Risk Factors Comparison 2023-03-16 to 2022-02-25 Form: 10-K

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Investing in our Class A common stock involves a high degree of risk. Certain factors may have a material adverse effect on our business, financial condition, and results of operation. You should carefully consider the risks and uncertainties described below, together with all of the other information included in this Annual Report on Form 10- K, including our consolidated financial statements and the related notes, and in our other filings with the SEC. Our business, financial condition, operating results, cash flow and prospects could be materially and adversely affected by any of these risks or uncertainties. In that case, the trading price of our Class A common stock could decline, and you may lose all or part of your investment. Risks Related to Our Business and Industry **Our consolidated financial statements contain a statement regarding a substantial doubt about our ability to continue as a going concern because funding of the remaining amounts due to us in connection with the liquidity transactions (as defined below) has not yet occurred and we have not yet raised sufficient alternative funds through our at- the- market offerings or otherwise. If such transactions, as described below, do not close and we do not secure sufficient amounts of alternative financing and / or we do not realize the anticipated benefits of our identified and to be identified cost savings, we will be unable to meet our current obligations and we will be unable to continue as a going concern as early as the end of the second quarter of 2023. In connection with the second closing contemplated by that certain purchase agreement between us and RJB, an affiliate of Joseph N. Sanberg, one of our existing stockholders, dated as of April 29, 2022, as amended in August 2022 and September 2022 (the " RJB Purchase Agreement "), we agreed to issue and sell to RJB, and RJB agreed to purchase from us 10, 000, 000 shares of Class A common stock for an aggregate purchase price of $ 56. 5 million (or $ 5. 65 per share) (such amount, the " outstanding obligated amount ") (the " RJB Second Closing "). As of the date of the filing of this Annual Report on Form 10- K, we have received $ 1. 0 million of the outstanding obligated amount and we have not yet received the remaining $ 55. 5 million from RJB, and the RJB Second Closing as contemplated by the RJB Purchase Agreement has not closed. Additionally, as of the date of this Annual Report on Form 10- K, while we have received $ 5. 8 million of a gift card receivable, we have not received the remaining $ 12. 7 million gift card receivable owed to us from an affiliate of Mr. Sanberg, pursuant to that certain gift card sponsorship agreement dated as of May 5, 2022 (as amended or modified, the " Sponsorship Gift Cards Agreement " and together with the RJB Second Closing, the " liquidity transactions "). Mr. Sanberg has agreed to personally guarantee (i) the payment of the outstanding obligated amount under the RJB Purchase Agreement and (ii) the payment of $ 12. 7 million owed under the Sponsorship Gift Cards Agreement. On November 6, 2022, we and an affiliate of Mr. Sanberg (the " pledgor ") entered into a Guaranty and Pledge Agreement (the " pledge agreement "), pursuant to which the pledgor (i) agreed to guarantee the payment of RJB' s outstanding obligated amount and (ii) to secure its obligation to pay the outstanding obligated amount, granted us a security interest in pledgor' s interests in certain equity securities (the" pledged shares"), of certain privately- held issuers (the" pledged entities"), including the certificates (if any) representing the pledged shares, and all dividends, distributions cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the pledged shares, or collectively, the pledge collateral. Because the outstanding obligated amount remained unpaid after November 30, 2022, we are permitted to exercise remedies in respect of the pledged shares. In particular, we have the right to foreclose on and take ownership of the pledged shares and we are evaluating our options to monetize the pledged shares. There is no assurance that the outstanding obligated amount will be paid by pledgor, RJB or Mr. Sanberg. Because the pledged entities are privately- held companies, there is no public trading market for the pledged shares. As a result, the value of the pledged shares could be less than the outstanding obligated amount, and, if we seek to foreclose upon the pledged shares to satisfy pledgor' s obligation to pay the remaining outstanding obligated amount, the proceeds of any private sale of the pledged shares, to the extent any such private sale is permissible and effected subject to regulatory and contractual limitations that may apply, may be less than could have been obtained from a sale in a public trading market and may be less than the remaining outstanding obligated amount. Because we have agreed under the note purchase agreement amendment (as defined below) to repay our $ 30. 