrative expenses per previously reported financial statements to net revenues in the accompanying consolidated statements of operations for the nine months ended September 30, 2022. 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 three months to be cash equivalents. As of September 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 September 30, 2023 Using:			Total
	Level 1	Level 2	Level 3	
Liabilities:				
Contingent consideration	\$ —	\$ —	\$ —	\$ —
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

	Fair Value Measurements as of December 31, 2022 Using:			Total
	Level 1	Level 2	Level 3	
Liabilities:				
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.

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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.

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 1,952,580 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 included 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:

	September 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 September 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:

	September 30, 2023	December 31, 2022
Raw materials	\$ 1,508,416	\$ 1,611,134
Work in process	653,412	888,643
Finished goods	2,548,499	2,622,787
Inventory	<u>\$ 4,710,327</u>	<u>\$ 5,122,564</u>

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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 H&J 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 during the year ended December 31, 2022. 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 during the year ended December 31, 2022.

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 a) the dilutive items included in the weighted average common shares – diluted amount above as of September 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 September 30, 2022:

	September 30,	
	2023	2022
Convertible notes	—	47,092
Series A convertible preferred stock	27,097	27,097
Series C convertible preferred stock	321,395	—
Common stock warrants	1,662,096	5,285
Stock options	1,558	1,558
Total potentially dilutive shares	2,012,145	81,032

The stock options and warrants above are out-of-the-money as of September 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.

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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:

	Nine Months Ended September 30, 2022
Net revenues	\$ 23,995,555
Net loss	\$ (8,405,222)
Net loss per common share	\$ (29.63)

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 1,952,580 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>
<u>Carrying amount of assets and liabilities</u>	
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	<u>(62,103)</u>
Loss on disposition of business	<u>\$ (1,523,940)</u>

*Represents the fair value of 1,952,580 shares of common stock issued to D. Jones.

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Through September 30, 2023, the Company has made payments to D. Jones totaling \$200,000. The remaining balance of \$29,000 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.

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 nine months ended September 30, 2023 and 2022. The results of the discontinued operations of HJ for the three and nine months ended September 30, 2023 and 2022 consist of the following:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net revenues	\$ —	\$ 765,678	\$ 1,405,482	\$ 2,658,527
Cost of net revenues	—	356,349	565,621	961,761
Gross profit	—	409,329	839,861	1,696,765
Operating expenses:				
General and administrative	—	359,205	520,582	1,256,078
Sales and marketing	—	203,087	346,167	718,862
Distribution	—	—	—	—
Change in fair value of contingent consideration	—	—	—	—
Total operating expenses	—	562,293	866,749	1,974,940
Loss from operations	—	(152,962)	(26,888)	(278,175)
Other income (expense):				
Interest expense	—	(7,470)	(11,675)	(48,332)
Loss on disposition of business	—	—	(1,523,940)	—
Other non-operating income (expenses)	—	—	—	—
Total other income (expense), net	—	(7,470)	(1,535,615)	(48,332)
Income tax benefit (provision)	—	—	—	—
Net loss from discontinued operations	\$ —	\$ (160,432)	\$ (1,562,503)	\$ (326,507)
Weighted average common shares outstanding – basic and diluted	373,498	21,150	283,673	9,836
Net loss from discontinued operations per common share – basic and diluted	\$ —	\$ (7.59)	\$ (5.51)	\$ (33.19)

NOTE 5: DUE FROM FACTOR

Due to/from factor consist of the following:

	September 30, 2023	December 31, 2022
Outstanding receivables:		
Without recourse	\$ 308,918	\$ 1,680,042
With recourse	29,843	65,411
Matured funds and deposits	103,095	81,055
Advances	(172,285)	(632,826)
Credits due customers	(10,746)	(354,282)
	\$ 258,825	\$ 839,400

NOTE 6: GOODWILL AND INTANGIBLE ASSETS

The following is a summary of goodwill attributable to each business combination:

	September 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>\$ 8,973,501</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 September 30, 2023:

	Gross Amount	Accumulated Amortization	Carrying Value
Amortized:			
Customer relationships	\$ 9,734,560	\$ (4,874,676)	\$ 4,859,884
	<u>\$ 9,734,560</u>	<u>\$ (4,874,676)</u>	<u>\$ 4,859,884</u>
Indefinite-lived:			
Brand name	\$ 5,841,880	—	5,841,880
	<u>\$ 15,576,440</u>	<u>\$ (4,874,676)</u>	<u>\$ 10,701,764</u>

In connection with the H&J disposition, the Company derecognized \$1,246,915 in intangible assets.

The Company recorded amortization expense of \$719,547 and \$537,813 during the three months ended September 30, 2023 and 2022, and \$2,478,824 and \$1,613,438 during the nine months ended September 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 September 30, 2023 and December 31, 2022:

	September 30, 2023	December 31, 2022
Accrued expenses	\$ 489,628	\$ 668,714
Reserve for returns	—	307,725
Payroll related liabilities	3,792,438	2,618,870
Sales tax liability	304,748	262,765
Other liabilities	194,817	78,845
	<u>\$ 4,781,632</u>	<u>\$ 3,936,920</u>

As of September 30, 2023, payroll liabilities included an aggregate of \$1,406,403 in payroll taxes due to remit to federal and state authorities. Of this amount, \$698,842 pertained to DBG and \$707,561 pertained to Bailey44. The amounts are subject to further penalties and interest. The amounts are subject to further penalties and interest.

