UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2023

OR

o **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 001-37788

WAITR HOLDINGS INC.
(Exact name of Registrant as specified in its Charter)

Delaware	**26-3828008**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
214 Jefferson Street, Suite 200 Lafayette, Louisiana	**70501**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **1-337-534-6881**

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934: None

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 x NO o

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 x NO o

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

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

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

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO x

The number of shares of Registrant's common stock outstanding as of August 9, 2023 was 13,524,841.

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PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	June 30, 2023 Unaudited	December 31, 2022
ASSETS		
CURRENT ASSETS		
Cash	$ 5,066	$ 12,066
Accounts receivable, net	2,859	3,982
Capitalized contract costs, current	1,574	1,559
Prepaid expenses and other current assets	3,085	5,997
TOTAL CURRENT ASSETS	**12,584**	**23,604**
Property and equipment, net	415	808
Capitalized contract costs, noncurrent	2,672	3,403
Goodwill	—	9,536
Intangible assets, net	6,574	7,065
Operating lease right-of-use assets	2,387	2,917
Other noncurrent assets	742	812
TOTAL ASSETS	**$ 25,374**	**$ 48,145**
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
LIABILITIES:		
CURRENT LIABILITIES		
Short term debt - related party	$ 55,572	$ —
Short-term loans for insurance financing	614	1,892
Accounts payable	3,880	5,689
Restaurant food liability	714	1,282
Accrued payroll	887	1,672
Income tax payable	87	74
Operating lease liabilities	852	1,023
Other current liabilities	16,032	17,596
TOTAL CURRENT LIABILITIES	**78,638**	**29,228**
Long term debt - related party	—	53,901
Operating lease liabilities, net of current portion	1,685	2,079
Other noncurrent liabilities	15	28
TOTAL LIABILITIES	**80,338**	**85,236**
Commitments and contingent liabilities (Note 10)		
STOCKHOLDERS' EQUITY (DEFICIT):		
Common stock, $0.0001 par value; 249,000,000 shares authorized and 13,506,812 and 12,955,299 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively	21	21
Additional paid in capital	541,359	538,812
Accumulated deficit	(596,344)	(575,924)
TOTAL STOCKHOLDERS' DEFICIT	**(54,964)**	**(37,091)**
TOTAL LIABILITIES AND STOCKHOLDERS' DEFICIT	**$ 25,374**	**$ 48,145**

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
REVENUE	**$ 13,951**	**$ 31,171**	**$ 30,655**	**$ 66,211**
COSTS AND EXPENSES:				
Operations and support	6,012	15,983	14,223	36,262
Sales and marketing	3,629	6,973	8,197	13,226
Research and development	783	1,242	1,943	2,553
General and administrative	5,697	12,213	14,416	23,758
Depreciation and amortization	421	3,000	878	6,065
Goodwill impairment	9,536	—	9,536	67,190
Gain on disposal of assets	(11)	(71)	(22)	(88)
TOTAL COSTS AND EXPENSES	**26,067**	**39,340**	**49,171**	**148,966**
LOSS FROM OPERATIONS	**(12,116)**	**(8,169)**	**(18,516)**	**(82,755)**
OTHER EXPENSES (INCOME) AND LOSSES (GAINS), NET				
Interest expense	940	1,461	1,875	3,165
Other (income) expense	(110)	2,024	16	2,934
NET LOSS FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	**(12,946)**	**(11,654)**	**(20,407)**	**(88,854)**
Income tax expense	6	17	13	33
NET LOSS FROM CONTINUING OPERATIONS	**$ (12,952)**	**$ (11,671)**	**$ (20,420)**	**$ (88,887)**
LOSS PER SHARE:				
Basic and diluted	$ (0.96)	$ (1.45)	$ (1.52)	$ (11.32)
Weighted average shares used to compute net loss per share:				
Weighted average common shares outstanding – basic and diluted	13,496,985	8,026,589	13,461,325	7,854,998

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Six Months Ended June 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	$ (20,420)	$ (88,887)
Adjustments to reconcile net loss to net cash used in operating activities:		
Non-cash interest expense	1,835	577
Induced conversion expense related to Notes	—	930
Stock-based compensation	2,407	3,250
Gain on disposal of assets	(22)	(88)
Depreciation and amortization	878	6,065
Goodwill impairment	9,536	67,190
Amortization of capitalized contract costs	783	629
Change in fair value of contingent consideration liability	—	104
Other	(35)	(58)
Changes in assets and liabilities:		
Accounts receivable	1,123	(292)
Capitalized contract costs	(67)	(1,048)
Prepaid expenses and other current assets	2,912	3,580
Other noncurrent assets	66	161
Accounts payable	(1,809)	(1,596)
Restaurant food liability	(568)	(1,108)
Income tax payable	13	33
Accrued payroll	(785)	(658)
Accrued medical contingency	—	(53)
Other current liabilities	(1,571)	(2,224)
Other noncurrent liabilities	(3)	(336)
Net cash used in operating activities	**(5,727)**	**(13,829)**
Cash flows from investing activities:		
Purchases of property and equipment	—	(81)
Internally developed software	—	(4,318)
Purchase of domain names	—	(12)
Proceeds from sale of property and equipment	33	32
Net cash provided by (used in) investing activities	**33**	**(4,379)**
Cash flows from financing activities:		
Proceeds from issuance of stock	155	7,120
Payments on long-term loan	(164)	(20,000)
Borrowings under short-term loans for insurance financing	246	2,811
Payments on short-term loans for insurance financing	(1,525)	(3,602)
Payments on finance lease obligation	(3)	(2)
Taxes paid related to net settlement on stock-based compensation	(15)	(27)
Net cash used in financing activities	**(1,306)**	**(13,700)**
Net change in cash	**(7,000)**	**(31,908)**
Cash, beginning of period	12,066	60,111
Cash, end of period	**$ 5,066**	**$ 28,203**
Supplemental disclosures of cash flow information:		
Cash paid during the period for interest	$ 40	$ 2,588
Supplemental disclosures of non-cash investing and financing activities:		
Conversion of convertible notes to stock	$ —	$ 1,673

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS’ EQUITY (DEFICIT)
THREE AND SIX MONTHS ENDED JUNE 30, 2023
(in thousands, except share data)
(unaudited)

Three Months Ended June 30, 2023

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders’ deficit
	Shares	Amount			
Balances at March 31, 2023	**13,444,759**	**$ 21**	**$ 540,022**	**$ (583,392)**	**$ (43,349)**
Net loss	—	—	—	(12,952)	(12,952)
Vesting of restricted stock units	62,053	—	—	—	—
Taxes paid related to net settlement on stock-based compensation	—	—	(5)	—	(5)
Stock-based compensation	—	—	1,342	—	1,342
Balances at June 30, 2023	**13,506,812**	**$ 21**	**$ 541,359**	**$ (596,344)**	**$ (54,964)**

Six Months Ended June 30, 2023

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders’ deficit
	Shares	Amount			
Balances at December 31, 2022	**12,955,299**	**$ 21**	**$ 538,812**	**$ (575,924)**	**$ (37,091)**
Net loss	—	—	—	(20,420)	(20,420)
Vesting of restricted stock units	120,084	—	—	—	—
Taxes paid related to net settlement on stock-based compensation	—	—	(15)	—	(15)
Stock-based compensation	—	—	2,407	—	2,407
Issuance of common stock	431,429	—	155	—	155
Balances at June 30, 2023	**13,506,812**	**$ 21**	**$ 541,359**	**$ (596,344)**	**$ (54,964)**

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
THREE AND SIX MONTHS ENDED June 30, 2022
(in thousands, except share data)
(unaudited)

Three Months Ended June 30, 2022

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balances at March 31, 2022	**7,785,282**	**$ 15**	**$ 511,515**	**$ (446,351)**	**$ 65,179**
Net loss	—	—	—	(11,671)	(11,671)
Vesting of restricted stock units	35,761	—	—	—	—
Taxes paid related to net settlement on stock-based compensation	—	—	(27)	—	(27)
Stock-based compensation	—	—	1,579	—	1,579
Stock issued for conversion of Notes	220,575	—	1,673	—	1,673
Issuance of common stock	130,817	1	884	—	885
Balances at June 30, 2022	**8,172,435**	**$ 16**	**$ 515,624**	**$ (458,022)**	**$ 57,618**

Six Months Ended June 30, 2022

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balances at December 31, 2021	**7,304,714**	**$ 15**	**$ 503,609**	**$ (369,135)**	**$ 134,489**
Net loss	—	—	—	(88,887)	(88,887)
Vesting of restricted stock units	43,396	—	—	—	—
Taxes paid related to net settlement on stock-based compensation	—	—	(27)	—	(27)
Stock-based compensation	—	—	3,250	—	3,250
Stock issued for conversion of Notes	220,575	—	1,673	—	1,673
Issuance of common stock	603,750	1	7,119	—	7,120
Balances at June 30, 2022	**8,172,435**	**$ 16**	**$ 515,624**	**$ (458,022)**	**$ 57,618**

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

WAITR HOLDINGS INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

1. Organization

Waitr Holdings Inc., a Delaware corporation, together with its wholly owned subsidiaries (the "Company," "ASAP," "we," "us" and "our"), operates an online ordering technology platform (the "Platform"), providing delivery, carryout and dine-in options, connecting restaurants, merchants, drivers and diners in certain cities in the United States. The Platform uses the "deliver anything ASAP" model making it easy for consumers to order food, alcohol, convenience, grocery, flowers, auto parts and other items. Additionally, the Company facilitates access to third parties that provide payment processing solutions for restaurants and other merchants. We entered into the business of facilitating access to third parties that provide payment processing solutions through the acquisition of ProMerchant LLC, Cape Cod Merchant Services LLC and Flow Payments LLC (collectively referred to herein as the "Cape Payment Companies") in August 2021.

On November 18, 2022, the Company filed a Certificate of Amendment to amend the Company's Third Amended and Restated Certificate of Incorporation, which effected a one for twenty (1:20) reverse stock split (the "Reverse Stock Split") of its outstanding common stock. See *Note 12 – Stockholders' Equity* for additional information. All common share and per share amounts presented in the unaudited condensed consolidated financial statements and accompanying notes have been retroactively adjusted to reflect the Reverse Stock Split.

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The unaudited interim condensed consolidated financial statements and accompanying notes have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") and in accordance with the rules and regulations of the United States Securities and Exchange Commission ("SEC") as they apply to interim financial information. Accordingly, the interim condensed consolidated financial statements do not include all of the information and notes required by GAAP for complete annual financial statements, although the Company believes that the disclosures made are adequate to make information not misleading. References to the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASUs") included hereafter refer to the ASC and ASUs established by the Financial Accounting Standards Board (the "FASB") as the source of authoritative GAAP.

The unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto, together with management's discussion and analysis of financial condition and results of operations, contained in our Annual Report on Form 10-K for the year ended December 31, 2022 and filed with the SEC on April 17, 2023 (the "2022 Form 10-K"). The interim condensed consolidated financial statements are unaudited, but in the Company's opinion, include all adjustments that are necessary for a fair presentation of the results for the periods presented. The interim results are not necessarily indicative of results that may be expected for any other interim period or the fiscal year.

Segments

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker (the "CODM") in making decisions regarding resource allocation and assessing performance. The Company has determined that its chief executive officer is the CODM of the Company.

Our operations revolve around two primary areas of service: (i) delivery services, which include operations related to the Company's technology platform for online ordering and delivery ("Delivery Services"), and (ii) third-party payment processing referral services, which include operations related to facilitating access to third parties that provide payment processing solutions for restaurants and other merchants ("Third-Party Payment Processing Referral Services"). See *Note 14 – Segment Information* for additional information on the Company's segments and *Note 4 - Revenue* for additional information on revenue derived by segments.

Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements include the accounts of the Company and all wholly owned subsidiaries. Intercompany transactions and balances have been eliminated upon consolidation.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in accordance with GAAP requires the Company to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Significant estimates and judgments relied upon in preparing these condensed consolidated financial statements affect the following items:

- incurred loss estimates under our insurance policies with large deductibles or retention levels;
- loss exposure related to claims;
- determination of agent vs. principal classification for revenue recognition purposes;
- income taxes;
- useful lives of tangible and intangible assets;
- contingencies; and
- fair value of goodwill and other intangible assets, including the recoverability of intangible assets with finite lives and other long-lived assets.

The Company regularly assesses these estimates and records changes to estimates in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameters used in determining these estimates could cause actual results to differ from those estimates.

Significant Accounting Policies

See "**Recent Accounting Pronouncements**" below for a description of accounting principle changes adopted during the six months ended June 30, 2023. There have been no material changes to our significant accounting policies described in the 2022 Form 10-K.

Recent Accounting Pronouncements

The Company considered the applicability and impact of all ASUs. ASUs not listed below were assessed and determined to be either not applicable or are expected to have minimal impact on these unaudited condensed consolidated financial statements.

Recently Adopted Accounting Standards

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*, which creates an exception to the general recognition and measurement principle in ASC 805 by requiring companies to apply ASC 606, *Revenue from Contracts with Customers*, to recognize and measure contract assets and contract liabilities from contracts with customers acquired in a business combination. The guidance additionally clarifies that companies should apply the definition of a performance obligation in ASC 606 when recognizing contract liabilities assumed in a business combination. ASU 2021-08 was effective for and adopted by the Company on January 1, 2023. The adoption of ASU 2021-08 did not have a material impact on the Company's disclosures or consolidated financial statements.

3. Going Concern

Pursuant to the requirements of ASC 205-40, *Going Concern*, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. This evaluation initially does not take into consideration the potential mitigating effect of management's plans that have not been fully implemented as of the date the financial statements are issued. When substantial doubt exists under this methodology, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company's ability to continue as a going concern. The mitigating effect of management's plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the financial statements are issued, and (2) it is probable that the plans, when implemented, will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued.

The Company has had recurring losses from operations and declines in cash positions. As reflected in the accompanying unaudited condensed consolidated financial statements, the Company has an accumulated deficit of $596,344 as of June 30, 2023. The Company has experienced negative cash flow from operations during each quarter of fiscal 2022 through the second quarter of fiscal 2023. The Company's cash position has declined from $12,066 at December 31, 2022 to $5,066 as of June 30, 2023. As of June 30, 2023, the Company has outstanding debt in the principal amount of $56,355 with a maturity date of May 15, 2024. In an effort to alleviate these conditions, management is evaluating the Company's expected liquidity levels and exploring potential ways of raising additional capital in order to meet its obligations, including the debt repayments which are due in less than twelve months from the date of issuance of these financial statements, although there can be no assurance that we will be able to raise additional capital on commercially acceptable terms, or at all. Additionally, management is evaluating its existing cost structure and implementing cost saving initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. To the extent raising additional equity capital is pursued, management plans to do so in best efforts private placements, rather than through the ATM Program (as defined below) (see *Note 12 – Stockholders' Equity*). The Company does not anticipate being able to utilize its ATM Program in fiscal 2023.