0 million of outstanding senior secured notes in full by the end of the second quarter of 2023, if we do not receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions, and if we are unable to raise additional capital from other financing sources, including from the February 2023 ATM (as defined below), the disposition of the pledged collateral, or otherwise, and / or achieve the anticipated benefits of our identified and to be identified cost savings and working capital management, including our corporate workforce reduction announced in December 2022 and any additional cost reduction initiatives, we expect that we will be unable to meet our current obligations and that we will be unable to continue as a going concern, as early as the end of the second quarter of 2023. Our ability to continue as a going concern requires us to have sufficient capital to meet our minimum liquidity covenant, as applicable, as well as to continue to make investments and to fund our operations. As discussed more below, because we have agreed to repay our $ 30. 0 million of outstanding senior secured notes in full by the end of the second quarter of 2023, our operating cash flows alone are not expected to provide us with sufficient capital to continue to make investments and to fund our operations for the twelve months following the date of this report, and as early as the end of the second quarter of 2023 based on our current operating plans and programs, we are dependent upon our ability to receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions, any cash proceeds from the disposition of the pledged collateral, if any, our ability to** obtain additional funding and raise additional capital, including as a result of the February 2023 ATM or otherwise, and our ability to achieve the anticipated savings through the implementation of expense reductions in areas identified and to be identified by us in product, technology, general and administrative costs and marketing expenditures. In addition to the foregoing, we may also seek to pursue and execute financing opportunities, a business combination or other strategic transaction, although there is no assurance that we can identify or consummate any such transaction. Absent additional debt or equity funding or expense and operating adjustments, we cannot assure you that our future cash and cash equivalents, together with cash generated from operations, will be sufficient to allow us to fund our operations or any future growth, including to attract and retain customers. If such financing is not available and such expense and operating adjustments cannot be made, we will be unable to operate our business, develop new business or execute on our strategic plan, and our operating results would suffer. Additionally, any new debt financing may increase expenses, contain covenants that further restrict the operation of our business, and will need to be repaid regardless of operating results. For example, covenants contained in our senior secured notes include limitations on our ability to pay dividends; create, incur or assume indebtedness or liens; consummate a merger, sale, disposition or similar transaction; engage in transactions with affiliates; and make investments. Additional equity financing, debt financing that is convertible into equity, or debt or equity financing in which we issue equity or derivative securities, including any shares of Class A common stock issuable in connection with the liquidity transactions, other financing transactions, business combinations or strategic transactions would result in dilution to our existing stockholders. If we are not able to secure adequate additional funding, we may be forced to make additional reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and / or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations, and future prospects. In addition, we could also be forced to commence a bankruptcy or take other defensive action, which would materially adversely affect our business, financial condition and operating results. See “ Management’ s Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources. ” Our indebtedness could materially adversely affect our business and financial condition. In particular, any failure to comply with the covenants in the note purchase agreement or failure to timely pay the accelerated payment obligations agreed to in March 2023 would materially adversely affect our business As of December 31, 2022, we had $ 30. 0 million in outstanding borrowings under our senior secured notes pursuant to the note purchase agreement. Our debt could have important consequences for our business, including: making it more difficult for us to satisfy our obligations under the senior secured notes or to our trade or other creditors; increasing our vulnerability to adverse economic or industry conditions; limiting our ability to obtain additional financing to fund our existing operations or any future expansion of our business, including our strategic plan to achieve and maintain net revenue growth, particularly when the availability of financing in the capital markets may be limited; requiring us to dedicate a substantial portion of our cash flow from operations for payments on our indebtedness and thus reducing the availability of our cash flow to fund working capital, capital expenditures, business development, acquisitions and general corporate or other requirements; increasing our vulnerability to and limiting our flexibility in planning for, or reacting to, changes in our business and the industries in which we operate; increasing our vulnerability to general adverse conditions; restricting us from making acquisitions or cause us to make non- strategic divestitures; placing us at a competitive disadvantage to less- leveraged competitors; and limiting our ability to obtain additional debt and equity financing for working capital, capital expenditures, business development, debt service requirements, acquisitions and general corporate or other purposes. In addition, on March 15, 2023, we entered into a waiver, consent, and amendment to the note purchase agreement (the “ note purchase agreement amendment ”), pursuant to which we agreed to pay the full outstanding principal balance on the senior secured notes in four amortization installments, including all accrued and unpaid interest, as follows: $ 7. 