As of September 30, 2023 and 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 fourth quarter of 2023.

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Convertible Debt

2020 Regulation D Offering

As of September 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 469,480 warrants to purchase common stock at an exercise price equal to \$4.26, and 60,000 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 nine months ended September 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, September 30, 2023	<u>\$ 100,000</u>	<u>\$ —</u>	<u>\$ 100,000</u>

During the nine months ended September 30, 2022, the Company converted an aggregate of \$888,930 in outstanding principal into 350 shares of common stock.

During the nine months ended September 30, 2023 and 2022, the Company amortized \$689,100 and \$1,792,060, respectively of debt discount to interest expense pertaining to convertible notes.

In January 2023, the Company issued 110,000 shares of common stock at a fair value of \$322,300 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 September 30, 2023 and December 31, 2022, Bailey had an outstanding PPP Loan balance of \$933,295 and matures in 2026.

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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 nine months ended September 30, 2023, the Company received additional proceeds totaling \$2,880,238 and made repayments totaling \$3,338,572. As of September 30, 2023, the remaining principal outstanding was \$438,000. 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 \$902,051 from Shopify Capital and another lender, and made repayments totaling \$395,323. As of September 30, 2023, the remaining principal outstanding was \$506,728. 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 September 30, 2023 and December 31, 2022, the outstanding principal on the note to the sellers of Bailey was \$3,500,000. 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 September 30, 2023 and 2022 and \$315,000 and \$315,000 for the nine months ended September 30, 2023 and 2022, all respectively, which was accrued and unpaid as of September 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. Upon the Company’s equity financing in September 2023, the Company repaid an aggregate \$1,059,732 in principal to the respective noteholders. The Company recognized a debt discount of \$608,750, which was fully amortized through September 30, 2023. This note is currently in default, however the parties are currently working on an extension to the Maturity Date.

The following is a summary of promissory notes payable, net:

	September 30, 2023	December 31, 2022
Bailey Note	\$ 3,500,000	\$ 3,500,000
Sundry Note	—	5,500,000
March 2023 Notes - principal	1,399,018	—
Promissory note payable, net	<u>\$ 4,899,018</u>	<u>\$ 9,000,000</u>

NOTE 8: STOCKHOLDERS’ DEFICIT

On January 11, 2023, the Company, entered into a Securities Purchase Agreement with a certain accredited investor, pursuant to which the Company agreed to issue and sell, in a private placement (the “January Private Placement”), an aggregate of 475,000 shares of the Company’s common stock (“Common Stock”), and accompanying warrants to purchase 475,000 shares of Common Stock, at a

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combined purchase price of \$3.915 per share and Common Warrant, and (ii) 802,140 pre-funded warrants exercisable for 802,140 shares of Common Stock, and accompanying common warrants to purchase 802,140 shares of Common Stock, at a combined purchase price of \$3.915 per pre-funded warrant and accompanying common warrant, to the investors, for aggregate gross proceeds from the January Private Placement of approximately \$5 million before deducting placement agent fees and related offering expenses. As a result of the transaction, the Company issued 1,277,140 shares of Common Stock, including the 475,000 shares and the immediate exercise of 802,140 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 110,000 shares of common stock at a fair value of \$322,300 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 118,890 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 1,952,580 shares of common stock to D. Jones at a fair value of \$1,357,043 pursuant to the H&J Settlement Agreement.

On August 31, 2023, the Company entered into a Securities Purchase Agreement with a certain accredited investor, pursuant to which the Company agreed to issue and sell, in a private placement (the “August Private Placement”), an aggregate of 32,000 shares of the Company’s Common Stock and accompanying Series A warrants to purchase up to 32,000 shares of Common Stock and Series B warrants to purchase up to 32,000 shares of Common Stock at a combined purchase price of \$9.73 per share and common warrants, and (ii) 481,875 pre-funded warrants exercisable for 481,875 shares of Common Stock, and accompanying Series A Warrants to purchase up to 481,875 shares of Common Stock and Series B Warrants to purchase up to 481,875 shares of Common Stock, at a combined purchase price of \$9.73, for aggregate gross proceeds from the August Private Placement of approximately \$5 million. The Company received net proceeds of \$3.8 million after deducting placement agent fees and offering expenses. Through September 30, 2023, none of the pre-funded warrants from the August Private Placement had been exercised for shares of Common Stock.

In connection with the August Private Placement, the Company entered into a warrant amendment (the “Warrant Amendment”) with certain investors to amend certain existing warrants to purchase up to 196,542 shares of Common Stock that were previously issued in December 2022 and January 2023 to the investors, with an exercise price of \$131.25 per share and \$95.00 per share, respectively (the “Amended Warrants”) as follows: (i) to reduce the exercise price of the Amended Warrants to \$9.43 per share, and (ii) to extend the original expiration date of the Amended Warrants so that they will terminate five and one half years from the closing of the offering. Immediately following the Warrant Amendment, the Company exercised warrants for 123,814 shares of common stock for proceeds of \$1,167,566.

In September 2023, the Company issued 42,782 shares in accrued amounts owed to Sundry executives based on their employment agreements for a total value of \$500,000.