The Company's plans are dependent on conditions and factors, many of which are outside of the Company's control. There can be no assurance that we will be able to generate positive cash flow from operations in any future period. Additionally, we may be unable to raise additional capital or enter into any financing arrangements when needed on favorable terms or at all. Accordingly, management could not conclude that it was probable that the plans will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. As such, the Company has concluded that substantial doubt exists about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

We are continuously reviewing our liquidity and anticipated working capital needs based on overall market and economic factors. Market conditions, future financial performance or other factors may make it difficult or impractical for us to access sources of capital on favorable terms, if at all. The failure to successfully implement our strategy to raise capital while also achieving cost savings will adversely impact our financial condition, which impact could be material, could reduce the period of time for which our anticipated working capital needs will be sufficient, and could result in the Company terminating, curtailing or ceasing operations or pursuing other strategic alternatives.

The accompanying unaudited condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business for the twelve-month period following the date the financial statements are issued. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result should the Company be unable to continue as a going concern.

4. Revenue

The following table presents our revenue disaggregated by offering. Revenue consists of the following for the periods indicated (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Delivery Services Segment:				
Delivery Transaction Fees	$ 10,631	$ 27,756	$ 24,345	$ 59,332
Other revenue	447	632	966	1,586
Total Delivery Services Segment	11,078	28,388	25,311	60,918
Third-Party Payment Processing Referral Services Segment	2,873	2,783	5,344	5,293
Total Revenue	**$ 13,951**	**$ 31,171**	**$ 30,655**	**$ 66,211**

Revenue from Contracts with Customers

Delivery Services Segment

The Delivery Services Segment includes operations related to the Company’s technology platform for online ordering and delivery. While food ordering and delivery is the primary component of the Delivery Services Segment, the Company’s technology platform also includes online ordering and delivery of various other products such as flowers, auto parts, alcohol and luxury goods. The Company generates revenue (“Delivery Transaction Fees”) in the Delivery Services Segment primarily when diners or customers place an order on the Platform.

Delivery Transaction Fees represent the revenue recognized from the Company’s obligation to process orders on the Platform. The performance obligation is satisfied when the Company successfully processes an order placed on the Platform and the restaurant receives the order at their location. Consistent with the recognition objective in ASC 606, *Revenue from Contracts with Customers*, the variable consideration due to the Company for processing orders is recognized on a daily basis. The Company is the agent in the transaction as the Platform provides a means for the restaurant to receive orders from customers. As an agent of the restaurant in the transaction, the Company recognizes Delivery Transaction Fees earned from the restaurant on the Platform on a net basis. Delivery Transaction Fees also include a fee charged to the end user customer when they request the order be delivered to their location. Revenue is recognized for diner fees once the delivery service is completed. The contract period for substantially all restaurant contracts is one month as both the Company and the restaurant have the ability to unilaterally terminate the contract by providing notice of termination.

In addition to Delivery Transaction Fees, revenue in the Delivery Services Segment includes other revenue sources such as paid placement revenue for prominent positioning of a restaurant on the Platform and revenue related to fees received for the early distribution of earnings to independent contractor drivers.

Third-Party Payment Processing Referral Services Segment

The Company generates revenue from Third-Party Payment Processing Referral Services by facilitating access to third-party payment processing solution providers. Revenue from such services primarily consists of residual payments received from third-party payment processing solution providers, based on the volume of transactions a payment processing solution provider performs for the merchant. The Company also occasionally receives a bonus up-front fee from third-party payment processing solution providers, paid at the time of a merchant’s initial transaction with a payment processing solution provider, based on a price specified in the agreement between the merchant and the payment processing solution provider. Revenue from bonus up-front fees is recognized once the Company receives the initial fixed up-front bonus amount upon merchant activation.

Third-party payment processing referral fees represent revenue recognized from the Company’s offering of referral services, connecting a merchant with a third-party payment processing service. The Company’s performance obligation in its contracts with payment processors is for an unknown or unspecified quantity of transactions and the consideration received is contingent upon the number of transactions submitted by the merchant and processed by the payment processor.

Accordingly, the total transaction price is variable. The performance obligation is satisfied and revenue is recognized by the Company when the third-party payment processor finalizes the processing of a transaction through the payment system and transaction volume is available from the payment processor to the Company. Consistent with the recognition objective in ASC 606, the variable consideration due to the Company for serving as the facilitator of the arrangement between the third-party payment processor and merchant is recognized on a daily basis. The Company is the agent in these arrangements as it establishes the relationship between the third-party payment processor and merchant, and thus, recognizes revenue on a net basis. The third-party payment processor is considered the customer of the Company as no direct contract exists between the merchant and the Company.

Accounts Receivable

The Company records a receivable when it has an unconditional right to the consideration. See *Note 5 – Accounts Receivable, Net* for additional details on the Company's accounts receivable.

Costs to Obtain a Contract with a Customer

The Company recognizes an asset for the incremental costs of obtaining a contract with a restaurant and recognizes the expense over the course of the period when the Company expects to recover those costs. The Company has determined that certain internal sales incentives earned at the time when an initial contract is executed meet these requirements. Capitalized sales incentives are amortized to sales and marketing expense on a straight-line basis over the period of benefit, which the Company has determined to be five years. The Company applies a practical expedient to expense costs as incurred for costs to obtain a contract with a customer when the amortization period would have been one year or less.

Deferred costs related to obtaining contracts with restaurants were $2,626 and $3,128 as of June 30, 2023 and December 31, 2022, respectively, out of which $1,035 and $1,032, respectively, was classified as current. Amortization of expense for the costs to obtain a contract were $259 and $221 for the three months ended June 30, 2023 and 2022, respectively, and $517 and $429 for the six months ended June 30, 2023 and 2022, respectively.

Costs to Fulfill a Contract with a Customer

The Company also recognizes an asset for the costs to fulfill a contract with a restaurant when they are specifically identifiable, generate or enhance resources used to satisfy future performance obligations, and are expected to be recovered. The Company has determined that certain costs related to onboarding restaurants onto the Platform meet the capitalization criteria under ASC Topic 340-40, *Other Assets and Deferred Costs*. Costs related to these implementation activities are deferred and then amortized to operations and support expense on a straight-line basis over the period of benefit, which the Company has determined to be five years.

Deferred costs related to fulfilling contracts with restaurants were $1,620 and $1,834 as of June 30, 2023 and December 31, 2022, respectively, out of which $539 and $527, respectively, was classified as current. Amortization of expense for the costs to fulfill a contract were $134 and $110 for the three months ended June 30, 2023 and 2022, respectively, and $266 and $204 for the six months ended June 30, 2023 and 2022, respectively.

5. Accounts Receivable, Net

Accounts receivable consist of the following (in thousands):

	June 30, 2023	December 31, 2022	December 31, 2021
Credit card receivables	$ 661	$ 2,334	$ 1,354
Residual commissions receivable	1,850	1,422	1,342
Receivables from restaurants and customers	610	596	660
Accounts receivable	3,121	4,352	3,356
Less: allowance for doubtful accounts and chargebacks	(262)	(370)	(329)
Accounts receivable, net	**$ 2,859**	**$ 3,982**	**$ 3,027**

6. Intangibles Assets and Goodwill

Intangible Assets

Intangible assets with finite useful lives are amortized using the straight-line method over their estimated useful lives and include internally developed software, as well as software to be otherwise marketed, and trademarks/trade name/patents and customer relationships. The Company reviews the recoverability of its long-lived assets annually, or when events or changes in circumstances occur that indicate that the carrying value of the asset may not be recoverable. The Company has determined that the trademark intangible asset and domain names related to the rebranding initiative are indefinite-lived assets and therefore are not subject to amortization but are evaluated for impairment.

The Bite Squad and Delivery Dudes trade name intangible assets were being amortized over their estimated useful lives and were fully impaired as of December 31, 2022. Additionally, as of December 31, 2022, the Company's internally developed software and customer relationship assets related to the Delivery Services Segment were fully impaired.

As of January 1, 2023, the Company's remaining intangible assets included the trademark intangible asset and domain names related to the rebranding initiative, and trademarks and customer relationship intangible assets related to the Third-Party Payment Processing Referral Services Segment. See "Impairments" below for details of impairment testing for intangible assets as of June 30, 2023.

Intangible assets are stated at cost or acquisition-date fair value less accumulated amortization and impairment and consist of the following at June 30, 2023 and December 31, 2022 (in thousands):

	As of June 30, 2023			
	Gross Carrying Amount	**Accumulated Amortization**	**Accumulated Impairment**	**Intangible Assets, Net**
Intangible assets subject to amortization:				
Trademarks/Trade name/Patents	$ 376	$ (213)	$ —	$ 163
Customer Relationships	6,500	(1,589)	—	4,911
Total intangible assets subject to amortization	6,876	(1,802)	—	5,074
Trademarks, not subject to amortization	1,500	—	—	1,500
Total	**$ 8,376**	**$ (1,802)**	**$ —**	**$ 6,574**

	As of December 31, 2022			
	Gross Carrying Amount	**Accumulated Amortization**	**Accumulated Impairment**	**Intangible Assets, Net**
Intangible assets subject to amortization:				
Software	$ 40,341	$ (13,542)	$ (26,799)	$ —
Trademarks/Trade name/Patents	6,549	(6,044)	(284)	221
Customer Relationships	96,510	(18,647)	(72,519)	5,344
Total intangible assets subject to amortization	143,400	(38,233)	(99,602)	5,565
Trademarks, not subject to amortization	3,038	—	(1,538)	1,500
Total	**$ 146,438**	**$ (38,233)**	**$ (101,140)**	**$ 7,065**

The Company recorded amortization expense of $246 and $2,465 for the three months ended June 30, 2023 and 2022, respectively, and $492 and $4,950 for the six months ended June 30, 2023 and 2022, respectively.

Estimated future amortization expense of intangible assets subject to amortization as of June 30, 2023 is as follows (in thousands):

		Amortization
The remainder of 2023	$	496
2024		953
2025		876
2026		871
2027		867
Thereafter		1,011
Total future amortization	**$**	**5,074**

Goodwill

Prior to the three months ended September 30, 2022, we concluded that we had one reporting unit for purposes of goodwill impairment testing. During the three months ended September 30, 2022, we quantitatively and qualitatively reassessed our segment reporting and determined the Third-Party Payment Processing Referral Services Segment is material to the group and now have two reporting units for purposes of goodwill impairment testing.

The following table presents changes in the carrying value of goodwill for the Company's single reporting unit prior to the allocation of goodwill to segments (in thousands).

Balance as of December 31, 2021	$	130,624
March 15, 2022 impairment		(67,190)
Balance prior to segment allocation		63,434
September 30, 2022 impairment		(51,991)
Remaining goodwill to be allocated to segments	$	11,443

During the three months ended September 30, 2022, the Company reallocated its goodwill from a single reporting unit to the Delivery Services Segment and the Third-Party Payment Processing Referral Services Segment based on a relative fair value analysis using several probability weighted scenarios. The following table presents changes in the carrying value of goodwill for the Company's segments after the allocation of goodwill to segments through December 31, 2022 (in thousands).

	Delivery Services Segment		Third-Party Payment Processing Referral Services Segment		Total	
Goodwill allocation to segments	$	1,907	$	9,536	$	11,443
September 30, 2022 impairment		(1,907)		—		(1,907)
Balance as of December 31, 2022	$	—	$	9,536	$	9,536

No events or circumstances occurred during the three months ended March 31, 2023 that would indicate an impairment may have occurred, and accordingly, the Company determined that goodwill and long-lived asset impairment testing was not needed at March 31, 2023. As a result of a sustained decline in the Company's stock price and market capitalization during the second quarter of 2023, the Company conducted an impairment test as of the valuation date of June 30, 2023, resulting in the full impairment of the Company's remaining goodwill. See "Impairments" below for additional details. The following table presents the carrying value of goodwill for the Company's segments as of June 30, 2023 (in thousands).

	Delivery Services Segment	Third-Party Payment Processing Referral Services Segment	Total
Balance as of December 31, 2022	$ —	$ 9,536	$ 9,536
June 30, 2023 impairment	—	(9,536)	(9,536)
Balance as of June 30, 2023	$ —	$ —	$ —

Impairments

The Company has historically conducted its goodwill and intangible asset impairment test annually in October, or more frequently if indicators of impairment exist. The Company conducts the impairment test in accordance with FASB ASC Topic 360, Impairment and Disposal of Long-Lived Assets ("ASC 360") for certain long-lived assets, including capitalized contract costs, developed technology, customer relationships, and trade names, and in accordance with FASB ASC Topic 350, Intangibles – Goodwill and Other ("ASC 350") for the reporting unit's goodwill.

ASC 360 requires long-lived assets to be tested for impairment using a three-step impairment test. Step 1 of the test is giving consideration to whether indicators of impairment of long-lived assets are present. If indicators are present, the Company proceeds to Step 2 to determine whether an impairment loss should be measured. As a part of Step 2, the Company performs a recoverability test by comparing the estimated undiscounted cash flows of the long-lived asset group to its carrying amount. If the estimated undiscounted cash flows are less than the carrying amount of the long-lived asset group, an impairment loss is measured based on its fair value as part of Step 3. ASC 350 requires goodwill and other indefinite lived assets to be tested for impairment at the reporting unit level. Determining the fair value of a reporting unit and intangible assets requires the use of estimates and significant judgments that are based on a number of factors including actual operating results. It is reasonably possible that the judgments and estimates could change in future periods.

June 30, 2023 Impairment Analysis

As a result of a sustained decline in the Company's stock price and market capitalization during the second quarter of 2023, the Company conducted an impairment test as of the valuation date of June 30, 2023. The Company engaged a third-party to assist management in estimating the fair values of long-lived assets and the reporting units for purposes of impairment testing under ASC 360 and ASC 350. Given the results of the qualitative assessment and indications of possible impairment, the Company proceeded to Step 2 to determine whether an impairment loss should be measured.

The customer relationships intangible assets, which are entirely related to the Third-Party Payment Processing Referral Services Segment, were tested for impairment under the guidance in ASC 360 using an undiscounted cash flow model. The undiscounted cash flows for the customer relationships intangible assets were above the carrying amounts and the Company determined that the long-lived asset group was recoverable, and no impairment existed as of June 30, 2023.