5 million paid in connection with the signing of the note purchase agreement amendment; $ 7. 5 million on April 15, 2023; $ 7. 5 million on May 15, 2023; and $ 7. 5 million on June 15, 2023. Under the note purchase agreement amendment, the noteholder also agreed to reduce the minimum liquidity covenant amount on a dollar- for- dollar basis equal to the amount of the amortization payments (subject to a $ 10. 0 million floor until the debt is repaid in full). Further, conditioned upon the timely payment of all of the amortization payments, the noteholder agreed to waive all prepayment premiums and the ESG KPI Fee (as defined below) that would otherwise have been owing by us at maturity. Furthermore, in connection with the note purchase agreement amendment, the noteholder consented to the surrender of ownership to us, by the pledgor, of certain pledged shares, in satisfaction of certain obligations of the pledgor under the pledge agreement, should such a surrender of collateral be agreed by us and the pledgor. The note purchase agreement amendment also clarified that such pledged shares, when surrendered, would become collateral for our obligations under the note purchase agreement. The note purchase agreement amendment also contains additional and modified reporting and information requirements, including the removal of a requirement to deliver an audit opinion of our independent registered public accounting firm relating to our financial statements for the year ended December 31, 2022 that does not include a “ going concern ” explanatory paragraph expressing substantial doubt about our ability to continue as a going concern. The note purchase agreement amendment also clarifies that to the extent, if any, that certain prior events related to the Pledge Agreement or amendments to the RJB Purchase Agreement constituted defaults under the note purchase agreement, such defaults are waived, although it is our position that no such defaults existed at any time. Our ability to make scheduled payments on the accelerated terms agreed to under the note purchase agreement amendment, or to refinance our debt obligations, including the senior secured notes, depends on our financial condition and operating performance and the condition of the debt and capital markets, which are subject to prevailing economic, industry and competitive conditions, as well as certain financial, business, legislative, political, regulatory and other factors beyond our control. We expect to use cash flow from operations to meet our

current and future financial obligations, including funding our operations, debt service requirements and capital expenditures. Our business may not generate sufficient cash flow from operations in the future, which could result in our being unable to repay indebtedness or to fund other liquidity needs. In addition, the note purchase agreement governing the senior secured notes contains covenants that will limit our ability to engage in activities that may be in our long- term best interests. Our failure to comply with those covenants could result in an event of default, which, if not cured or waived, could result in the acceleration of all of our indebtedness. We have a history of losses, and we may be unable to achieve or sustain profitability. We have experienced net losses in each year since our inception. In the years ended December 31, **2022,** 2021 ~~,~~ **and** 2020 ~~and 2019~~, we incurred net losses of $ **109. 7 million, $** 88. 4 million, **and** $ 46. 2 million, **respectively. In December 2022, we identified multiple initiatives to both reduce expense and streamline decision-making and organization structure, including a plan for meaningful reduction on marketing and consulting expenses, including a reduction of approximately 10 % of our total corporate workforce, inclusive of both then current and vacant roles, of up to** ~~and~~ - **an aggregate of approximately** $ ~~61~~ **50** . ~~1~~ **0** million ~~, respectively~~. We **may also** ~~anticipate that we will continue to incur substantial operating expenses in the foreseeable future as we have begun to and plan to continue to significantly~~ increase marketing **expenses in the future in the event we are able to receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions, raise additional capital, including from the February 2023 ATM, the disposition of the pledged collateral, if any, or other financing sources. Our decision to decrease marketing** ~~spend~~ **spending starting** in **December** 2022 **and in 2023 may negatively impact