On September 10, 2023, the non-employee members of the board of directors adopted a 2023 Stock Purchase Plan (the “2023 Plan”) to enable the Company to attract, retain and motivate its employees. Under the 2023 Plan, qualified employees can purchase shares of the Company’s common stock at fair market value by either the delivery of cash or the delivery of a form of acceptable non-recourse promissory note. The aggregate number of common stock issuable under the 2023 Plan shall not exceed 65,000 subject to certain adjustment provided under the 2023 Plan.

Pursuant to the 2023 Plan, the Company issued an aggregate of 63,000 shares of common stock to certain employees and consultants with accompanying 5-year non-recourse promissory notes. The issuance of the shares were considered for services, and as such the Company recorded \$657,090, or a fair value of \$10.43 per share, in stock-based compensation which was included in general and administrative expenses in the consolidated statement of operations.

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

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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. On October 13, 2022, the outstanding share of the Company's Series A Preferred Stock was redeemed.

On September 13, 2023, the Company filed a certificate of cancellation (the "Series A Certificate of Cancellation") with the Secretary of State of the State of Delaware, effective as of the time of filing, cancelling the Series A Certificate of Designation relating to the Series A Preferred 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.

On September 13, 2023, the Company filed a certificate of cancellation (the "Series B Certificate of Cancellation") with the Secretary of State of the State of Delaware, effective as of the time of filing, cancelling the Series B Certificate of Designation, and thereby eliminating all Series B Preferred Stock.

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 \$0.717 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.

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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 \$0.717, 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 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.

NOTE 9: RELATED PARTY TRANSACTIONS

During the nine months ended September 30, 2023 and 2022, the Company made net repayments for amounts due to related parties totaling \$218,967 and \$162,692, respectively. As of September 30, 2023 and December 31, 2022, amounts due to related parties were \$336,250 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.

In October 2022, the Company received advances from Trevor Pettennude totaling \$325,000. The advances are unsecured, non-interest bearing and due on demand. The advances were paid off in September 2023.

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As of December 31, 2022, H&J had an outstanding note payable of \$129,489 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 32,085 pre-funded warrants which were immediately exercised for shares of common stock. The Company also granted an additional 51,085 warrants as part of the offering. Each warrant has an exercise price of \$9.43 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 \$122.35 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 \$131.25. The warrants are immediately exercisable upon issuance and expire five years after issuance.

In connection with the August Private Placement, the Company granted 481,875 pre-funded warrants, which had not yet been exercised for shares of common stock as of September 30, 2023. These warrants are expected to be fully sold and exercised into shares in the fourth quarter of 2023. The Company also granted an additional 1,027,750 warrants as part of the offering. Each warrant has an exercise price of \$9.43 per share, is immediately exercisable upon issuance and expires 5.5 years after issuance. The Company also granted the placement agent 38,541 warrants to purchase common stock at an exercise price of \$12.16 per share, which is immediately exercisable upon issuance and expires 5.5 years after issuance.

In connection with the August Private Placement, the Company entered into a warrant amendment (the "Warrant Amendment") with certain investors to amend certain existing warrants to purchase up to 196,542 shares of Common Stock that were previously issued in December 2022 and January 2023 to the investors, with an exercise price of \$131.25 per share and \$95.00 per share, respectively (the "Amended Warrants") as follows: (i) to reduce the exercise price of the Amended Warrants to \$9.43 per share, and (ii) to extend the original expiration date of the Amended Warrants so that they will terminate five and one half years from the closing of the offering. Immediately following the Warrant Amendment, the Company exercised warrants for 123,814 shares of common stock for proceeds of \$1,167,566.

The following is a summary of warrant activity:

	<u>Common Stock Warrants</u>	<u>Weighted Average Exercise Price</u>
Outstanding - December 31, 2022	176,733	\$ 209.25
Granted	1,641,262	14.69
Exercised	(155,899)	27.63
Forfeited	—	—
Outstanding - September 30, 2023	<u>1,662,096</u>	\$ 20.86
Exercisable at December 31, 2022	<u>171,278</u>	\$ 210.50
Exercisable at September 30, 2023	<u>1,662,096</u>	\$ 26.19

Stock Options

As of September 30, 2023 and December 31, 2022, the Company had 1,558 stock options outstanding with a weighted average exercise price of \$9,055.50 per share. As of September 30, 2023, there were 1,463 options exercisable.

Stock-based compensation expense of \$101,417 and \$110,092 was recognized for the three months ended September 30, 2023 and 2022, respectively, and \$308,511 and \$368,944 was recognized for the nine months September 30, 2023 and 2022, respectively. During the nine months ended September 30, 2023 and 2022, \$43,197 and \$43,196 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 September 30, 2023 amounted to \$269,490 and will be recognized over a weighted average period of 0.77 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 September 30, 2023, the Company has \$980,322 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 September 30, 2023, the Company has \$248,734 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 September 30, 2023 and 2022 was \$140,304 and \$267,041, and \$401,444 and \$736,523 for the nine 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 \$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 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 \$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 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's 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 44 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 September 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 nine month periods ended September 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 nine-month periods ended September 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 September 30, 2023, and no history of generating taxable income.

NOTE 14: SUBSEQUENT EVENTS

Through the issuance date, the Company has exercised 225,375 pre-funded warrants per the August Private Placement into shares of common stock.