The trade name intangible assets related to the Third-Party Payment Processing Referral Services Segment were tested for impairment under the guidance in ASC 360 and were valued using an undiscounted cash flow model. The undiscounted cash flows for the trade names related to the Third-Party Payment Processing Referral Services Segment were above the carrying amount and the Company determined that the long-lived asset group was recoverable, and no impairment existed as of June 30, 2023. The Company determined that impairment testing was not warranted at June 30, 2023 for the $1,500 of trademarks related to the rebranding initiative given the recency of the prior valuation in September 2022.

For ASC 350 testing purposes, the Company compared the fair value of the reporting unit with its carrying amount. The fair value of the reporting unit was estimated giving consideration to the Income Approach, including the discounted cash flow method, and the Market Approach, including the guideline public company method. Significant inputs and assumptions in the ASC 350 analysis included forecasts (e.g., revenue, operating costs and capital expenditures), discount rate, long-term growth rate and tax rates for the reporting unit under the Income Approach and market-based enterprise value to revenue multiples under the Market Approach. As a result of the ASC 350 analysis, the Company recognized a non-cash pre-tax impairment loss of $9,536 to write down the carrying value of goodwill in the Third-Party Payment Processing Referral Services Segment to zero. The impairment loss is included in the unaudited condensed consolidated statement of operations for the three and six months ended June 30, 2023 under the caption “goodwill impairment”.

7. Other Current Liabilities

Other current liabilities consist of the following (in thousands):

	June 30, 2023	December 31, 2022
Accrued insurance expenses	$ 7,243	$ 7,139
Accrued estimated workers’ compensation expenses	159	275
Accrued medical contingency	366	366
Accrued legal contingency	1,250	1,250
Accrued sales tax payable	520	307
Other accrued expenses	1,731	3,157
Unclaimed property	2,888	2,795
Other current liabilities	1,875	2,307
Total other current liabilities	**$ 16,032**	**$ 17,596**

8. Debt

The Company’s outstanding debt obligations are as follows (in thousands):

	Coupon Rate Range in 2022 through 2Q23	Effective Interest Rate at June 30, 2023	Maturity	June 30, 2023	December 31, 2022
Short term debt - related party:					
Term Loan	7.125%	13.16%	May 2024	$ 12,864	$ —
Notes	4.5% - 6.0%	4.86%	May 2024	43,491	—
				56,355	—
Less: unamortized debt issuance costs on Term Loan				(648)	—
Less: unamortized debt issuance costs on Notes				(135)	—
				$ 55,572	**$ —**
Long term debt - related party:					
Term Loan	7.125%	13.16%	May 2024	$ —	$ 12,579
Notes	4.5% - 6.0%	4.86%	May 2024	—	42,523
				—	55,102
Less: unamortized debt issuance costs on Term Loan				—	(992)
Less: unamortized debt issuance costs on Notes				—	(209)
				$ —	**$ 53,901**
Short-term loans for insurance financing	6.25% - 6.96%	n/a	September 2023 - March 2024	614	1,892
Total outstanding debt				**$ 56,186**	**$ 55,793**

Interest expense related to the Company’s outstanding debt totaled $940 and $1,461 for the three months ended June 30, 2023 and 2022, respectively, and $1,875 and $3,165 for the six months ended June 30, 2023 and 2022, respectively. Interest expense includes interest on outstanding borrowings and amortization of debt issuance costs and debt discount. See *Note 16 – Related Party Transactions* for additional information regarding the Company's related party debt.

Term Loan

The Company maintains an agreement with Luxor Capital Group, LP (" Luxor Capital") (as amended or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement provides for a senior secured first priority term loan (the "Term Loan") which is guaranteed by certain subsidiaries of the Company. Interest on the Term Loan is payable quarterly, in cash or, at the election of the Company, as a payment-in-kind, with interest paid in-kind being added to the aggregate principal balance. The Company elected to pay the interest payments of $221 and $228 due on March 31, 2023 and June 30, 2023, respectively, in-kind, resulting in such amounts being added to the principal balance of the Term Loan.

In January 2023, the Company made prepayments totaling $139 on the Term Loan, representing 60% of the net proceeds received by the Company for sales under the ATM Program that settled in early January 2023. Additionally, the Company made a prepayment of $25 on the Term Loan on June 29, 2023 pursuant to an amendment to the Credit Agreement. See *Amendments to Loan Agreements* below for additional details on the Term Loan and Credit Agreement.

The Credit Agreement includes a number of customary covenants that, among other things, limit or restrict the ability of the Company and its subsidiaries to incur additional debt, incur liens on assets, engage in mergers or consolidations, dispose of assets, pay dividends or repurchase capital stock and repay certain junior indebtedness. The Credit Agreement also includes customary affirmative covenants, representations and warranties and events of default.

Notes

Additionally, the Company issued unsecured convertible promissory notes (the "Notes") to Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP (the "Luxor Entities") pursuant to an agreement (as amended or otherwise modified from time to time, the "Convertible Notes Agreement"). The net carrying value of the Notes as of June 30, 2023 and December 31, 2022 totaled $43,356 and $42,314, respectively. See *Amendments to Loan Agreements* below for additional details on the Notes.

Interest on the Notes is payable quarterly, in cash or, at the Company's election, approximately 33% of interest due can be paid-in-kind. For the quarters ended March 31, 2023, June 30, 2023 and September 30, 2023, pursuant to certain amendments to the Convertible Notes Agreement, the Company is allowed to pay-in-kind 100% of the interest payments due on such dates (see *Amendments to Loan Agreements* below). The Company elected to pay the $479 and $489 interest payments due on March 31, 2023 and June 30, 2023, respectively, in-kind, resulting in such amounts being added to the principal balance of the Notes. Interest expense related to the Notes was comprised of the following for the three and six months ended June 30, 2023 and 2022 (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Contractual interest expense	$ 489	$ 745	$ 968	$ 1,488
Amortization of debt discount	37	47	74	101
	$ 526	**$ 792**	**$ 1,042**	**$ 1,589**

The Notes include customary anti-dilution protection, including broad-based weighted average adjustments for issuances of additional shares. Upon maturity, the outstanding Notes (and any accrued but unpaid interest) will be repaid in cash or converted into shares of common stock, at the holder's election. The Notes are convertible at the holder's election into shares of the Company's common stock at a rate of $127.25 per share at June 30, 2023, subject to certain "blocker" limitations limiting the amount of shares into which the Notes can be converted.

The Company's payment obligations on the Notes are not guaranteed. The Convertible Notes Agreement contains negative covenants, affirmative covenants, representations and warranties and events of default that are substantially similar to those that are set forth in the Credit Agreement (except those that relate to collateral and related security interests, which are not contained in the Convertible Notes Agreement or otherwise applicable to the Notes).

Amendments to Loan Agreements

January 6, 2023 Amendments

On January 6, 2023, ASAP Inc. (f/k/a Waitr Inc.), Waitr Intermediate Holdings, LLC, other guarantors party thereto, Luxor Capital, LLC and Luxor Capital entered into an amendment to the Credit Agreement (the “January 2023 Amended Credit Agreement”). Additionally, on January 6, 2023, Waitr Holdings Inc. and Luxor Capital entered into an amendment to the Convertible Notes Agreement (the “January 2023 Amended Convertible Notes Agreement”). The January 2023 Amended Credit Agreement and January 2023 Amended Convertible Notes Agreement provided that (i) Section 5.1(c) of each of the agreements was amended to waive the requirement for the audit report to be unqualified as to going concern with respect to the fiscal year 2022 financial statements and (ii) the requirement of Section 5.1(i) of each of the agreements that the financial plan demonstrate adequate liquidity through the final maturity date was amended to waive such requirement with respect to the financial plan to be delivered within 30 days of the end of fiscal year 2022.

March 31, 2023 Amendments

On March 31, 2023, the Company entered into an amendment to the Credit Agreement (the “March 2023 Amended Credit Agreement”) and an amendment to the Convertible Notes Agreement (the “March 2023 Amended Convertible Notes Agreement”). The March 2023 Amended Credit Agreement and March 2023 Amended Convertible Notes Agreement extended the due date from March 31, 2023 to April 17, 2023 for submission of the fiscal year 2022 audited financial statements of the Company to the lenders. Additionally, the March 2023 Amended Convertible Notes Agreement allowed the Company to pay in-kind 100% of the accrued interest for the fiscal quarter ended March 31, 2023.

The Company evaluated the amendments in the March 2023 Amended Convertible Notes Agreement under ASC 470-60, “*Troubled Debt Restructurings by Debtors*”. Management concluded that there were indicators of financial difficulty for the Company at this date. Additionally, management concluded that the increase in the allowable percentage of interest on the Notes that could be paid-in-kind, from 33% to 100% for the interest payment for the quarter ended March 31, 2023, was a concession granted by the lenders. Therefore, the amendment was accounted for as a troubled debt restructuring. Management assessed whether the total undiscounted future cash payments specified by the March 2023 Amended Convertible Notes Agreement were greater or less than the carrying amount of the debt at the time of the restructuring and determined that the undiscounted future cash payments under the new terms were greater than the carrying amount of the debt at the time of the restructuring. Accordingly, no gain or loss was required to be recognized on the troubled debt restructuring on March 31, 2023. The change was accounted for prospectively using the new effective interest rate of the Notes.

June 29, 2023 Amendments

On June 29, 2023, the Company entered into an amendment to the Credit Agreement (the “June 2023 Amended Credit Agreement”) and an amendment to the Convertible Notes Agreement (the “June 2023 Amended Convertible Notes Agreement”). The June 2023 Amended Credit Agreement and June 2023 Amended Convertible Notes Agreement extend the due dates for submission of each of the second and third quarter 2023 financial statements of the Company to the lenders by approximately five days. Additionally, the June 2023 Amended Convertible Notes Agreement allows the Company to pay in-kind 100% of the accrued interest for the fiscal quarters ended June 30, 2023 and September 30, 2023.

The Company evaluated the amendments in the June 2023 Amended Convertible Notes Agreement under ASC 470-60, “*Troubled Debt Restructurings by Debtors*”. Management concluded that there were indicators of financial difficulty for the Company at this date. Additionally, management concluded that the increase in the allowable percentage of interest on the Notes that could be paid-in-kind, from 33% to 100% for the interest payments for the quarters ended June 30, 2023 and September 30, 2023, was a concession granted by the lenders. Therefore, the amendment is accounted for as a troubled debt restructuring. Management assessed whether the total undiscounted future cash payments specified by the June 2023 Amended Convertible Notes Agreement are greater or less than the carrying amount of the debt at the time of the restructuring and determined that the undiscounted future cash payments under the new terms are greater than the carrying amount of the debt at the time of the restructuring. Accordingly, no gain or loss was required to be recognized on the troubled debt restructuring on June 29, 2023. The change is accounted for prospectively using the new effective interest rate of the Notes.

Short-Term Loans

The Company has outstanding short-term loans as of June 30, 2023 for the purpose of financing portions of its annual insurance premium obligations. The loans are payable in monthly installments until maturity.

9. Income Taxes

The Company provides for income taxes using an asset and liability approach under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to periods in which the taxes become payable. The Company recorded income tax expense of $6 and $17 for the three months ended June 30, 2023 and 2022, respectively, and $13 and $33 for the six months ended June 30, 2023 and 2022, respectively. The Company’s income tax expense is entirely related to state taxes in various jurisdictions. The Company recorded a full valuation allowance against net deferred tax assets as of June 30, 2023 and December 31, 2022 as the Company has historically generated net operating losses, and the Company did not consider future book income as a source of taxable income when assessing if a portion of the deferred tax assets is more likely than not to be realized.

10. Commitments and Contingent Liabilities

Third-Party Delivery for Online Ordering of Food and Other Items

In June 2023, the Company contracted with Uber Technologies Inc. whereby Uber Direct will provide the delivery services for the Company’s online ordering of food and other items. It is expected that this arrangement will be implemented during the third quarter of the current fiscal year. The Company will continue to provide and operate the technology platform for online ordering.

Sponsorship Agreements

In July 2022, the Company entered into a five-year sponsorship agreement (the “MetLife Sponsorship Agreement”) with New Meadowlands Stadium Company, LLC (“NMSC”), pursuant to which the Company was the exclusive mobile ordering platform used at MetLife Stadium. In June 2023, the Company and NMSC mutually agreed to terminate the MetLife Sponsorship Agreement and all future obligations related to the agreement have been extinguished in full.

In September 2022, the Company entered into a four-year sponsorship agreement with the National Hockey League’s Florida Panthers (the “FLA Sponsorship Agreement”) pursuant to which the Company was the official mobile ordering platform used at the FLA Live Arena. In May 2023, the Company terminated the FLA Sponsorship Agreement and entered into a new sponsorship agreement which terminated on June 30, 2023.

Workers Compensation and Auto Policy Claims

We establish a liability under our workers’ compensation and auto insurance policies for claims incurred within our self-insured retention levels and an estimate for claims incurred but not yet reported. As of June 30, 2023 and December 31, 2022, $7,390 and $7,349, respectively, in outstanding workers’ compensation and auto policy reserves are included in the unaudited condensed consolidated balance sheets.

Legal Matters

In July 2016, Waiter.com, Inc. filed a lawsuit against Waitr Inc. in the United States District Court for the Western District of Louisiana, alleging trademark infringement based on the Company’s use of the “Waitr” trademark and logo, Civil Action No.: 2:16-CV-01041. The plaintiff sought injunctive relief and damages relating to the Company’s use of the “Waitr” name and logo. During the third quarter of 2020, the trial date was rescheduled to June 2021. On June 22, 2021, the Company entered into a License, Release and Settlement Agreement (the “Settlement”) to settle all claims related to this lawsuit. Pursuant to the Settlement, the Company paid the plaintiff $4,700 in cash on July 1, 2021. In connection with the Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, which was extended by eight additional months in exchange for a one-time payment of $800. During the three months ended March 31, 2022, the Company accrued an $800 reserve in connection with its option to extend the license period by an additional eight months, which was paid in May 2022. The $800 legal reserve is included in other expense in the unaudited condensed consolidated statement of operations for the six months ended June 30, 2022.