our ability** to continue ~~to invest~~ to attract new and retain existing customers, enhance our technology and infrastructure **, our ability to** invest to optimize and drive efficiency in our distribution and fulfillment capabilities, and expand our product offerings ~~. These efforts may prove more expensive than we anticipate,~~ and we may not succeed in **achieving** ~~increasing our customer count, net revenue and~~ margins ~~sufficiently~~ -- **sufficient** to offset ~~these~~ **our** expenses ~~or at all,~~ which may require us to **further** reduce certain expenditures that could be important to maintaining or increasing our net revenue and margins. **If we are able to receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions, raise capital from alternative sources, including from the February 2023 ATM, the disposition of the pledged collateral, if any, or other financing sources, we anticipate that we may again incur substantial operating expenses in the future, including later in 2023, to continue to attract new and retain existing customers, enhance our technology and infrastructure invest to optimize and drive efficiency in our distribution and fulfillment capabilities, and expand our product offerings. If we are able to increase marketing expenditures in the future, our efforts may prove more expensive than we anticipate, and we may not succeed in increasing our customer count, net revenue and margins sufficiently to offset these expenses or at all, which may require us to further reduce certain expenditures that could be important to maintaining or increasing our net revenue and margins.** We **also** incur significant expenses in operating our fulfillment centers, including personnel costs, obtaining and storing ingredients and other products, and developing our technology and we have seen, and may continue to see, **as a result of inflation or other factors,** higher ingredient, shipping and labor costs **, which have, and could continue to have, a negative impact on margins** . In addition, many of our expenses, including the costs associated with our fulfillment centers, are fixed. Accordingly, we may not be able to achieve or maintain profitability **, maintain efficient variable margins** , and we may incur significant losses for the foreseeable future. We may be unable to successfully ~~accelerate and / or continue to~~ execute our ~~growth~~ strategy. If we fail to cost **-** effectively acquire new customers or retain our existing customers or if we fail to derive profitable net revenue from our customers, our business would be materially adversely affected ~~, and if the number of our customers continues to decline, we may not be able to comply with the minimum subscription count covenant in our senior secured term loan, which could lead to an event of default under our existing senior secured term loan~~. Our ~~growth~~ strategy, and our ability to ~~grow net revenue and~~ operate profitably depends largely on our ability to cost **-** effectively acquire new customers, retain existing customers, and to keep customers engaged so that they continue to purchase products from us, including our higher value offerings. If we are unable to cost **-** effectively acquire new customers, retain our existing customers, or keep customers engaged, our business, financial condition and operating results would be materially adversely affected. For example, the number of our ~~Customers~~ **customers** declined to approximately ~~336~~ **298** , 000 in the three months ended December 31, ~~2021~~ **2022** from approximately ~~353~~ **336** , 000 in the three months ended December ~~31~~ **30** , ~~2020~~ **2021** , and our net revenue declined **slightly** to $ ~~107~~ **106** . ~~0~~ **8** million from $ ~~115~~ **107** . ~~5~~ **0** million in that same period. While we ~~have~~ experienced an increase in demand **starting** in **2020** ~~recent periods~~ due, in part, to the impact the COVID- 19 pandemic has had on consumer behaviors, we saw a decrease in demand in **2022 and** 2021 ~~over~~ **compared to** 2020 as more normal consumer behaviors patterns started to return ~~, and any increased demand due to the pandemic' s impact on consumer behaviors may not be sustained~~. In addition, if, ~~as a result~~ **like we did during the height** of the COVID- 19 pandemic ~~or otherwise~~, we face significant disruptions in our supply chain, are unable to continue to operate one or more of our fulfillment centers or are unable to timely deliver orders to our customers **, as a result of future surges of COVID- 19 or otherwise** , we may not be able to retain our customers or attract new customers. Further, to meet increased demand and eliminate complexity in our operations during 2020, we cut back on or delayed certain product offerings and we delayed the launch of other new product offerings that are part of our ~~growth~~ strategy, and if we need to cut back or delay certain product offerings in the future as a result of ~~the pandemic~~, supply chain issues **, the pandemic** or otherwise, there could be an adverse effect on our ability to retain or attract customers. We have historically spent significant amounts on advertising and other marketing activities, such as digital and social media, television, radio and podcasts, direct mail, and email, to acquire new customers, retain and engage existing customers, and promote our brand. While we have reduced our marketing expenditures from historic levels, in late 2019, during parts of 2020 and 2021, we increased marketing expenditures to more normal levels. ~~In~~ **For example, in** the fourth quarter of 2021, using a portion of the proceeds from the ~~equity~~ **November 2021** capital ~~raised~~ - **raise** ~~closed in the fourth quarter of 2021,~~ we significantly increased our marketing expenses **. Furthermore,** ~~and expect to continue to do so throughout~~ in **December** 2022 **,** ~~and may continue to do so~~