ITEM 2. 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 our unaudited condensed financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our audited financial statements and related notes for the year ended December 31, 2022 included in Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC on April 17, 2023.

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"), Harper & Jones LLC ("H&J"), MOSBEST, LLC ("Stateside") and Sunnyside ("Sundry").

Some of the statements contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business, constitute forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We have based these forward-looking statements on our current expectations and projections about future events. The following information and any forward-looking statements should be considered in light of factors discussed elsewhere in this Quarterly Report on Form 10-Q, particularly including those risks identified in Part II-Item 1A "Risk Factors" and our other filings with the SEC.

Our actual results and timing of certain events may differ materially from the results discussed, projected, anticipated, or indicated in any forward-looking statements. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and the development of the industry in which we operate may differ materially from the forward-looking statements contained in this Quarterly Report on Form 10-Q. Statements made herein are as of the date of the filing of this Form 10-Q with the SEC and should not be relied upon as of any subsequent date. Even if our results of operations, financial condition and liquidity, and the development of the industry in which we operate are consistent with the forward-looking statements contained in this Quarterly Report on Form 10-Q, they may not be predictive of results or developments in future periods. We disclaim any obligation, except as specifically required by law and the rules of the SEC, to publicly update or revise any such statements to reflect any change in our expectations or in events, conditions or circumstances on which any such statements may be based or that may affect the likelihood that actual results will differ from those set forth in the forward-looking statements.

Business Overview

Recent Developments

We have filed a definitive proxy statement for a special meeting of stockholders scheduled for August 21, 2023 seeking stockholder approval to effectuate a reverse stock split of the Company's outstanding common stock at an exchange ratio between 1-for-2.5 and 1-for-50, as determined by the Company's Board of Directors. The purpose of the reverse split would be to achieve the requisite increase in the market price of our common stock to be in compliance with the minimum bid price of Nasdaq. Should the Company's stockholders fail to approve the reverse stock split at the aforementioned meeting, it is substantially likely that the Company's common stock and public warrants would be delisted from Nasdaq.

On June 21, 2023, Digital Brands Group, Inc. (the "Company") 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 1,952,580 shares of the Company's common stock, par value \$0.0001 (the "Common Stock"), to D. Jones, at a per share purchase price of \$0.717 which represented the lower of (i) the closing price per share of the Common Stock as reported on The Nasdaq Capital Market (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, and (iii) the Company assigned and transferred one hundred percent (100%) of the Company's membership interest in H&J to D. Jones.

The HJ 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.

Our Company

Digital Brands Group is a curated collection of lifestyle brands, including Bailey 44, 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 four significant brands that leverage our three channels: our websites, wholesale and our own stores.

- **Bailey 44** 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 44 is primarily a wholesale brand, which we are transitioning 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 will be transitioning 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 will be transitioning 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 substantial 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.

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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 omni channel 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.

Material Trends, Events and Uncertainties

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.

Components of Our Results of Operations

Net Revenue

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

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.

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Stateside and Sundry sell its products directly to customers. Stateside and Sundry also sell 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

DSTLD, Bailey, Stateside and Sundry's 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, duties; and inbound freight.

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, stock-based compensation, 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.

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.

We expect 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.

Distribution expenses includes costs paid to our third-party logistics provider, packaging and shipping costs to the customer from the warehouse and any returns from the customer to the warehouse.

At each reporting period, we estimate changes in the fair value of contingent consideration and recognize any change in fair in our consolidated statement of operations, which is included in operating expenses. Additionally, amortization of the identifiable intangibles acquired in the acquisitions is also included in operating expenses.

Interest Expense

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

Results of Operations**Three Months Ended September 30, 2023 compared to Three Months Ended September 30, 2022**

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

	Three Months Ended September 30,	
	2023	2022
Net revenues	\$ 3,257,332	\$ 2,658,444
Cost of net revenues	1,554,044	1,700,547
Gross profit	1,703,288	958,298
General and administrative	3,753,527	2,979,915
Sales and marketing	1,151,377	1,022,331
Other operating expenses	238,546	(605,148)
Operating loss	(3,422,162)	(2,438,800)
Other income (expenses)	(2,013,832)	(2,295,238)
Loss before provision for income taxes	(5,435,994)	(4,734,038)
Provision for income taxes	—	—
Net income (loss) from continuing operations	\$ (5,435,994)	\$ (4,734,038)

Net Revenues

Revenues increased by \$0.6 million to \$3.3 million for the three months ended September 30, 2023, compared to \$2.7 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 \$0.7 million for the three months ended September 30, 2023 to \$1.7 million from a gross profit of \$1.0 million for the corresponding fiscal period in 2022. The increase in gross margin was primarily attributable to increased revenue in the nine months ended September 30, 2023 and the gross profit achieved by Sundry since the acquisition.

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Our gross margin was 52.3% for three months ended September 30, 2023 compared to 36.0% for the three months ended September 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.

Operating Expenses

Our operating expenses increased by \$1.7 million for the three months ended September 30, 2023 to \$5.1 million compared to \$3.4 million for the corresponding fiscal period in 2022. General and administrative expenses increased by \$0.8 million due to stock-based compensation for shares issued to employees and consultants. Sales and marketing expenses increased by \$0.1 million, and other operating expenses increased by \$0.8 million primarily due to change in fair value of contingent consideration.