In April 2019, the Company was named as a defendant in a class action complaint filed by certain current and former restaurant partners, captioned *Bobby's Country Cookin', LLC, et al v. Waitr Holdings Inc.*, which is currently pending in the United States District Court for the Western District of Louisiana. The plaintiffs assert claims for breach of contract and violation of the duty of good faith and fair dealing, and they seek recovery on behalf of themselves and two separate classes. Based on the current class definitions, as many as 10,000 restaurant partners could be members of the two separate classes at issue. In February 2022, the parties reached a proposed settlement in principle to resolve the litigation in its entirety and requested a stay of the pending litigation. Ultimately, no settlement agreement was executed by the parties nor was District Court approval obtained. Thereafter, the Company sought and was granted leave to appeal the denial of its motion for summary judgment to the Fifth Circuit. On June 29, 2023, the Fifth Circuit reversed the District Court's ruling, in part, and then remanded the case to the District Court for further proceedings. The Company previously accrued a $1,250 reserve in connection with this lawsuit during the three months ended December 31, 2021. The accrued legal contingency is included in other current liabilities in the unaudited condensed consolidated balance sheet at June 30, 2023.

In November 2022, the Company was named as a defendant in *Jenson et al v. Bitesquad.com, LLC*, No. 22-cv-03044 (NEB), filed in Minnesota state court. The plaintiffs, three customers purporting to represent a class, allege that the Company's advertising is false and misleading in that the Company's "free delivery" promotions violate the Minnesota Uniform Deceptive Practices Act and the Minnesota False Statement in Advertising Act as a result of the Company charging "other fees" on such orders that plaintiffs assert constitute a "delivery charge." The plaintiffs seek unspecified damages as well as injunctive and declaratory relief. The Company removed the case to the United States District Court for the District of Minnesota under the Class Action Fairness Act. Based on the existence of an arbitration provision in the BiteSquad website "terms and conditions" section, the Company then moved to compel arbitration under the Federal Arbitration Act. The parties briefed and presented arguments on this motion to the court on March 8, 2023 and are waiting on the court's ruling. The Company believes that this lawsuit lacks merit and that it has strong defenses to all claims alleged. The Company continues to vigorously defend the lawsuit.

In October, 2017, the Company was named as a defendant in the matter of *Michael Boone and Jennifer Walters, individually and on behalf of their minor child Grace Boone, vs. Waitr Inc.*, pending in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana. The action arises from a pedestrian/vehicle collision that occurred in November 2016, and the alleged substantial damages as a result thereof. This matter was not resolved through mediation. A trial date has not been set and discovery is ongoing. The Company intends to vigorously defend this lawsuit.

In May 2020, the Company was named as a defendant in *Mary Ritchey, Individually and as Conservator for A.M., a minor, vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0722 LWC*, and *Robert P. McPherson vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0764 LWC*, consolidated and which is currently pending in the Circuit Court of the First Circuit, State of Hawaii. This action is a result of an automobile accident that occurred in October 2018 involving an employee of a Company subsidiary and the alleged substantial injuries and damages as a result thereof. Discovery is ongoing, as well as the motion practice. The court recently granted plaintiffs' motion to continue trial, and the trial has been rescheduled for June 2024. The Company intends to vigorously defend this lawsuit.

In May 2020, the Company was named as a defendant in *Jessie Stewart, Bradley Stewart & Sheila Ludwig vs. Waitr Inc. of LA., Waitr Holdings, Inc., Delivery Logistics, LLC, et al*, in the 22nd Judicial District Court, St. Tammany Parish, Louisiana. This action is a result of an automobile accident that occurred in April 2020 involving an independent contractor and the mother of the three plaintiffs, alleging substantial damages based on the injuries sustained in the accident and the ultimate death of the mother subsequent to the automobile accident. Discovery is ongoing and no trial date has been set. The Company intends to vigorously defend this lawsuit.

In addition to the lawsuits described above, the Company is involved in other litigation arising from the normal course of business activities, including, without limitation, vehicle accidents involving employees and independent contractor drivers resulting in claims alleging personal injuries and medical expenses, labor and employment claims, allegations of intellectual property infringement, and workers' compensation benefit claims as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although the Company believes that it maintains insurance with standard deductibles that generally covers liability for potential damages in many of these matters where coverage is available on acceptable terms (it is not maintained for claims involving intellectual property), insurance coverage is not guaranteed, there are limits to insurance coverage and in certain instances claims are met with denial of coverage positions by the carriers; accordingly, we could suffer material losses as a result of these claims, the denial of coverage for such claims, or damages awarded for any such claim that exceeds coverage. Litigation is unpredictable and we may determine in the future that certain existing claims have greater exposure or liability than previously understood.

11. Stock-Based Awards and Cash-Based Awards

In June 2020, the Company's stockholders approved the Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (the "2018 Incentive Plan"), which permits the granting of awards in the form of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock, restricted stock units, performance-based awards, and other stock-based or cash-based awards. As of June 30, 2023, there were 1,103,004 shares of common stock available for future grants pursuant to the 2018 Incentive Plan. The Company also has outstanding equity awards under the 2014 Stock Plan (as amended in 2017). Total compensation expense related to awards under the Company's incentive plans was $1,342 and $1,579 for the three months ended June 30, 2023 and 2022, respectively, and $2,407 and $3,250 for the six months ended June 30, 2023 and 2022, respectively.

Stock-Based Awards

Stock Options

The Company determines the fair value of stock option grants on the grant date using an option-pricing model with various assumptions regarding the risk-free rate, volatility and expected term. Expected volatility for stock options is typically estimated based on a combination of the historical volatility of the Company's stock price and the historical and implied volatility of comparable publicly traded companies. There were no grants of stock options under the 2018 Incentive Plan during the six months ended June 30, 2023 or the six months ended June 30, 2022. All outstanding stock options are fully vested and there is no remaining unrecognized compensation cost related to stock options. The Company recognized compensation expense for stock options of $13 for the six months ended June 30, 2022.

The stock option activity under the Company's incentive plans during the six months ended June 30, 2023 and 2022 is as follows:

	Six Months Ended June 30, 2023			Six Months Ended June 30, 2022		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Balance, beginning of period	**481,025**	**$ 7.58**	**$ 5.25**	**482,767**	**$ 7.74**	**$ 5.60**
Forfeited	(462)	66.62	96.23	(1,006)	41.29	89.20
Balance, end of period	**480,563**	**$ 7.52**	**$ 5.17**	**481,761**	**$ 7.67**	**$ 5.40**

Outstanding stock options, which were fully vested and expected to vest and exercisable are as follows as of June 30, 2023 and December 31, 2022:

	As of June 30, 2023		As of December 31, 2022	
	Options Fully Vested and Expected to Vest	Options Exercisable	Options Fully Vested and Expected to Vest	Options Exercisable
Number of Options	480,563	480,563	481,025	481,025
Weighted-average remaining contractual term (years)	1.53	1.53	2.02	2.02
Weighted-average exercise price	$ 7.52	$ 7.52	$ 7.58	$ 7.58
Aggregate Intrinsic Value (in thousands)	$ —	$ —	$ —	$ —

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (the difference between the fair value of the common stock and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their in-the-money options on each date. This amount will change in future periods based on the fair value of the Company's stock and the number of options outstanding. There were no exercises of stock options during the six months ended June 30, 2023 and 2022.

Restricted Stock

The Company’s restricted stock grants include performance-based and time-based vesting awards. The fair value of restricted shares is typically determined based on the closing price of the Company’s common stock on the date of grant.

Performance-Based Awards

As of June 30, 2023, there were 156,716 performance-based RSUs outstanding under the Company’s 2018 Incentive Plan. Such RSUs were granted to the Company’s chief executive officer, Carl Grimstad, in April 2020 (the “Grimstad RSU Grant”). The Grimstad RSU Grant has an aggregate grant date fair value of $3,542 and vests in full in the event of a change of control, as defined in Mr. Grimstad’s employment agreement with the Company, subject to his continuous employment with the Company through the date of a change of control; provided, however, that the Grimstad RSU Grant shall fully vest in the event that Mr. Grimstad terminates his employment for good reason or he is terminated by the Company for reason other than misconduct. No stock-based compensation expense will be recognized for the Grimstad RSU Grant until such time that is probable that the performance goal will be achieved, or at the time that Mr. Grimstad terminates his employment for good reason or he is terminated by the Company for reason other than misconduct, should either occur.

Awards with Time-Based Vesting

During the six months ended June 30, 2023, there were no grants of time-based vesting RSUs pursuant to the 2018 Incentive Plan. The Company recognized compensation expense for restricted stock of $1,342 and $1,579 during the three months ended June 30, 2023 and 2022, respectively, and $2,407 and $3,237 during the six months ended June 30, 2023 and 2022, respectively. Unrecognized compensation cost related to unvested time-based RSUs as of June 30, 2023 totaled $6,535, with a weighted average remaining vesting period of approximately 1.6 years. The total fair value of restricted shares that vested during the three months ended June 30, 2023 and 2022 was $23 and $153, respectively, and $54 and $221 during the six months ended June 30, 2023 and 2022, respectively.

The activity for restricted stock with time-based vesting under the Company’s incentive plans is as follows for the six months ended June 30, 2023 and 2022:

	Six Months Ended June 30, 2023			Six Months Ended June 30, 2022		
	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (years)	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (years)
Nonvested, beginning of period	**612,191**	**$ 24.42**	**2.05**	**430,728**	**$ 43.00**	**2.50**
Granted	—	—		423,500	8.20	
Shares vested	(164,815)	23.94		(48,981)	46.80	
Forfeitures	(61,286)	19.99		(49,473)	24.20	
Nonvested, end of period	**386,090**	**$ 25.32**	**1.62**	**755,774**	**$ 24.40**	**2.50**

Cash-Based Awards

Performance Bonus Agreement

On April 2020, the Company entered into a performance bonus agreement with Mr. Grimstad, which was extended through January 3, 2025 in connection with the extension of his employment agreement. Pursuant to the performance bonus agreement, upon the occurrence of a change of control in which the holders of the Company’s common stock receive per share consideration that is equal to or greater than $40.00, subject to adjustment in accordance with the 2018 Incentive Plan, the Company shall pay Mr. Grimstad an amount equal to $5,000 (the “Bonus”). In order to receive the Bonus, Mr. Grimstad must remain continuously employed with the Company through the date of the change of control; provided, however, that in the event Mr. Grimstad terminates his employment for good reason or the Company terminates his employment other than for misconduct, Mr. Grimstad will be entitled to receive the Bonus provided the change of control occurs on or before January 3, 2025. Compensation expense related to the bonus agreement will not be recognized until such time that is probable that the performance goal will be achieved.

Executive Retention Bonuses

On January 31, 2023, the Company agreed to a pay a retention bonus to Mr. Grimstad in the amount of $1,000, of which $750 was payable immediately (and was paid on February 17, 2023) and the balance of $250 is to be paid upon the satisfaction of certain conditions. In the event Mr. Grimstad terminates his employment, other than for good reason (as defined in his employment agreement), or is terminated by the Company for misconduct (as defined in his employment agreement), in each case prior to January 31, 2024, Mr. Grimstad is required to repay the Company an amount of cash equal to the after-tax amount of the retention compensation actually paid.

Additionally, on January 31, 2023, the Company agreed to pay retention bonuses totaling $500 to certain executive officers of the Company (chief financial officer, general counsel and chief engagement officer), of which $375 was payable immediately (and was paid on February 17, 2023) and the balance of $125 is to be paid upon the satisfaction of certain conditions. In the event that any such executive officer terminates his at-will employment for any reason, other than the Company’s failure to timely pay salary, or the Company terminates such employment for such executive officer’s willful misconduct, gross negligence, failure to perform required duties or due to a felony conviction, in each case prior to January 31, 2024, such executive officer is required to repay the Company an amount of cash equal to the after-tax amount of the retention compensation actually paid.

The retention bonuses which were paid in February 2023 are being amortized over the service period of the award, February 1, 2023 through January 31, 2024, and are included in general and administrative expense in the unaudited condensed consolidated statement of operations. The portions of the retention bonuses which are to be paid upon the satisfaction of certain performance conditions and service conditions will not be expensed until such time that is probable that the performance goal will be achieved.

12. Stockholders’ Equity

Common Stock

At June 30, 2023 and December 31, 2022, there were 249,000,000 shares of common stock authorized and 13,506,812 and 12,955,299 shares of common stock issued and outstanding, respectively, with a par value of $0.0001. The Company did not hold any shares as treasury shares as of June 30, 2023 or December 31, 2022. The Company’s common stockholders are entitled to one vote per share.

At-the-Market Offering

In August 2022, the Company entered into a fourth amended and restated open market sale agreement with respect to an at-the-market offering program (the “ATM Program”) under which the Company could offer and sell, from time to time at its sole discretion, shares of its common stock having an aggregate offering price of up to $50,000 through Jefferies LLC as its sales agent. The issuance and sale of shares by the Company under the open market sales agreement was made pursuant to the Company’s effective registration statements on Form S-3. In January 2023, the Company sold 431,429 shares of common stock pursuant to the ATM Program for net proceeds of $155. As of August 18, 2023, $44,183 remained unsold under the ATM Program, however, the Company does not anticipate being able to utilize its ATM Program to effect any further sales of common stock in 2023.

Preferred Stock

At June 30, 2023 and December 31, 2022, the Company was authorized to issue 1,000,000 shares of preferred stock ($0.0001 par value per share). There were no issued or outstanding preferred shares as of June 30, 2023 or December 31, 2022.

Notes

The Company has outstanding Notes which are convertible into shares of the Company’s common stock at a rate of $127.25 per share. See *Note 8 – Debt* for additional information regarding the Notes.

13. Fair Value Measurements

Contingent Consideration

The fair value of contingent consideration is measured at acquisition date, and at the end of each reporting period through the term of the arrangement, using the Black Scholes option-pricing model with assumptions for volatility and risk-free rate. Contingent consideration related to an earnout provision in the Company's acquisition on August 25, 2021 of the Cape Payment Companies and the future contingent payment based on the achievement of certain revenue targets. The earnout provision, if any, was payable no later than March 30, 2023, and was valued at $1,686 as of the acquisition date. At December 31, 2022, the Company determined that it was unlikely that the earnout provision would be met, therefore no value was assigned. The earnout provision was not met, accordingly, no payment was due on March 30, 2023.

Summary by Fair Value Hierarchy

The Company had no assets or liabilities required to be measured at fair value on a recurring basis at June 30, 2023 or December 31, 2022.