in **connection with cost- savings actions, we announced that we were significantly reducing marketing expenses for 2023, and our ability to increase marketing expenses in the** future ~~periods compared~~ **is dependent upon our ability** to ~~prior year periods~~ **receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions** , ~~and~~ **our ability to raise additional capital, including from the February 2023 ATM, the disposition of the pledged collateral, if any,** ~~for~~ - **or other financing sources** ~~marketing expense to continue to comprise a significant portion of our operating expenses~~ . For the years ended December 31, **2022,** 2021, **and** 2020 ~~, and 2019~~ , our marketing expenses were $ ~~72~~ **84** . 1 million, $ **72. 1 million, and $** 49. 9 million, ~~and $ 48. 1 million,~~ respectively, representing approximately ~~15~~ **18** . 3 %, **15. 3 %, and** 10. 8 ~~%, and 10. 6~~ % of net revenue, respectively. If we are unable to deliver results from our ~~growth~~ **new marketing** strategy ~~on our accelerated timeline or at all~~ , or otherwise effectively manage expenses and cash flows, we may **further** reduce spending, ~~particularly in marketing and capital expenditures,~~ to the extent needed in order to comply with the liquidity covenant **or accelerated premium payment obligations we agreed to** in **March 2023 under** our senior secured ~~term loan~~ **notes or to preserve cash** , which may materially adversely impact net revenue and our ability to execute ~~and / or~~ **our** ~~accelerate our growth~~ strategy. ~~To the extent that~~ **For example, in late 2018,** we **significantly** ~~reduce~~ **reduced** marketing ~~expenses~~ **expenditures as part of** ~~or~~ **our efforts** ~~other costs~~ to **deliberately prioritize operational stability which led to** ~~help manage our liquidity and remain in compliance with the minimum liquidity covenant in our senior secured term loan, there is~~ a ~~risk that such~~ **sustained decrease in the number of customers and revenues in the years thereafter prior to the impact of the COVID- 19 pandemic. We expect a** ~~reductions~~ - **reduction** ~~will~~ **in customers and revenues in 2023 as a** result ~~in a lower subscription count~~ **of our new marketing strategy** , **and we cannot assure you** ~~which itself could present a risk~~ that we will not **see a significant decrease** ~~be able to comply with the minimum subscription count covenant~~ in **customers** ~~our senior secured term loan, which increased as of January 1, 2022, which could lead to an~~ **and revenues** ~~event of default under our existing senior secured term loan~~ . See " Management' s Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources. " In addition, **if we are able to receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions, secure additional financing or raise additional capital, including from the February 2023 ATM, the disposition of the pledged collateral, if any, or other financing sources,** we may fail to identify or execute cost ~~–~~ efficient marketing opportunities as we adjust our investments in marketing, including ~~making~~ **our ability to successfully make** new marketing technology investments ~~in response to the ongoing elimination of cookie- based tracking~~ , or fail to fully understand or estimate the conditions, characteristics and behaviors that drive customer behavior. As we continue to refine our marketing strategy to strategically prioritize customer acquisition channels that we believe will be more successful at attracting high affinity customers, we may fail to identify channels that accomplish this objective or fail to understand or mitigate continuing and new negative effects of reducing our marketing expenses or of limiting our investment in historical marketing channels. Any of these failures may adversely impact our ability to attract or retain potential customers, including by making us less competitive relative to competitors. Additionally, our decision to strategically invest in new and existing customers who we believe have high potential to be valuable to the business may fail to properly identify such customers or retain customers who generate the value that we anticipate. In addition, the increased demand we saw as a result of the impact the COVID- 19 pandemic ~~has~~ had on consumer behaviors resulted in us, at times, temporarily reducing marketing spend for portions of 2020 in order to manage capacity. If any of our marketing activities prove less successful than anticipated in attracting new customers or retaining existing customers, we may not be able to recover our marketing spend, our cost to acquire new customers may increase, and our