Other Income (Expenses)

Other expenses was \$2.0 million and \$2.3 million for the three months ended September 30, 2023 and 2022, respectively. In 2023, the Company had less interest expense due to less outstanding notes. In 2022, other income was driven by the change in fair value of derivative liability in 2022.

Net Loss from Continuing Operations

Our net loss from continuing operations increased by \$0.7 million to a net loss from continuing operations of \$5.4 million for the three months ended September 30, 2023 compared to a loss from continuing operations of \$4.7 million for the corresponding fiscal period in 2022, primarily due to the change in fair value of contingent consideration and increased operating expenses, partially offset by higher gross profit.

Nine Months Ended September 30, 2023 compared to Nine Months Ended September 30, 2022

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

	Nine Months Ended September 30,	
	2023	2022
Net revenues	\$ 12,127,135	\$ 7,937,406
Cost of net revenues	6,094,532	5,252,943
Gross profit	6,032,603	2,684,464
General and administrative	12,115,590	11,053,536
Sales and marketing	3,188,054	3,252,418
Other operating expenses (income)	(9,947,530)	6,940,865
Operating loss	676,489	(18,562,355)
Other income (expenses)	(5,642,068)	(3,372,475)
Loss before provision for income taxes	(4,965,579)	(21,934,830)
Provision for income taxes	—	—
Net income (loss) from continuing operations	\$ (4,965,579)	\$ (21,934,830)

Net Revenues

Revenues increased by \$4.2 million to \$12.1 million for the nine months ended September 30, 2023, compared to \$7.9 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 \$3.3 million for the nine months ended September 30, 2023 to \$6.0 million from a gross profit of \$2.7 million for the corresponding fiscal period in 2022. The increase in gross margin was primarily attributable to increased revenue in the nine months ended September 30, 2023 and the gross profit achieved by Sundry since the acquisition, as well as increasing margins across all entities.

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Our gross margin was 49.7% for the nine months ended September 30, 2023 compared to 33.8% for the nine months ended September 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 \$15.9 million for the nine months ended September 30, 2023 to \$5.4 million compared to \$21.2 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 \$17.1 million. General and administrative expenses increased by \$1.1 million primarily due to Sundry's operations and stock-based compensation for shares issued to employees and consultants. Sales and marketing expenses decreased by \$0.1 million. Through the third quarter of 2023, we were able to obtain and efficiencies in fully absorbing all of our brands.

Other Income (Expenses)

Other expenses was \$5.6 million and \$3.4 million for the nine months ended September 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 \$17.0 million to loss of \$5.0 million for the nine months ended September 30, 2023 compared to a loss of \$21.9 million for the corresponding fiscal period in 2022, primarily due to the change in fair value of contingent consideration and higher gross profit.

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 September 30, 2023, we had cash of \$1.1 million, but we had a working capital deficit of \$14.7 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.

Cash Flow Activities

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

	Nine Months Ended September 30,	
	2023	2022
Net cash provided by operating activities:		
Net loss	\$ (6,528,082)	\$ (22,261,338)
Non-cash adjustments	\$ (1,717,038)	\$ 10,638,677
Change in operating assets and liabilities	\$ 1,787,484	\$ 2,932,803
Net cash used in operating activities	\$ (6,457,638)	\$ (8,689,857)
Net cash provided by (used in) investing activities	\$ 41,331	\$ (5,533)
Net cash provided by financing activities	\$ 6,207,950	\$ 8,362,395
Net change in cash	\$ (208,357)	\$ (332,995)

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Cash Flows Used In Operating Activities

Our cash used by operating activities decreased by \$2.2 million to cash used of \$6.5 million for the nine months ended September 30, 2023 as compared to cash used of \$8.7 million for the corresponding fiscal period in 2022. The increase in net cash used in operating activities was primarily driven by the lower net loss, partially offset by non-cash adjustments.

Cash Flows Provided By (Used in) Investing Activities

Our cash provided by investing activities was \$41,331 in 2023 primarily due to a reduction of deposits, partially offset by purchase of property and cash sold in the H&J disposition.

Cash Flows Provided by Financing Activities

Cash provided by financing activities was \$6.2 million for the nine months ended September 30, 2023. Cash inflows included \$8.1 million in net proceeds from the January Private Placement and August Private Placement and proceeds from loans and notes of \$5.8 million. Cash outflows are primarily due to \$8.8 million in repayments of notes.

Cash provided by financing activities was \$8.4 million for the nine months ended September 30, 2022. Cash inflows in the nine months ended September 30, 2022 were primarily related to \$7.3 million in equity proceeds after offering costs, \$3.8 million from convertible notes and loans, partially offset by note repayments of \$3.1 million.

Contractual Obligations and Commitments

As of September 30, 2023, we have \$7.0 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.

Critical Accounting Policies and Estimates

Our management's discussion and analysis of financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States. The preparation of our consolidated financial statements and related disclosures requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, costs and expenses and the disclosure of contingent assets and liabilities in our financial statements. We base our estimates on historical experience, known trends and events and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. We evaluate our estimates and assumptions on an ongoing basis. Our actual results may differ from these estimates under different assumptions or conditions.