Adjustments to the fair value of the contingent consideration liability at the end of each reporting period were recognized in income (loss) from operations in the condensed consolidated statement of operations. The following table presents a reconciliation of the contingent consideration liability classified as a Level 3 financial instrument for the three and six months ended June 30, 2022 (in thousands):

	Three Months Ended June 30, 2022	Six Months Ended June 30, 2022
Balance, beginning of the period	$ 2,020	$ 1,939
Additions	—	—
Increase in fair value	23	104
Reductions/settlements	—	—
Balance, end of the period	**$ 2,043**	**$ 2,043**

In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company is required to record certain assets and liabilities at fair value on a non-recurring basis. The Company generally applies fair value concepts in recording assets and liabilities acquired in business combinations and asset acquisitions. Fair value concepts are also generally applied in estimating the fair value of long-lived assets and a reporting unit in connection with impairment analyses. Additionally, the Company applied fair value concepts in connection with the induced conversion of the Notes during the three months ended June 30, 2022.

14. Segment Information

The Company operates through two reportable operating segments based on two primary areas of service: (i) Delivery Services, which include operations related to the Company's technology platform for online ordering and delivery, and (ii) Third-Party Payment Processing Referral Services, which include operations related to facilitating access to third parties that provide payment processing solutions for restaurants and other merchants. For additional information about how our reportable segments derive revenue, refer to *Note 4 – Revenue*.

The CODM does not evaluate operating segments using asset information and, accordingly, we do not report asset information by segment. There are no internal revenue transactions between our reportable segments. The accounting policies of the operating segments are the same as those described in the 2022 Form 10-K.

The CODM evaluates segment performance primarily based on segment adjusted EBITDA. Segment adjusted EBITDA is defined as revenue less the following expenses: operations and support, sales and marketing, research and development, general and administrative and certain non-operating expenses associated with our segments. Excluded from segment adjusted EBITDA are non-cash items and other items that do not reflect our core operations. The following table presents information about our segments, with a reconciliation of total segments adjusted EBITDA to net loss from continuing operations of the consolidated Company (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Segments adjusted EBITDA:				
Delivery Services Segment	$ (296)	$ (3,601)	$ (4,667)	$ (5,628)
Third-Party Payment Processing Referral Services Segment	(514)	(10)	(1,015)	226
Total segments adjusted EBITDA	(810)	(3,611)	(5,682)	(5,402)
Reconciling items:				
Interest expense	(940)	(1,461)	(1,875)	(3,165)
Income taxes	(6)	(17)	(13)	(33)
Depreciation and amortization expense	(421)	(3,000)	(878)	(6,065)
Goodwill impairment	(9,536)	—	(9,536)	(67,190)
Stock-based compensation expense	(1,342)	(1,579)	(2,407)	(3,250)
Gain on disposal of assets	11	71	22	88
Induced conversion expense related to Notes	—	(930)	—	(930)
Change in fair value of contingent consideration liability	—	(23)	—	(104)
Transaction related expenditures and other non-recurring adjustments	92	(1,121)	(51)	(2,036)
Accrued legal reserve	—	—	—	(800)
Net loss from continuing operations	$ (12,952)	$ (11,671)	$ (20,420)	$ (88,887)

15. Loss Per Share Attributable to Common Stockholders

The calculation of basic and diluted loss per share attributable to common stockholders for the three and six months ended June 30, 2023 and 2022 is as follows (in thousands, except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Basic and diluted loss per share:				
Net loss attributable to common stockholders - basic and diluted	**$ (12,952)**	**$ (11,671)**	**$ (20,420)**	**$ (88,887)**
Weighted average number of shares outstanding - basic and diluted	13,496,985	8,026,589	13,461,325	7,854,998
Basic and diluted loss per common share	**$ (0.96)**	**$ (1.45)**	**$ (1.52)**	**$ (11.32)**

The Company has outstanding Notes which are convertible into shares of the Company's common stock. See *Note 8 – Debt* for additional details on the Notes. Based on the conversion price in effect at the end of June 30, 2023 and June 30, 2022, the Notes were convertible into 341,773 and 286,116 shares, respectively, of the Company's common stock. During the three and six months ended June 30, 2023 and the three and six months ended June 30, 2022, the Company's weighted average common stock price was below the Notes conversion price. Additionally, the Company had net losses during such periods. Accordingly, the shares were not considered in the diluted earnings per share calculation.

The following table includes securities outstanding at the end of the respective periods, which have been excluded from the fully diluted calculations because the effect on net loss per common share would have been antidilutive:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Antidilutive shares underlying stock-based awards:				
Stock options	480,563	481,761	480,563	481,761
Restricted stock units	542,806	912,490	542,806	912,490
Warrants	—	29,342	—	29,342

16. Related-Party Transactions

Credit Agreement and Convertible Notes Agreement

In November 2018, the Company entered into the Credit Agreement, and in January 2019, the Company entered into an amendment to the Credit Agreement, and an amendment to the Convertible Notes Agreement with the Luxor Entities. In addition, on each of May 21, 2019, July 15, 2020, March 9, 2021, May 9, 2022, November 8, 2022, January 6, 2023, March 31, 2023 and June 29, 2023, the Company entered into amendments to the Credit Agreement with Luxor Capital and amendments to the Convertible Notes Agreement with the Luxor Entities. Additionally, on May 12, 2022, the Company entered into an amendment to the Convertible Notes Agreement with the Luxor Entities.

On May 1, 2020, the Company entered into a Limited Waiver and Conversion Agreement with respect to the Credit Agreement and Convertible Notes Agreement. On May 13, 2022, the Company entered into the May 2022 Conversion Agreement, and on July 22, 2022, the Company entered into the July 2022 Conversion Agreement, with respect to the Convertible Notes Agreement.

During the six months ended June 30, 2023, the Company made prepayments totaling $139 on the Term Loan, representing a portion of the net proceeds received by the Company for sales under the ATM Program pursuant to an amendment to the Credit Agreement. Additionally, the Company made a prepayment of $25 on the Term Loan in June 2023 pursuant to the June 2023 Amended Credit Agreement.

Jonathan Green, a board member of the Company, is a partner at Luxor Capital. See *Note 8 - Debt* for additional details on related-party debt.

Other Transactions with Related Parties

As of June 30, 2023, some of the restaurants on our Platform are affiliated with one current and one prior member of our board of directors (the “Board”). We estimate that we generated total revenue, inclusive of diner fees, of approximately $66 and $75 during the three months ended June 30, 2023 and 2022, respectively, and $108 and $177 during the six months ended June 30, 2023 and 2022, respectively, from such restaurants that are affiliated with those current and prior members of the Board.

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

The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the unaudited condensed consolidated financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q (the "Form 10-Q") and with the audited consolidated financial statements included in the 2022 Form 10-K. The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of our control. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences are set forth in the sections titled "Cautionary Statement Regarding Forward-Looking Statements" and "Risk Factors".

Dollar amounts in Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations, are expressed in thousands, except as otherwise noted.

All references to common stock, share and per share amounts have been retroactively restated to reflect the 1:20 Reverse Stock Split that became effective on November 18, 2022, as if it had taken place as of the beginning of the earliest period presented.

Overview

ASAP.com, the on-demand delivery brand for Waitr Holdings Inc., operates an online ordering technology platform (the "Platform") using the "deliver anything ASAP" model, making it easy to order food, alcohol, convenience, grocery, flowers, auto parts and more. The Platform provides delivery, carryout and dine-in options, connecting restaurants, merchants, drivers and diners in certain cities in the United States. Additionally, ASAP facilitates access to third parties that provide payment processing solutions for restaurants and other merchants. We entered into the business of facilitating access to third parties that provide payment processing solutions through the acquisition of ProMerchant LLC, Cape Cod Merchant Services LLC and Flow Payments LLC (collectively referred to herein as the "Cape Payment Companies") in August 2021.

The Company operates through two reportable operating segments based on the two primary areas of service described above: (i) "Delivery Services", which include operations related to the Company's technology platform for online ordering and delivery, and (ii) "Third-Party Payment Processing Referral Services", which include operations related to facilitating access to third parties that provide payment processing solutions for restaurants and other merchants. Our strategy is to expand our ecosystem, which today is comprised of our restaurants, merchants, diners and independent contractor drivers, through the enhancement of our Platform and providing additional products and services, including the facilitation of access to third-party payment processing services for our ecosystem. We believe that the Third Party Payment Processing Referral Service is a business segment with opportunity for growth. We intend to focus resources on this business segment.

At June 30, 2023, our Platform included restaurants in approximately 570 cities. Average Daily Orders for the three months ended June 30, 2023 and 2022 were approximately 6,559 and 18,070, respectively, and revenue was $13,951 and $31,171, respectively. For the six months ended June 30, 2023 and 2022, Average Daily Orders were 7,803 and 20,475, respectively, and revenue was $30,655 and $66,211, respectively.

In June 2023, the Company contracted with Uber Technologies Inc. whereby Uber Direct will provide the delivery services for the Company's online ordering of food and other items. It is expected that this arrangement will be implemented during the third quarter of the current fiscal year. The Company will continue to provide and operate the technology platform for online ordering.

Going Concern

The Company has concluded that as a result of recurring losses from operations and declines in cash positions, there exists substantial doubt about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of the financial statements contained in this Form 10-Q. The Company's results of operations and cash positions have been adversely impacted primarily by declines in order volumes. As of June 30, 2023, the Company has outstanding debt in the principal amount of $56,355 with a maturity date of May 15, 2024. In an effort to alleviate these conditions, management is evaluating the Company's expected liquidity levels and exploring potential ways of raising additional capital in order to meet its obligations, including the debt repayments which are due in less than twelve months from the date of issuance of these financial statements, although there can be no assurance that we will be able to raise additional capital on commercially acceptable terms, or at all. Additionally, management is implementing cost saving initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. The Company's plans are dependent on conditions and factors, many of which are outside of the Company's control. There can be no assurance that we will be successful in implementing our plans or that we will be able to generate positive cash flow from operations in any future period, nor can there be any assurance that we will be able to raise additional capital. The result of such inability, whether individually or in the aggregate, will adversely impact our financial condition and could cause us to curtail or cease operations or to pursue other strategic alternatives, including commencing a case under the U.S. Bankruptcy Code. Accordingly, management could not conclude that it was probable that the plans will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. See "*Liquidity and Capital Resources*" below for additional details.

Impact of Macroeconomic Developments and COVID-19 on our Business

We are exposed to general economic conditions that are beyond our control, including macroeconomic developments and impacts related to inflation, increased gasoline prices and the ongoing effects of the COVID-19 pandemic, both globally and in the U.S. The inflationary trends that the U.S. is experiencing, as well as increased gasoline prices, affect all constituent groups in our ecosystem, including restaurants, consumers and independent contractor drivers. These groups may be negatively impacted by these economic conditions, which in turn could impact our financial position and results of operations. There is uncertainty of the duration of these macroeconomic conditions.

We have been able to operate effectively during the COVID-19 pandemic. There remains uncertainty as to whether or not the COVID-19 pandemic will continue to impact diner behavior, and if so, in what manner.

To the extent that macroeconomic factors, including inflation, increased gasoline prices and the COVID-19 pandemic adversely impact the Company's business, results of operations, liquidity or financial condition, they may also have the effect of heightening many of the other risks described in the risk factors in the 2022 Form 10-K and this Form 10-Q. Management continues to monitor the impact of recent macroeconomic trends and the ongoing impact of new COVID-19 variants and the possible effects on its financial position, liquidity, operations, industry and workforce.

Significant Accounting Policies and Critical Accounting Estimates

The preparation of financial statements in accordance with GAAP requires us 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, along with related disclosures. We regularly assess these estimates and record changes to estimates in the period in which they become known. We base our estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameters used in determining these estimates could cause actual results to differ from estimates. Significant estimates and judgements relied upon in preparing these condensed consolidated financial statements affect the following items:

- incurred loss estimates under our insurance policies with large deductibles or retention levels;
- loss exposure related to claims;
- determination of agent vs. principal classification for revenue recognition purposes;
- income taxes;
- useful lives of tangible and intangible assets;
- contingencies; and
- fair value of goodwill and other intangible assets, including the recoverability of intangible assets with finite lives and other long-lived assets.

Other than the changes disclosed in Part I, Item 1, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* to our unaudited condensed consolidated financial statements in this Form 10-Q, there have been no material changes to our significant accounting policies and estimates described in the 2022 Form 10-K.

New Accounting Pronouncements and Pending Accounting Standards

See Part I, Item 1, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* for a description of accounting standards adopted during the six months ended June 30, 2023. The Company considered the applicability and impact of all ASUs. ASUs not listed in Note 2 were assessed and determined to be either not applicable or are expected to have minimal impact on these unaudited condensed consolidated financial statements.

Factors Affecting the Comparability of Our Results of Operations

Goodwill and Long-Lived Asset Impairments. During the six months ended June 30, 2023, we recognized a non-cash goodwill impairment charge totaling $9,536. During the six months ended June 30, 2022, we recognized a non-cash goodwill impairment charge totaling $67,190. Determining the fair value of a reporting unit and intangible and other assets requires the use of estimates and significant judgments that are based on a number of factors including actual operating results. It is reasonably possible that the judgments and estimates used could change in future periods. Significant goodwill and intangible asset impairments may impact the comparability of our results from period to period.

Changes in Fee Structure. Our fee structure has changed at various times since our inception. We continue to review and update our current rate structure, as necessary, as we look to offer new and enhanced value-adding services to our restaurant partners. Any changes to our fee structure (whether externally to comply with governmental imposed caps or as a result of internal decision-making) could affect the comparability of our results of operations from period to period.

Seasonality and Holidays. Our business tends to follow restaurant closure and diner behavior patterns with respect to demand of our service offering. In many of our markets, we have historically experienced variations in order frequency as a result of weather patterns, university summer breaks and other vacation periods. In addition, a significant number of restaurants tend to close on certain major holidays, including Thanksgiving, Christmas Eve and Christmas Day, among others. Further, diner activity may be impacted by unusually cold, rainy, or warm weather. Cold weather and rain typically drive increases in order volume, while unusually warm or sunny weather typically drives decreases in orders. Furthermore, severe weather-related events such as snowstorms, ice storms, hurricanes and tropical storms have adverse effects on order volume, particularly if they cause property damage or utility interruptions to our restaurant partners. The COVID-19 pandemic, as well as the federal government’s responses thereto, have had an impact on our typical seasonality trends and could impact future periods.

Acquisition Pipeline. We continue to evaluate potential acquisition targets and may pursue acquisitions in the future. These potential business acquisitions may impact the comparability of our results in future periods relative to prior periods.

Key Factors Affecting Our Performance

Efficient Market Penetration. Our competition has negatively impacted our cash flow, which is dependent on successful restaurant, merchant, diner and driver penetration of our markets. Failure in achieving our targeted scale could adversely affect our working capital, which in turn, would continue to negatively impact our financial condition.