existing customers may reduce the frequency or size of their purchases from us. In addition, our third- party marketing partners may not provide adequate value for their services. Any of the foregoing events could materially adversely affect our business, financial condition and operating results, as well as present a risk that we fail to comply with certain covenants ~~in~~ **under** our senior secured **notes** ~~term loan~~ , which could lead to an event of default under our senior secured **notes** ~~term loan~~ . Our net revenue in any period is essentially a function of our ability to attract and retain customers and the frequency and size of the orders placed by those customers. If customers do not perceive our product offerings to be of sufficient value and quality, or if we fail to offer new and relevant product offerings, we may not be able to attract or retain customers or engage existing customers so that they continue to purchase products from us. Many of our new customers originate from referrals from existing customers, and therefore we must ensure that our existing customers ~~19remain~~ -- **remain** loyal to us in order to continue receiving those referrals. Our new customers typically evaluate whether our product offerings fit their lifestyles, tastes and preferences before deciding whether to continue purchasing our product offerings and, if so, the frequency at which they make purchases. While an increase in order frequency or size could potentially offset losses of customers and, similarly, an increase in the number of customers could potentially offset a reduction in the frequency or size of the orders placed by our customers, our continued failure to attract and retain customers would materially adversely affect our business, financial condition and operating results. If we fail to ~~grow net revenue on our accelerated timeline or at all or~~ effectively **attain or** manage any future **net** revenue growth, or if we fail to effectively manage costs, our business could be materially adversely affected. Our net revenue increased from $ ~~454. 9 million in 2019 to $~~ 460. 6 million in 2020 ~~and~~ **to** $ 470. 4 million in 2021 **and decreased to $ 458. 5 million in 2022** . The number of our full- time employees ~~increased~~ **declined** from ~~1, 635 at December 31, 2019 to~~ 1, 934 at December 31, 2020 ~~and declined~~ to 1, 795 at December 31, 2021 **and to 1, 541 at December 31, 2022** . **Our ability** ~~If we are unable~~ to grow net revenue ~~on our accelerated timeline~~ **in the future is dependent upon** ~~or~~ **our** ~~at all~~ **ability to receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions** , ~~or~~ **our ability to secure additional funding and raise additional capital, including from the February 2023 ATM, the disposition of the pledged collateral,** if **any, or other financing sources. As such, we expect that our current marketing reduction plans and any future reductions in marketing investments will impact our net revenue. If** our net revenues **continue to** decline ~~,~~ **faster than we anticipate** or if we do not effectively manage our costs, or **if we fail to recognize the benefits of past or any future price increases, or if we** fail to accurately forecast net revenue to plan operating expenses, our business, financial condition and operating results would be materially adversely affected. In addition, any future growth and expansion of our business and our product offerings may place additional demands on our operations teams and require significant additional financial, operational, human capital, technological and other resources to meet our needs, which may not be available in a cost- effective manner or at all. We are also required to manage relationships with various suppliers and other third parties, and expend time and effort to integrate new suppliers into our fulfillment operations. If we do not ~~sustain net revenue growth or if we do not~~ effectively manage ~~any future growth or~~ costs **, including as a result of inflation or our ability to realize the benefits of the non- marketing cost reductions we identified in December 2022** , we may not be able to execute on our business plan, respond to competitive pressures, take advantage of market opportunities, satisfy customer requirements, maintain high ~~-~~ quality product offerings, or maintain compliance with **our accelerated payment obligations and** certain covenants in our senior secured **notes** ~~term loan~~ . See " Management' s Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources. " In addition, changes to our actual or projected operating results may indicate that the carrying value of our long- lived assets may not be recoverable, which may require us to recognize impairment charges on any of our assets, or require us to reduce investment in the business or engage in additional business restructurings and incur additional restructuring charges. These changes may include any deterioration of operating results, changes in business plans or changes in anticipated cash flows. Any significant shortfall, now or in the future, in net revenue resulting from our inability to resume and sustain net revenue growth or to effectively manage our net revenue or any future growth could lead to an indication that the carrying value of