Emerging Growth Company Status

We are an emerging growth company as that term is used in the Jumpstart Our Business Startups Act of 2012 and, as such, have elected to comply with certain reduced public company reporting requirements.

Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to take advantage of the benefits of this extended transition period. Our financial statements may, therefore, not be comparable to those of companies that comply with such new or revised accounting standards

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the Securities and Exchange Commission.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are a smaller reporting company as defined by Rule 12b-2 of the Securities and Exchange Act of 1934, as amended (the “Exchange Act”) and are not required to provide the information required under this item.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are designed to ensure that information required to be disclosed in the reports we file and submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, who serve as our principal executive officer and principal financial and accounting officer, respectively, has evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2023. In making this evaluation, our management considered the material weakness in our internal control over financial reporting described below. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were not effective as of such date.

We have initiated various remediation efforts, including the hiring of additional financial personnel/consultants with the appropriate public company and technical accounting expertise and other actions that are more fully described below. As such remediation efforts are still ongoing, we have concluded that the material weaknesses have not been fully remediated. Our remediation efforts to date have included the following:

- We have made an assessment of the basis of accounting, revenue recognition policies and accounting period cutoff procedures. In some cases, we made the necessary adjustments to convert the basis of accounting from cash basis to accrual basis. In all cases we have done the required analytical work to ensure the proper cutoff of the financial position and results of operations for the presented accounting periods.
- We have made an assessment of the current accounting personnel, financial reporting and information system environments and capabilities. Based on our preliminary findings, we have found these resources and systems lacking and have concluded that these resources and systems will need to be supplemented and/or upgraded. We are in the process of identifying a single, unified accounting and reporting system that can be used by the Company and Bailey, with the goal of ensuring consistency and timeliness in reporting, real time access to data while also ensuring ongoing data integrity, backup and cyber security procedures and processes.
- We engaged external consultants with public company and technical accounting experience to facilitate accurate and timely accounting closes and to accurately prepare and review the financial statements and related footnote disclosures. We plan to retain these financial consultants until such time that the internal resources of the Company have been upgraded and the required financial controls have been fully implemented.

The actions that have been taken are subject to continued review, implementation and testing by management, as well as audit committee oversight. While we have implemented a variety of steps to remediate these weaknesses, we cannot assure you that we will be able to fully remediate them, which could impair our ability to accurately and timely meet our public company reporting requirements.

Notwithstanding the assessment that our internal controls over financial reporting are not effective and that material weaknesses exist, we believe that we have employed supplementary procedures to ensure that the financial statements contained in this filing fairly present our financial position, results of operations and cash flows for the reporting periods covered herein in all material respects.

Limitations on Effectiveness of Controls and Procedures

Our management, including our Chief Executive Officer (Principal Executive Officer) and Chief Financial Officer (Principal Financial Officer), does not expect that our disclosure controls and procedures will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include, but are not limited to, the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Management believes that the material weakness set forth above did not have an effect on our financial results.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the nine months ended September 30, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

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. See Note 11 in the accompanying condensed consolidated financial statements for a complete listing of legal proceedings, which include:

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 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 \$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 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's 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 44 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 September 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.

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.

ITEM 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. Before investing in our common stock, you should consider carefully the risks described in our Annual Report on Form 10-K filed with the Securities and Exchange Commission, or SEC on April 17, 2023, together with the other information contained in this Quarterly Report on Form 10-Q, including our financial statements and the related notes and in our other filings with the Securities and Exchange Commission. If any of the risks occur, our business, financial condition, results of operations and prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you may lose all or part of your investment. In addition, although as a “smaller reporting company” as defined by Item 10 of Regulation S-K, we are not required to provide information required by this Item, we note the following risk:

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 “MLVS 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.

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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 March 31, 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.

On September 20, 2023, the Company was formally notified by Nasdaq that it has evidenced full compliance with all requirements for continued listing on The Nasdaq Capital Market, including the bid price and stockholders’ equity requirements.

The Company will remain subject to a “Panel Monitor” as that term is defined under Nasdaq Listing Rule 5815(d)(4)(A), through September 20, 2024. Under the terms of the Panel Monitor, in the event the Company fails to satisfy any requirement for continued listing on The Nasdaq Capital Market during the monitoring period, the Company will be required to request a hearing before the Nasdaq Hearings Panel (the “Panel”) in order to maintain its listing rather than taking the interim step of submitting a compliance plan for the Listing Qualifications Staff’s review or receiving any otherwise applicable grace period.

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, obtaining certain stockholders’ waiver of anti-dilution rights and effecting a reverse stock split, there can be no assurance that we will be successful in our efforts to maintain the Nasdaq listing.

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

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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.

Some or all of the expected benefits of the Reverse Stock Split 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 also had 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 though we regained 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 a one-for-one hundred (1-for-100) reverse stock split of its Common Stock on November 3, 2022, and we effected the Reverse Stock Split at a ratio of more than 1-for-2.5, if we subsequently fail to satisfy the Bid Price Rule, Nasdaq could begin the process of delisting our Common Stock without providing a Minimum Bid Price Rule Compliance Period.

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 30, 2023, we have \$7.0 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.