Our Restaurant, Diner and Driver Network. Part of our strategy is to maintain our network of restaurants, merchants, diners and independent contractor drivers using the Platform. If we fail to retain existing restaurants, merchants, diners and independent contractor drivers using the Platform, or to add merchants, diners and independent contractor drivers to the Platform, our revenue, financial results and business may be adversely affected.

Key Business Metrics

Defined below are the key business metrics that we use to analyze our business performance, determine financial forecasts, and help develop long-term strategic plans for our Delivery Services Segment. We currently do not have any defined key business metrics related to our Third-Party Payment Processing Referral Services Segment.

Active Diners. We count Active Diners as the number of unique diner accounts from which an order has been completed through the Platform during the past twelve months (as of the end of the relevant period) and consider Active Diners an important metric because the number of diners using our Platform is a key revenue driver and a valuable measure of the size of our engaged diner base.

Average Daily Orders. We calculate Average Daily Orders as the number of completed orders during the period divided by the number of days in that period, including holidays. Average Daily Orders is an important metric for us because the number of orders processed on our Platform is a key revenue driver and, in conjunction with the number of Active Diners, a valuable measure of diner activity on our Platform for a given period.

Gross Food Sales. We calculate Gross Food Sales as the total food and beverage sales, sales taxes, prepaid gratuities, and diner fees processed through the Platform during a given period. Gross Food Sales are different than the order value upon which we charge our fee to restaurants, which excludes gratuities and diner fees. Prepaid gratuities, which are not included in our revenue, are determined by diners and may vary from order to order. Gratuities other than prepaid gratuities, such as cash tips, are not included in Gross Food Sales. Gross Food Sales is an important metric for us because the total volume of food sales transacted through our Platform is a key revenue driver.

Average Order Size. We calculate Average Order Size as Gross Food Sales for a given period divided by the number of completed orders during the same period. Average Order Size is an important metric for us because the average value of gross food sales on our Platform is a key revenue driver.

	Three Months Ended June 30,		Six Months Ended June 30,	
Key Business Metrics	**2023**	**2022**	**2023**	**2022**
Active Diners (as of period end)	692,054	1,327,971	692,054	1,327,971
Average Daily Orders	6,559	18,070	7,803	20,475
Gross Food Sales (dollars in thousands)	$ 35,207	$ 86,315	$ 81,780	$ 187,383
Average Order Size (in dollars)	$ 58.98	$ 52.49	$ 57.90	$ 50.56

Basis of Presentation

Revenue

We generate revenue primarily when diners place an order on the Platform. We recognize revenue from diner orders when orders are delivered. Our revenue consists primarily of net Delivery Transaction Fees. Additionally, effective August 25, 2021, we generate revenue by facilitating merchant access to third-party payment processing solution providers.

Cost and Expenses:

Operations and Support. Operations and support expense consists primarily of salaries, benefits, stock-based compensation and bonuses for employees engaged in operations and customer service, as well as territory managers, market success associates, restaurant onboarding, and driver logistics personnel, and payments to independent contractor drivers for delivery services. Operations and support expense also includes payment processing costs incurred on customer orders and the cost of software and related services providing support for diners, restaurants and drivers.

Sales and Marketing. Sales and marketing expense consists primarily of salaries, commissions, benefits, stock-based compensation and bonuses for personnel supporting sales and marketing efforts, including restaurant business development managers, marketing employees and contractors, and third-party marketing expenses such as social media and search engine marketing, online display advertisements, sponsorships and print marketing. Sales and marketing expense also includes referral agent commissions related to the facilitation of merchant access to third-party payment processing solution providers.

Research and Development. Research and development expense consists primarily of salaries, benefits, stock-based compensation and bonuses for employees and contractors engaged in the design, development, maintenance and testing of the Platform, net of costs capitalized for the development of the Platform. This expense also includes such items as software subscriptions that are necessary for the upkeep and maintenance of the Platform.

General and Administrative. General and administrative expense consists primarily of salaries, benefits, stock-based compensation and bonuses for executive, finance and accounting, human resources and other administrative employees as well as third-party legal, accounting, and other professional services, insurance (including workers' compensation, auto liability and general liability), travel, facilities rent, and other corporate overhead costs.

Depreciation and Amortization. Depreciation and amortization expense consists primarily of amortization of capitalized costs for software development, trademarks and customer relationships and depreciation of leasehold improvements and equipment, primarily tablets deployed in restaurants. We do not allocate depreciation and amortization expense to other line items.

Other Expenses (Income) and Losses (Gains), Net. Other expenses (income) and losses (gains), net, includes interest expense on outstanding debt, as well as any other items not considered to be incurred in the normal operations of the business, including accrued legal settlements and contingencies and expense related to the induced conversion of the Notes.

Results of Operations

The following table sets forth our results of operations for the periods indicated, with line items presented in thousands of dollars and as a percentage of our revenue:

	Three Months Ended June 30,				Six Months Ended June 30,			
(in thousands, except percentages(1))	**2023**	**% of Revenue**	**2022**	**% of Revenue**	**2023**	**% of Revenue**	**2022**	**% of Revenue**
Revenue	**$ 13,951**	**100 %**	**$ 31,171**	**100 %**	**$ 30,655**	**100 %**	**$ 66,211**	**100 %**
Costs and expenses:								
Operations and support	6,012	43 %	15,983	51 %	14,223	46 %	36,262	55 %
Sales and marketing	3,629	26 %	6,973	22 %	8,197	27 %	13,226	20 %
Research and development	783	6 %	1,242	4 %	1,943	6 %	2,553	4 %
General and administrative	5,697	41 %	12,213	39 %	14,416	47 %	23,758	36 %
Depreciation and amortization	421	3 %	3,000	10 %	878	3 %	6,065	9 %
Goodwill impairment	9,536	68 %	—	— %	9,536	31 %	67,190	101 %
Gain on disposal of assets	(11)	— %	(71)	— %	(22)	— %	(88)	— %
Total costs and expenses	**26,067**	187 %	**39,340**	126 %	**49,171**	160 %	**148,966**	225 %
Loss from operations	**(12,116)**	(87) %	**(8,169)**	(26) %	**(18,516)**	(60) %	**(82,755)**	(125) %
Other expenses (income) and losses (gains), net:								
Interest expense	940	7 %	1,461	5 %	1,875	6 %	3,165	5 %
Other (income) expense	(110)	(1) %	2,024	6 %	16	— %	2,934	4 %
Net loss before income taxes	**(12,946)**	(93) %	**(11,654)**	(37) %	**(20,407)**	(67) %	**(88,854)**	(134) %
Income tax expense	6	— %	17	— %	13	— %	33	— %
Net loss	**$ (12,952)**	(93) %	**$ (11,671)**	(37) %	**$ (20,420)**	(67) %	**$ (88,887)**	(134) %

(1) Percentages may not foot due to rounding.

The following section includes a discussion of our results of operations for the three and six months ended June 30, 2023 and 2022.

Revenue

	Three Months Ended June 30,			Six Months Ended June 30,		
	2023	**2022**	**Percentage Change**	**2023**	**2022**	**Percentage Change**
	(dollars in thousands)			**(dollars in thousands)**		
Revenue	$ 13,951	$ 31,171	(55 %)	$ 30,655	$ 66,211	(54 %)

See Part I, Item 1, *Note 4 - Revenue* for details of revenue by operating segment. Revenue decreased for the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022, primarily as a result of decreased order volumes in our Delivery Services Segment. Partially offsetting the impact of decreased order volumes was an increase in the Average Order Size in the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022. The Average Order Size was $58.98 for the three months ended June 30, 2023, compared to $52.49 for the three months ended June 30, 2022, an improvement of 12%. The Average Order Size was $57.90 for the six months ended June 30, 2023, compared to $50.56 for the six months ended June 30, 2022, an improvement of 15%.

Revenue for our Third-Party Payment Processing Referral Services Segment was relatively flat for the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022.

Operations and Support

	Three Months Ended June 30,		Percentage Change	Six Months Ended June 30,		Percentage Change
	2023	2022		2023	2022	
	(dollars in thousands)			(dollars in thousands)		
Operations and support	$ 6,012	$ 15,983	(62 %)	$ 14,223	$ 36,262	(61 %)
As a percentage of revenue	43 %	51 %		46 %	55 %	

Operations and support expenses decreased in dollar terms and as a percentage of revenue in the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022, primarily due to lower driver operations costs in our Delivery Services Segment as a result of decreased order volumes.

Sales and Marketing

	Three Months Ended June 30,		Percentage Change	Six Months Ended June 30,		Percentage Change
	2023	2022		2023	2022	
	(dollars in thousands)			(dollars in thousands)		
Sales and marketing	$ 3,629	$ 6,973	(48 %)	$ 8,197	$ 13,226	(38 %)
As a percentage of revenue	26 %	22 %		27 %	20 %	

The overall decrease in sales and marketing expense in dollar terms in the three and six months ended June 30, 2023, compared to the three and six months ended June 30, 2022, was primarily due to a reduction in workforce and decreased advertising spend in our Delivery Services Segment. Slightly offsetting the decrease was an increase in sales and marketing expense for our Third-Party Payment Processing Referral Services Segment as a result of increased sales efforts.

Decreased order volumes in our Delivery Services Segment during the 2023 periods resulted in an increase in sales and marketing expense as a percentage of revenue for the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022.

Research and Development

	Three Months Ended June 30,		Percentage Change	Six Months Ended June 30,		Percentage Change
	2023	2022		2023	2022	
	(dollars in thousands)			(dollars in thousands)		
Research and development	$ 783	$ 1,242	(37 %)	$ 1,943	$ 2,553	(24 %)
As a percentage of revenue	6 %	4 %		6 %	4 %	

Research and development expense is primarily related to costs associated with our Delivery Services Segment. The expense decreased in dollar terms in the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022, primarily due to a decrease in product and engineering personnel. As a percentage of revenue, research and development expense increased for the three and six months ended June 30, 2023, compared to the three and six months ended June 30, 2022, as a result of decreased order volumes.

General and Administrative

	Three Months Ended June 30,		Percentage Change	Six Months Ended June 30,		Percentage Change
	2023	2022		2023	2022	
	(dollars in thousands)			(dollars in thousands)		
General and administrative	$ 5,697	$ 12,213	(53 %)	$ 14,416	$ 23,758	(39 %)
As a percentage of revenue	41 %	39 %		47 %	36 %	

General and administrative expense decreased in dollar terms in the three and six months ended June 30, 2023, compared to the three and six months ended June 30, 2022, primarily due to staff reductions and a decrease in insurance expense. Decreased order volumes in the 2023 periods resulted in an increase in general and administrative expense as a percentage of revenue for the three and six months ended June 30, 2023 compared to the three and six months ended June 30, 2022.

Depreciation and Amortization

	Three Months Ended June 30,		Percentage Change	Six Months Ended June 30,		Percentage Change
	2023	2022		2023	2022	
	(dollars in thousands)			(dollars in thousands)		
Depreciation and amortization	$ 421	$ 3,000	(86 %)	$ 878	$ 6,065	(86 %)
As a percentage of revenue	3 %	10 %		3 %	9 %	

A significant portion of the Company's intangible assets and property and equipment were impaired as of December 31, 2022 due to the significant decline in the Company's market capitalization during the year ended December 31, 2022. As a result, depreciation and amortization expense decreased in dollar terms and as a percentage of revenue in the three and six months ended June 30, 2023, compared to the three and six months ended June 30, 2022.

Goodwill Impairment

During the three months ended March 31, 2022, we recognized a non-cash goodwill impairment charge of $67,190 to write down the carrying value of goodwill to its implied fair value. The primary factor contributing to a reduction in the fair value was the significant decline in the Company's stock price in mid-March 2022, resulting in a market capitalization that was lower than the carrying value of the Company's consolidated stockholders' equity. No events or circumstances occurred during the three months ended June 30, 2022 that would indicate an impairment may have occurred, and accordingly, the Company determined that goodwill and long-lived asset impairment testing was not needed at June 30, 2022.

No events or circumstances occurred during the three months ended March 31, 2023 that would indicate an impairment may have occurred, and accordingly, the Company determined that goodwill and long-lived asset impairment testing was not needed at March 31, 2023. During the three months ended June 30, 2023, we recognized a non-cash goodwill impairment charge of $9,536 to write down the carrying value of goodwill to its implied fair value. The primary factor contributing to a reduction in the fair value was the sustained decline in the Company's stock price and market capitalization in the second quarter of 2023. As of June 30, 2023, the Company's goodwill has been fully impaired. See Part I, Item 1, *Note 6 – Intangible Assets and Goodwill* for additional details.

Other Expenses (Income) and Losses (Gains), Net

	Three Months Ended June 30,		Percentage Change	Six Months Ended June 30,		Percentage Change
	2023	2022		2023	2022	
	(dollars in thousands)			(dollars in thousands)		
Other expenses (income) and losses (gains), net	$ 830	$ 3,485	(76 %)	$ 1,891	$ 6,099	(69 %)
As a percentage of revenue	6 %	11 %		6 %	9 %	

Other expenses (income) and losses (gains), net for the three months ended June 30, 2023 primarily consisted of $924 of interest expense associated with the Term Loan and Notes. For the three months ended June 30, 2022, other expenses (income) and losses (gains), net primarily consisted of $1,436 of interest expense associated with the Term Loan and Notes and $930 of expense associated with the induced conversion of the Notes.

For the six months ended June 30, 2023, other expenses (income) and losses (gains), net primarily consisted of $1,835 of interest expense associated with the Term Loan and Notes. For the six months ended June 30, 2022, other expenses (income) and losses (gains), net primarily consisted of $3,109 of interest expense associated with the Term Loan and Notes and $930 of expense associated with the induced conversion of the Notes.

Income Tax Expense

Income tax expense for the three months ended June 30, 2023 and 2022 was $6 and $17, respectively, and $13 and $33 for the six months ended June 30, 2023 and 2022, respectively. The Company’s income tax expense is entirely related to state taxes in various jurisdictions. We have historically generated net operating losses; therefore, a valuation allowance has been recorded on our net deferred tax assets.

Segments Adjusted EBITDA

The CODM evaluates segment performance primarily based on segment adjusted EBITDA. Segment adjusted EBITDA is defined as revenue less the following expenses: operations and support, sales and marketing, research and development, general and administrative and certain non-operating expenses associated with our segments. Excluded from segment adjusted EBITDA are non-cash items and other items that do not reflect our core operations. The following table presents information about our segments, with a reconciliation of total segments adjusted EBITDA to loss from operations of the consolidated Company (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Segments adjusted EBITDA:				
Delivery Services Segment	$ (296)	$ (3,601)	$ (4,667)	$ (5,628)
Third-Party Payment Processing Referral Services Segment	(514)	(10)	(1,015)	226
Total segments adjusted EBITDA	(810)	(3,611)	(5,682)	(5,402)
Reconciling items:				
Interest expense	(940)	(1,461)	(1,875)	(3,165)
Income taxes	(6)	(17)	(13)	(33)
Depreciation and amortization expense	(421)	(3,000)	(878)	(6,065)
Goodwill impairment	(9,536)	—	(9,536)	(67,190)
Stock-based compensation expense	(1,342)	(1,579)	(2,407)	(3,250)
Gain on disposal of assets	11	71	22	88
Induced conversion expense related to Notes	—	(930)	—	(930)
Change in fair value of contingent consideration liability	—	(23)	—	(104)
Transaction related expenditures and other non-recurring adjustments	92	(1,121)	(51)	(2,036)
Accrued legal reserve	—	—	—	(800)
Net loss from continuing operations	$ (12,952)	$ (11,671)	$ (20,420)	$ (88,887)

A discussion of operational results by segment is included in “- Results of Operations” above.

Liquidity and Capital Resources

Overview

Pursuant to the requirements of ASC 205-40, *Going Concern*, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company’s ability to continue as a going concern within one year after the date that the financial statements are issued. This evaluation initially does not take into consideration the potential mitigating effect of management’s plans that have not been fully implemented as of the date the financial statements are issued. When substantial doubt exists under this methodology, management evaluates whether the mitigating effect of its plans sufficiently alleviates substantial doubt about the Company’s ability to continue as a going concern. The mitigating effect of management’s plans, however, is only considered if both (1) it is probable that the plans will be effectively implemented within one year after the date that the financial statements are issued, and (2) it is probable that the plans, when implemented, will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the entity’s ability to continue as a going concern within one year after the date that the financial statements are issued.

The Company has concluded that as a result of recurring losses from operations and declines in cash positions, there exists substantial doubt about the Company’s ability to continue as a going concern for a period of at least twelve months from the date of issuance of the financial statements in this Form 10-Q. The Company’s results of operations and cash positions have been adversely impacted primarily by declines in order volumes. Our primary source of liquidity during the year ended December 31, 2022 was from proceeds from the issuance of our common stock. The Company experienced a trend of negative cash flow from operations during the year ended December 31, 2022 and in the first and second quarters of 2023. Cash flow used in operations totaled $28,716 for the year ended December 31, 2022 and $5,727 for the six months ended June 30, 2023. The Company has had recurring net losses, and as reflected in the accompanying unaudited condensed consolidated financial statements, the Company has an accumulated deficit of $596,344 as of June 30, 2023. The Company's cash position has declined from $12,066 at December 31, 2022 to $5,066 as of June 30, 2023. As of June 30, 2023, the Company has outstanding debt in the principal amount of $56,355 with a maturity date of May 15, 2024. Our cash position as of July 31, 2023 was approximately $5,187. We believe that we have sufficient cash on hand to fund operations through at least the third fiscal quarter of 2023.

In an effort to alleviate these conditions, management is evaluating the Company's expected liquidity levels and exploring potential ways of raising additional capital in order to meet its obligations, including the debt repayments which are due in less than twelve months from the date of issuance of these financial statements, although there can be no assurance that we will be able to raise additional capital on commercially acceptable terms, or at all. Additionally, management is evaluating its existing cost structure and implementing cost saving initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. To the extent raising additional equity capital is pursued, management plans to do so in best efforts private placements, rather than through the ATM Program. The Company does not anticipate utilizing its ATM Program in fiscal 2023.

The Company's plans are dependent on conditions and factors, many of which are outside of the Company's control. There can be no assurance that we will be able to generate positive cash flow from operations in any future period, nor can there be any assurance that we will be able to raise additional capital; the result of such inability, whether individually or in the aggregate, will adversely impact our financial condition. Accordingly, management could not conclude that it was probable that the plans will sufficiently mitigate the relevant conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. As such, the Company has concluded that substantial doubt exists about the Company's ability to continue as a going concern for a period of at least twelve months from the date of issuance of these financial statements.

We are continuously reviewing our liquidity and anticipated working capital needs based on overall market and economic factors. Market conditions, future financial performance or other factors may make it difficult or impractical for us to access sources of capital on favorable terms, if at all. The failure to successfully implement our strategy to raise capital while also achieving cost savings will adversely impact our financial condition, which impact could be material, could reduce the period of time for which our anticipated working capital needs will be sufficient, and could result in the Company terminating, curtailing or ceasing operations or pursuing other strategic alternatives, including commencing a case under the U.S. Bankruptcy Code.

The accompanying unaudited condensed consolidated financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of business for the twelve-month period following the date the financial statements are issued. The financial statements do not include any adjustments relating to the recoverability and classification of recorded asset amounts or the amounts and classification of liabilities that might result should the Company be unable to continue as a going concern.

Debt

In January 2023, the Company made prepayments totaling $139 on the Term Loan, representing 60% of the net proceeds received by the Company for sales under the ATM Program that settled in early January 2023. In June 2023, the Company made a $25 prepayment on the Term Loan pursuant to the June 2023 Amended Credit Agreement. The Company elected to pay 100% of the interest payments due on March 31, 2023 for the Term Loan and Notes, totaling $221 and $479, respectively, in-kind. Additionally, the Company elected to pay 100% of the interest payments due on June 30, 2023 for the Term Loan and Notes, totaling $228 and $489, respectively, in-kind.

The aggregate principal amount of outstanding short-term debt totaled $56,355 as of June 30, 2023, consisting of $12,864 for the Term Loan and $43,491 of Notes. As of June 30, 2023, the Company had $614 of outstanding short-term loans for insurance premium financing.

Capital Expenditures

Our main capital expenditures relate to investments in the development and maintenance of the Platform. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth under “Risk Factors” in the 2022 Form 10-K and subsequent filings with the SEC, including this Form 10-Q.

Cash Flow

The following table sets forth our summary cash flow information for the periods indicated:

	Six Months Ended June 30,	
(in thousands)	**2023**	**2022**
Net cash used in operating activities	$ (5,727)	$ (13,829)
Net cash provided by (used) in investing activities	33	(4,379)
Net cash used in financing activities	(1,306)	(13,700)

Cash Flows Used in Operating Activities

For the six months ended June 30, 2023, net cash used in operating activities was $5,727, compared to net cash used in operating activities of $13,829 for the six months ended June 30, 2022. During the six months ended June 30, 2023, the net change in operating assets and liabilities decreased net cash provided by operating activities by $689, primarily consisting of a decrease in accounts payable of $1,809 and a decrease in other current liabilities of $1,571, partially offset by a decrease in prepaid expenses and other current assets of $2,912. During the six months ended June 30, 2022, the net change in operating assets and liabilities decreased net cash provided by operating activities by $3,541, primarily consisting of a decrease in other current liabilities of $2,224 and a decrease in accounts payable of $1,596.

Cash Flows Provided By (Used) in Investing Activities

For the six months ended June 30, 2023, net cash provided by investing activities included $33 of proceeds from the sale of property and equipment. For the six months ended June 30, 2022, net cash used in investing activities consisted primarily of $4,318 of costs for internally developed software.

Cash Flows Used in Financing Activities

For the six months ended June 30, 2023, net cash used in financing activities consisted of $164 of payments on the Term Loan and $1,525 of payments on short-term loans for insurance financing, partially offset by $155 of net proceeds from the sales of common stock under the Company’s ATM Program. For the six months ended June 30, 2022, net cash used in financing activities consisted primarily of a $20,000 payment on the Term Loan and $3,602 of payments on short-term loans for insurance financing, partially offset by $7,120 of net proceeds from the sales of common stock under the Company’s ATM Program.

Cautionary Statement Regarding Forward-Looking Statements

This Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Exchange Act. All statements, other than statements of historical or current fact, that reflect future plans, estimates, beliefs or expected performance are forward-looking statements. In some cases, you can identify forward-looking statements because they are preceded by, followed by or include words such as “may,” “can,” “should,” “will,” “goal,” “strategy,” “estimate,” “plan,” “project,” “forecast,” “intend,” “expect,” “anticipate,” “believe,” “seek,” “target” or similar expressions. These forward-looking statements are based on information available as of the date of this Form 10-Q and our management’s current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties, including the following factors, in addition to the factors discussed elsewhere in this Form 10-Q, and the factors discussed in our 2022 Form 10-K and subsequent filings with the SEC:

Risks Related to Our Operations

- inability to finance our operations through the sale or issuance of debt or equity securities or through bank or other financing as a result of the existence of substantial doubt about our ability to continue as a going concern;
- inability to successfully generate or otherwise obtain sufficient funds for our working capital needs, resulting in the need to substantially alter, or possibly discontinue, cease or curtail operations or to pursue other strategic alternatives, including commencing a case under the U.S. Bankruptcy Code;
- risks related to a shift in our business strategy;
- continuing to experience a decrease in the number of diners and number of orders or decrease in order sizes on the Platform;
- declines in our delivery service levels or lack of increases in business for restaurants;
- loss of restaurants on the Platform, including due to changes in our fee structure;
- inability to successfully expand our operations of facilitating the entry into merchant agreements by and between merchants and third-party payment processing solution providers;
- risks related to market closures and employee reductions;
- inability to achieve profitability in the future;
- risks related to our relationships with the independent contractor drivers, including shortages of available drivers, loss of independent contractor drivers, adverse conditions impacting independent contractor drivers, and possible increases in driver compensation;
- inflationary pressures, increased gasoline prices and other macroeconomic factors that are largely beyond our control;
- inability to maintain and enhance our brands, including degradation thereto resulting from our comprehensive rebranding initiative to change our visual identity, or occurrence of events that damage our reputation and brands, including unfavorable media coverage;
- seasonality and the impact of inclement weather, including major hurricanes, tropical cyclones, major snow and/or ice storms in areas not accustomed to them and other instances of severe weather and other natural phenomena;
- inability to manage operations;
- inability to successfully improve the experience of restaurants and diners in a cost-effective manner;
- changes in our products or to operating systems, hardware, networks or standards that our operations depend on;
- dependence of our business on our ability to maintain and scale our technical infrastructure;
- personal data, internet security breaches or loss of data provided by diners or restaurants on our Platform;
- inability of third-party payment processing services, of which we may facilitate the entry into merchant agreements, to comply with applicable state or federal regulations;
- inability to comply with applicable law or standards if we were to become a payment processor at some point in the future;
- risks related to the credit card and debit card payments we accept;
- reliance on third-party vendors to provide products and services;
- substantial competition in technology innovation and distribution and inability to continue to innovate and provide technology desirable to diners, restaurants and merchants;
- failure to pursue and successfully make additional acquisitions;
- failure to comply with covenants in the agreements governing our debt;
- additional impairments of the carrying amounts of goodwill or other indefinite-lived assets;
- dependence on search engines, display advertising, social media, email, content-based online advertising and other online sources to attract diners to the Platform;
- loss of senior management or key operating personnel and dependence on skilled personnel to grow and operate our business;

- inability to successfully integrate and maintain acquired businesses;
- failure to protect our intellectual property;
- patent lawsuits and other intellectual property rights claims;
- potential liability and expenses for existing and future legal claims, including claims that may exceed insurance coverage or are not insured against;
- our use of open source software;
- insufficient capital to pursue business objectives and respond to business opportunities, challenges or unforeseen circumstances;
- unionization of our employees, the magnitude of which increases if our independent contractor drivers were ever reclassified as employees;
- failure to maintain an effective system of disclosure controls and internal control over financial reporting; (see Part I, Item 4 for details of the identification of material weaknesses in our internal controls); and
- failure to remediate a material weakness in, or inherent limitations associated with, our internal controls (see Part I, Item 4).

Risks Related to Our Industry

- the highly competitive and fragmented nature of our industry;
- dependence on discretionary spending patterns in the areas in which the restaurants on our Platform operate and in the economy at large;
- general economic and business risks affecting our industry that are largely beyond our control;
- COVID-19 variants and continued pandemic concerns, or a similar public health threat that could significantly affect our business, financial condition and results of operations;
- implementation of fee caps by jurisdictions in areas where we operate;
- failure of restaurants in our networks to maintain their service levels;
- slower than anticipated growth in the use of the Internet via websites, mobile devices and other platforms;
- federal and state laws and regulations regarding privacy, data protection, and other matters affecting our business;
- the potential for increased misclassification claims following the change to the U.S. presidential administration;
- risks relating to our relationships with the independent contractor drivers, including shortages of available drivers and possible increases in driver compensation; and
- risks related to the cannabis industry with respect to the business operations of referring merchants to third-party payment processing solution providers.

Risks Related to Ownership of Our Securities

- risks related to future sales of a substantial number of shares by existing stockholders which could in turn cause our share price to decline;
- the risk that future offerings of debt or equity securities that rank senior to our common stock may adversely affect the market price of our common stock;
- the risk that the Notes as well as other derivative securities, if exercised or converted into shares of our common stock, would increase the number of shares eligible for future resale in the public market and result in dilution to our stockholders; and
- the risk that we fail to continue to meet all applicable OTCQB Venture Market (“OTCQB”) listing requirements in future periods and risks relating to the consequent delisting of our common stock from the OTCQB if we fail to meet continued listing requirements, which could further adversely affect the market liquidity of our common stock, the ability for us to raise capital, and could decrease the market price of our common stock significantly.

These risks and uncertainties may be outside of our control. Forward-looking statements should not be relied upon as representing our views as of any subsequent date. We do not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. Our actual results could differ materially from those discussed in these forward-looking statements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to interest rate risk and certain other market risks in the ordinary course of our business.

Interest Rate Risk

As of June 30, 2023, we had outstanding interest-bearing short-term debt totaling $56,355, consisting of the Term Loan in the amount of $12,864 and the Notes in the principal amount of $43,491, both of which bear interest at fixed rates. As a result, we were not exposed to interest rate risk on our outstanding debt at June 30, 2023. If we enter into variable-rate debt in the future, we may be subject to increased sensitivity to interest rate movements.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15(b) of the Exchange Act, we have evaluated, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of the end of the period covered by this Form 10-Q. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed by us in reports that 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 and is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. Based upon the evaluation, our principal executive officer and principal financial officer have concluded that as of June 30, 2023, our disclosure controls and procedures were not effective because of the material weaknesses in our internal control over financial reporting described below under "*Material Weaknesses in Internal Control Over Financial Reporting*". Our management, including our principal executive officer and principal financial officer, has concluded that, notwithstanding the material weaknesses in our internal control over financial reporting, the unaudited condensed consolidated financial statements in this Form 10-Q present fairly, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with U.S. GAAP.