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;

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- 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 September 30, 2023 were \$9.0 million and \$10.7 million, respectively. During the year ended December 31, 2022, we recorded impairment expense of \$15.5 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 our operating and financial performance in any given period does not meet the guidance provided to the public or the expectations of investment analysts, the market price of our common stock may decline.

We have in the past, and we may, but are not obligated to, provide public guidance on our expected operating and financial results for future periods. Any such guidance consists of forward-looking statements, subject to the risks and uncertainties described in this Report and in our other public filings and public statements. The ability to provide this public guidance, and the ability to accurately forecast our results of operations, are inherently uncertain and subject to numerous risks and uncertainties, including those described in this Report, many of which may be beyond our control. Our actual results may not always be in line with or exceed any guidance we

have provided, especially in times of economic uncertainty, such as the current global economic uncertainty being experienced as a result of geopolitical tensions related to the ongoing conflicts in Russia and Ukraine, Israel and Palestine, and recent events in the banking industry such as the Silicon Valley Bank collapse and similar bank failures. If, in the future, our operating or financial results for a particular period do not meet any guidance provided or the expectations of investment analysts, or if we reduce our guidance for future periods, the market price of our common stock may decline as well. Even if we do issue public guidance, there can be no assurance that we will continue to do so in the future.

We may be impacted by macroeconomic conditions resulting from the global COVID-19 pandemic.

Since the first quarter of 2020, there has been a worldwide impact from the COVID-19 pandemic. Government regulations and shifting social behaviors have, at times, limited or closed non-essential transportation, government functions, business activities and person-to-person interactions. Global trade conditions and consumer trends that originated during the pandemic continue to persist and may also have long-lasting adverse impact on us and our industries independently of the progress of the pandemic.

For example, pandemic-related issues have exacerbated port congestion and intermittent supplier shutdowns and delays, resulting in additional expenses to expedite delivery of critical parts. In addition, labor shortages resulting from the pandemic, including worker absenteeism, has led to increased difficulty in hiring and retaining cloth manufacturing workers, as well as increased labor costs and supplier delays. Sustaining our production trajectory will require the ongoing readiness and solvency of our suppliers and vendors, a stable and motivated production workforce and government cooperation, including for travel and visa allowances. Additionally, infection rates and regulations continue to fluctuate in various regions, which may impact operations.

We cannot predict the duration or direction of current global trends or their sustained impact. Ultimately, we continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and attempt to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly. Lastly, rising interest rates may lead to consumers to increasingly pull back spending, including on our products, which may harm our demand, business and operating results. If we experience unfavorable global market conditions, or if we cannot or do not maintain operations at a scope that is commensurate with such conditions or are later required to or choose to suspend such operations again, our business, prospects, financial condition and operating results may be harmed.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Recent Sales of Unregistered Securities

On January 11, 2023, the Company, entered into a Securities Purchase Agreement with a certain accredited investor, pursuant to which the Company agreed to issue and sell, in a private placement (the “January Private Placement”), an aggregate of 475,000 shares of the Company’s common stock (“Common Stock”), and accompanying warrants to purchase 475,000 shares of Common Stock, at a combined purchase price of \$3.915 per share and Common Warrant, and (ii) 802,140 pre-funded warrants exercisable for 802,140 shares of Common Stock, and accompanying common warrants to purchase 802,140 shares of Common Stock, at a combined purchase price of \$3.915 per pre-funded warrant and accompanying common warrant, to the investors, for aggregate gross proceeds from the January Private Placement of approximately \$5 million before deducting placement agent fees and related offering expenses. As a result of the transaction, the Company issued 1,277,140 shares of Common Stock, including the 475,000 shares and the immediate exercise of 802,140 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 connection with the January Private Placement, the Company granted 802,140 pre-funded warrants which were immediately exercised for shares of common stock. The Company also granted an additional 1,277,140 warrants as part of the offering. Each warrant has an exercise price of \$3.80 per share, is immediately exercisable upon issuance and expires five years after issuance. The Company also granted the placement agent 95,786 warrants to purchase common stock at an exercise price of \$4.8938 per share, which is immediately exercisable upon issuance and expires five years after issuance.

In connection with merchant advances, the Company granted 152,380 warrants to purchase common stock at an exercise price of \$5.25. The warrants are immediately exercisable upon issuance and expires five years after issuance.

In January 2023, the Company issued 110,000 shares of common stock to a former convertible noteholder pursuant to default provisions.

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In March 2023, the Company issued an aggregate of 118,890 shares of common stock to Sundry executives based on their employment agreements with the Company.

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

In June 2023, the Company issued 1,952,580 shares of common stock to D. Jones at a fair value of \$1,357,043 pursuant to the H&J Settlement Agreement.

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.

On August 31, 2023, the Company entered into a Securities Purchase Agreement with a certain accredited investor, pursuant to which the Company agreed to issue and sell, in a private placement (the “August Private Placement”), an aggregate of 32,000 shares of the Company’s Common Stock and accompanying Series A warrants to purchase up to 32,000 shares of Common Stock and Series B warrants to purchase up to 32,000 shares of Common Stock at a combined purchase price of \$9.73 per share and common warrants, and (ii) 481,875 pre-funded warrants exercisable for 481,875 shares of Common Stock, and accompanying Series A Warrants to purchase up to 481,875 shares of Common Stock and Series B Warrants to purchase up to 481,875 shares of Common Stock, at a combined purchase price of \$9.73, for aggregate gross proceeds from the August Private Placement of approximately \$5 million. The Company received net proceeds of \$3.8 million after deducting placement agent fees and offering expenses. Through September 30, 2023, none of the pre-funded warrants from the August Private Placement had been exercised for shares of Common Stock.