Changes in Internal Control Over Financial Reporting

Other than the material weaknesses described below, there has not been any change in our internal control over financial reporting that occurred during the quarter ended June 30, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Material Weaknesses in Internal Control Over Financial Reporting

As disclosed in Part II Item 9A. "Controls and Procedures" in the 2022 Form 10-K, as of December 31, 2022, we identified a material weakness in internal controls related to ineffective design and operation of information technology general controls ("ITGC") in the areas of program change management and user access over certain information technology ("IT") systems that support the Company's financial reporting processes. The Company did not adequately design and maintain user access and program change management controls to ensure that IT program and data changes affecting the Company's online ordering technology systems are authorized and implemented appropriately. The Company's revenue process controls were also deemed ineffective because they could have been adversely impacted. The material weakness did not result in any identified misstatements to the financial statements and there were no changes in previously released financial results.

In the course of preparing our financial statements for the interim period ended June 30, 2023, management identified a material weakness in our internal control over financial reporting that existed due to a deficiency in the operation of our control that is designed to evaluate goodwill and intangible assets for impairment. Such control did not operate effectively to identify the occurrence of events or changes in circumstances that would more likely than not reduce the fair value of a reporting unit below its carrying amount or indicate that the carrying amount of intangible assets may not be recoverable. The material weakness did not result in any changes in previously released financial results.

The material weaknesses described above may have an impact to the Company's financial reporting process which creates a reasonable possibility that a material misstatement to the consolidated financial statements will not be prevented or detected on a timely basis and represent material weaknesses in the Company's internal control over financial reporting. Our management, including our principal executive officer and principal financial officer, has concluded that, notwithstanding the material weaknesses in our internal control over financial reporting, the unaudited condensed consolidated financial statements in this Form 10-Q present fairly, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with U.S. GAAP.

Remediation plan

During the three months ended March 31, 2023, we began implementing our previously disclosed remediation plan for the ITGC material weakness, as described below, and continued to implement our remediation plan through the date of the filing of this Form 10-Q. While significant progress has been made and we expect that the remediation of this material weakness will be completed by December 31, 2023, the material weakness cannot be considered remediated until the applicable remedial controls operate for a sufficient period of time and we have concluded, through testing, that these controls are designed and operating effectively.

Management has taken steps with the intention of remediating the ITGC material weakness, including updated program change management policies and user access reviews. As part of the remediation plan, management has implemented a control which includes a monthly review of activity logs from affected IT applications to identify instances in which a user has developed and implemented a code change, bypassing the standard application rules that require review of code changes prior to implementation. Under the updated policy, each instance identified in the monthly review of the code change log will be reviewed by management for authorization and approval. Additionally, we have implemented monthly user access reviews over our affected IT development applications.

Management is enhancing its internal control over the identification of impairment indicators for goodwill and long-lived assets. The Company currently has a documented process to identify, assess and calculate impairment of goodwill and long-lived assets. Management will review the process and enhance the documentation of evidence reviewed as part of the control. The material weakness cannot be considered completely remediated until the applicable remedial control has operated for a sufficient period of time and management has concluded, through testing, that the control is designed and operating effectively.

The remediation of the material weaknesses described above is among our highest priorities. Our Audit Committee will continually assess the progress and sufficiency of these initiatives and make adjustments as and when necessary.

PART II. OTHER INFORMATION

Dollar amounts in the discussion in Part II. Other Information are expressed in thousands, except as otherwise noted.

Item 1. Legal Proceedings

In July 2016, Waiter.com, Inc. filed a lawsuit against Waitr Inc. in the United States District Court for the Western District of Louisiana, alleging trademark infringement based on the Company's use of the "Waitr" trademark and logo, Civil Action No.: 2:16-CV-01041. The plaintiff sought injunctive relief and damages relating to the Company's use of the "Waitr" name and logo. During the third quarter of 2020, the trial date was rescheduled to June 2021. On June 22, 2021, the Company entered into a License, Release and Settlement Agreement (the "Settlement") to settle all claims related to this lawsuit. Pursuant to the Settlement, the Company paid the plaintiff $4,700 in cash on July 1, 2021. In connection with the Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, unless extended by eight additional months in exchange for a one-time payment of $800, which was paid in May 2022. During the three months ended March 31, 2022, the Company accrued an $800 reserve in connection with its option to extend the license period by an additional eight months. The $800 legal reserve is included in other expense in the unaudited condensed consolidated statement of operations for the six months ended June 30, 2022.

In April 2019, the Company was named as a defendant in a class action complaint filed by certain current and former restaurant partners, captioned *Bobby's Country Cookin', LLC, et al v. Waitr Holdings Inc.*, which is currently pending in the United States District Court for the Western District of Louisiana. The plaintiffs assert claims for breach of contract and violation of the duty of good faith and fair dealing, and they seek recovery on behalf of themselves and two separate classes. Based on the current class definitions, as many as 10,000 restaurant partners could be members of the two separate classes at issue. In February 2022, the parties reached a proposed settlement in principle to resolve the litigation in its entirety and requested a stay of the pending litigation. Ultimately, no settlement agreement was executed by the parties nor was District Court approval obtained. Thereafter, the Company sought and was granted leave to appeal the denial of its motion for summary judgment to the Fifth Circuit. On June 29, 2023, the Fifth Circuit reversed the District Court's ruling, in part, and then remanded the case to the District Court for further proceedings. The Company previously accrued a $1,250 reserve in connection with this lawsuit during the three months ended December 31, 2021. The accrued legal contingency is included in other current liabilities in the unaudited condensed consolidated balance sheet at June 30, 2023.

In November 2022, the Company was named as a defendant in *Jenson et al. v. Bitesquad.com, LLC*, No. 22-cv-03044 (NEB), filed in Minnesota state court. The plaintiffs, three customers purporting to represent a class, allege that the Company's advertising is false and misleading in that the Company's "free delivery" promotions violate the Minnesota Uniform Deceptive Practices Act and the Minnesota False Statement in Advertising Act as a result of the Company charging "other fees" on such orders that plaintiffs assert constitute a "delivery charge." The plaintiffs seek unspecified damages as well as injunctive and declaratory relief. The Company removed the case to the United States District Court for the District of Minnesota under the Class Action Fairness Act. Based on the existence of an arbitration provision in the BiteSquad website "terms and conditions" section, the Company then moved to compel arbitration under the Federal Arbitration Act. The parties briefed and presented arguments on this motion to the court on March 8, 2023 and are waiting on the court's ruling. The Company believes that this lawsuit lacks merit and that it has strong defenses to all claims alleged. The Company continues to vigorously defend the lawsuit.

In October, 2017, the Company was named as a defendant in the matter of *Michael Boone and Jennifer Walters, individually and on behalf of their minor child Grace Boone, vs. Waitr Inc.*, pending in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana. The action arises from a pedestrian/vehicle collision that occurred in November 2016, and the alleged substantial damages as a result thereof. This matter was not resolved through mediation. A trial date has not been set and discovery is ongoing. The Company intends to vigorously defend this lawsuit.

In May 2020, the Company was named as a defendant in *Mary Ritchey, Individually and as Conservator for A.M., a minor, vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0722 LWC*, and *Robert P. McPherson vs. Kristi Rando, Waitr Holdings, Inc., et al., Civil No. 1CCV-20-0764 LWC*, consolidated and which is currently pending in the Circuit Court of the First Circuit, State of Hawaii. This action is a result of an automobile accident that occurred in October 2018 involving an employee of a Company subsidiary and the alleged substantial injuries and damages as a result thereof. Discovery is ongoing, as well as the motion practice. The court recently granted plaintiffs' motion to continue trial, and the trial has been rescheduled for June 2024. The Company intends to vigorously defend this lawsuit.

In May 2020, the Company was named as a defendant in *Jessie Stewart, Bradley Stewart & Sheila Ludwig vs. Waitr Inc. of LA., Waitr Holdings, Inc., Delivery Logistics, LLC, et al,* in the 22nd Judicial District Court, St. Tammany Parish, Louisiana. This action is a result of an automobile accident that occurred in April 2020 involving an independent contractor and the mother of the three plaintiffs, alleging substantial damages based on the injuries sustained in the accident and the ultimate death of the mother subsequent to the automobile accident. Discovery is ongoing and no trial date has been set. The Company intends to vigorously defend this lawsuit.

In addition to the lawsuits described above, the Company is involved in other litigation arising from the normal course of business activities, including, without limitation, vehicle accidents involving employees and independent contractor drivers resulting in claims alleging personal injuries and medical expenses, labor and employment claims, allegations of intellectual property infringement, and workers' compensation benefit claims as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although the Company believes that it maintains insurance with standard deductibles that generally covers liability for potential damages in many of these matters where coverage is available on acceptable terms (it is not maintained for claims involving intellectual property), insurance coverage is not guaranteed, there are limits to insurance coverage and in certain instances claims are met with denial of coverage positions by the carriers; accordingly, we could suffer material losses as a result of these claims, the denial of coverage for such claims, or damages awarded for any such claim that exceeds coverage. Litigation is unpredictable and we may determine in the future that certain existing claims have greater exposure or liability than previously understood.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes with respect to the Company's risk factors previously reported in Part I, Item 1A, of the 2022 Form 10-K.

As required by ASC 205-40, Going Concern, our management has performed an analysis of our ability to continue as a going concern and has identified substantial doubt about our ability to continue as a going concern and management's plans to alleviate this condition may be unsuccessful.

Pursuant to the requirements of ASC 205-40, *Going Concern*, management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the financial statements are issued. Based on their assessment, our management has raised concerns about our ability to continue as a going concern within one year after the date that the unaudited condensed consolidated financial statements contained in this report are issued. Management has focused its efforts on certain initiatives to improve its cash position, including cost reductions. Management evaluated its existing cost structure and implemented cost savings initiatives to reduce operating costs and plans to continue to implement further cost saving initiatives where appropriate. While the Company believes that the cost savings initiatives will result in improved liquidity and cash flow, there can be no assurance that the Company will be able to generate positive cash flow from operations in the future, affecting the Company's ability to continue as a going concern.

The Company's results of operations and cash positions have been adversely impacted primarily by declines in order volumes. Our primary source of liquidity during the year ended December 31, 2022 was proceeds from the issuance of our common stock. The Company experienced a trend of negative cash flow from operations during the year ended December 31, 2022 and the first and second quarters of 2023. Cash flow used in operations totaled $28,716 during the year ended December 31, 2022 and $5,727 during the six months ended June 30, 2023. The Company has had recurring net losses, and as reflected in the accompanying unaudited condensed consolidated financial statements, the Company had an accumulated deficit of $596,344 as of June 30, 2023. The Company was delisted from the Nasdaq Capital Market on February 2, 2023, and as such, our ability to sell shares of common stock using the ATM Program going forward is impaired. The Company's cash position has declined from $12,066 at December 31, 2022 to $5,066 as of June 30, 2023 and approximately $5,187 as of July 31, 2023. As of June 30, 2023, the Company has outstanding debt in the principal amount of $56,355 with a maturity date of May 15, 2024. We believe that we have sufficient cash on hand to fund operations through at least the third fiscal quarter of 2023.

As substantial doubt about our ability to continue as a going concern exists, our ability to finance our operations through the sale and issuance of debt or equity securities or through bank or other financing could be impaired. Management continues to explore raising additional capital to supplement the Company's capitalization and liquidity and expects that the Company will seek to additionally fund its operations through proceeds from one or more equity raises, but there can be no assurance that such financing will be available on terms commercially acceptable to the Company, or at all. Our ability to continue as a going concern may depend on our ability to obtain additional capital, as there can be no assurance that we will be able to generate positive cash flow from operations in the future. If we raise funds by issuing debt securities or preferred stock, or by incurring loans, these forms of financing would have rights, preferences, and privileges senior to those of holders of our common stock. If adequate capital is not available to us when needed, or in the amounts required, we may be forced to terminate, significantly curtail or cease our operations or to pursue other strategic alternatives, including commencing a case under the U.S. Bankruptcy Code. Our consolidated results of operations could be materially adversely affected by these decisions and your investment in the Company could be materially impaired.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None

Item 3. Defaults Upon Senior Securities

Not applicable

Item 4. Mine Safety Disclosures

Not applicable

Item 5. Other Information

None

Item 6. Exhibits

Exhibit No.	Description
10.1	Amendment No. 9 to Credit and Guaranty Agreement by and among ASAP Inc. (f/k/a Waitr Inc.), Waitr Intermediate Holdings, LLC, other guarantors party hereto, Luxor Capital, LLC and Luxor Capital Group, LP (incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 30, 2023).
10.2	Amendment No. 10 to Credit Agreement by and among Waitr Holdings Inc., Luxor Capital, LLC and Luxor Capital Group, LP (incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on June 30, 2023).
31.1	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(a). [(1)]
31.2	Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(a). [(1)]
32.1	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350. [(1)]
32.2	Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350. [(1)]
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

(1) Filed herewith

SIGNATURES

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

Dated: August 18, 2023	By:	/s/ Armen Yeghyazarians
		Armen Yeghyazarians
		Chief Financial Officer and Chief Accounting Officer
		(Principal Financial Officer and Duly Authorized Officer)

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO RULES 13a-14(b) and 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Carl A. Grimstad, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Waitr Holdings 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 controls 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: August 18, 2023

By: /s/ Carl A. Grimstad
Carl A. Grimstad
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

EXHIBIT 31.2

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO RULES 13a-14(b) and 15d-14(a)
UNDER THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Armen Yeghyazarians, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Waitr Holdings 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 controls 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:	August 18, 2023
By:	/s/ Armen Yeghyazarians
	Armen Yeghyazarians Chief Financial Officer and Chief Accounting Officer (Principal Financial Officer)

EXHIBIT 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

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

In connection with the Quarterly Report of Waitr Holdings Inc. (the “Company”) on Form 10-Q for the quarter ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Carl A. Grimstad, certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates set forth and for the periods presented in the Report.

By: /s/ Carl A. Grimstad

Carl A. Grimstad
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

Date: August 18, 2023

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

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

In connection with the Quarterly Report of Waitr Holdings Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Armen Yeghyazarians, certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates set forth and for the periods presented in the Report.

By: /s/ Armen Yeghyazarians

Armen Yeghyazarians
Chief Financial Officer and Chief Accounting Officer
(Principal Financial Officer)

Date: August 18, 2023