In connection with the August Private Placement, the Company entered into a warrant amendment (the “Warrant Amendment”) with certain investors to amend certain existing warrants to purchase up to 196,542 shares of Common Stock that were previously issued in December 2022 and January 2023 to the investors, with an exercise price of \$131.25 per share and \$95.00 per share, respectively (the “Amended Warrants”) as follows: (i) to reduce the exercise price of the Amended Warrants to \$9.43 per share, and (ii) to extend the original expiration date of the Amended Warrants so that they will terminate five and one half years from the closing of the offering. Immediately following the Warrant Amendment, the Company exercised warrants for 123,814 shares of common stock for proceeds of \$1,167,566.

In September 2023, the Company issued 42,782 shares in accrued amounts owed to Sundry executives based on their employment agreements for a total value of \$500,000.

On September 10, 2023, the non-employee members of the board of directors adopted a 2023 Stock Purchase Plan (the “2023 Plan”) to enable the Company to attract, retain and motivate its employees. Under the 2023 Plan, qualified employees can purchase shares of the Company’s common stock at fair market value by either the delivery of cash or the delivery of a form of acceptable non-recourse promissory note. The aggregate number of common stock issuable under the 2023 Plan shall not exceed 65,000 subject to certain adjustment provided under the 2023 Plan.

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.

On around October 25, 2023, the Company converted 975 shares of Series C Convertible Preferred Stock held by Moise Emquies into 54,394 shares of common stock at the conversion price of \$17.925 per share.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURE

Not applicable.

ITEM 5. OTHER INFORMATION

Not applicable.

ITEM 6. EXHIBITS

Exhibit Number	Description
3.1	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).
3.2	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).
3.3	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).
3.4	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).
3.5	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).
3.6	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).
3.7	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).
3.8	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).
3.9	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).
3.10	Series A Preferred Stock Certificate of Cancellation filed on 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).
3.11	Series B Preferred Stock Certificate of Cancellation filed on 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).
4.1	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).
4.2	Form of Series A Warrant (incorporated by reference to Exhibit 4.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).
4.3	Form of Series B Warrant (incorporated by reference to Exhibit 4.2 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).
4.4	Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.3 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).
4.5	Form of Warrant Amendment (incorporated by reference to Exhibit 4.4 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).
4.6	Form of Placement Agent Warrant (incorporated by reference to Exhibit 4.5 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on September 5, 2023).
10.1	Fourth Amendment to Promissory Note, dated as of July 5, 2023 (incorporated by reference to Exhibit 10.1 of Digital Brands Group Inc.'s Form 8-K filed with the SEC on July 7, 2023).
10.2	Form of Securities Purchase Agreement, dated as of August 31, 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 September 5, 2023).
10.3	Form of Registration Rights Agreement, dated as of August 31, 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 September 5, 2023).
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a)
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a)
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350

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101.INS*	Inline XBRL Instance
101.SCH*	Inline XBRL Taxonomy Extension Schema
101.CAL*	Inline XBRL Taxonomy Extension Calculation
101.LAB*	Inline XBRL Taxonomy Extension Labels
101.PRE*	Inline XBRL Taxonomy Extension Presentation
104	Cover Page Interactive Data File (embedded within the Inline XBRL and contained in Exhibit 101)

* Filed herewith.

** Furnished herewith

Indicates management contract or compensatory plan or arrangement.

SIGNATURES

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

DIGITAL BRANDS GROUP, INC.

November 14, 2023

By: /s/ John Hilburn Davis, IV
John Hilburn Davis, IV, Chief Executive Officer

November 14, 2023

By: /s/ Reid Yeoman
Reid Yeoman, Chief Financial Officer

**Certification of Principal Executive Officer Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002**

I, John Hilburn Davis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Digital Brands Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2023

By: /s/ John Hilburn Davis
John Hilburn Davis
Chief Executive Officer
(Principal Executive Officer)

**Certification of Principal Financial Officer Pursuant to
Section 302 of the Sarbanes-Oxley Act of 2002**

I, Reid Yeoman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Digital Brands Group, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 14, 2023

By: */s/ Reid Yeoman*

Reid Yeoman
Chief Financial Officer
(Principal Financial Officer)

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

In connection with the Quarterly Report of Digital Brands Group, Inc. (the "Company") on Form 10-Q, for the fiscal quarter ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Hilburn Davis, Chief Executive Officer of Digital Brands Group, Inc., certify, pursuant to 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

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

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

Date: November 14, 2023

By: */s/ John Hilburn Davis*

John Hilburn Davis
Chief Executive Officer
(Principal Executive Officer)

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

In connection with the Quarterly Report of Digital Brands Group, Inc. (the "Company") on Form 10-Q, for the fiscal quarter ended September 30, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Reid Yeoman, Chief Financial Officer of Digital Brands Group, Inc., certify, pursuant to 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

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

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

Date: November 14, 2023

By: */s/ Reid Yeoman*

Reid Yeoman
Chief Financial Officer
(Principal Financial Officer)