our long- lived assets may not be recoverable, which could result in an impairment. Any such charges could materially adversely affect our business, financial condition and operating results. We may require additional capital to fund...... operational, technological and other resources. Changes in food costs and availability could materially adversely affect our business. The success of our business depends in part on our ability to anticipate and react to changes in food and supply costs and availability. We are susceptible to increases in food costs as a result of factors beyond our control, such as general economic conditions, inflation, market changes, increased competition, exchange rate fluctuations, seasonal fluctuations, shortages or interruptions, weather conditions, changes in global climates, global demand, food safety concerns, public health crises, such as pandemics and epidemics, generalized infectious diseases, changes in law or policy, **wars,** declines in fertile or arable lands, product recalls and government regulations. For example, any prolonged negative impact of ~~the COVID- 19 pandemic or~~ inflationary periods **, such as the current inflationary environment,** on food ~~and~~ **,** supply **and logistics** costs and availability could materially and adversely impact our business, financial condition and operating results. In addition, deflation in food prices could reduce the attractiveness of our product offerings relative to competing products and thus impede our ability to maintain or increase overall sales, while food inflation, particularly periods of rapid inflation, have and could continue to reduce our operating margins as there may be a lag between the time of the price increase and the time at which we are able to increase the price of our product offerings. We generally do not have long term supply contracts or guaranteed purchase commitments with our food suppliers, and we do not hedge our commodity risks. In limited circumstances, we may enter into strategic purchasing commitment contracts with certain suppliers, but many of these contracts are relatively short in duration and may provide only limited protection from price fluctuations, and the use of these arrangements may limit our ability to benefit from favorable price movements. As a result, we may not be able to anticipate, react to or mitigate against cost fluctuations which could materially adversely affect our business, financial condition and operating results. Any increase in the prices of the ingredients most critical to our recipes, or scarcity of such ingredients, such as vegetables, poultry, beef, pork and seafood, would adversely affect our operating results. Alternatively, in the event of cost increases or decrease of availability with respect to one or more of our key ingredients, we may choose to temporarily suspend including such ingredients in our recipes, rather than paying the increased cost for the ingredients. Any such changes to our available recipes could materially adversely affect our business, financial condition and operating results. ~~Our results~~ **Restrictive covenants in the note purchase agreement governing the senior secured notes may limit our ability to pursue our business strategies. The note purchase agreement governing the senior secured notes limits our ability, and the terms of any future indebtedness may limit our ability, among other things, to: • incur or guarantee additional indebtedness or issue certain preferred stock; • make capital expenditures; • make certain investments; • pay dividends or make distributions on our capital stock or make certain other restricted payments; • sell assets, including capital stock of our subsidiaries; • enter into certain transactions with our affiliates; • create or incur liens on certain assets; • agree to payment restrictions affecting our restricted subsidiaries; and • consolidate, merge, sell or otherwise dispose of all or substantially all of our assets. In addition, the note purchase agreement, as amended by the note purchase agreement amendment, contains (i) a liquidity maintenance covenant, which requires our liquidity (as defined in the notes purchase agreement) to be no less than $ 25. 0 million, which reduces to $ 17. 5 million in connection with the first $ 7. 5 million amortization payment; and which will be further reduced to $ 10. 0 million until the senior secured notes are repaid in full after the second amortization payment is made, and (ii) an asset coverage ratio covenant, which requires our liquidity to be no less than 1. 25: 1. 00 on each quarterly test date. A breach of the covenants or restrictions under the note purchase agreement** could **result in a default thereunder. Any such default may allow the noteholder to accelerate the notes and may result in the acceleration of any other future debt to which a cross- acceleration or cross- default provision applies. If we are unable to repay the amounts due and payable under the note purchase agreement, holders of the senior secured notes could, pursuant to the security documents proceed against the collateral in which they have first- priority security interests. In the event the holders of senior secured notes accelerate the repayment of the senior secured notes, we cannot assure you that we would have sufficient assets to repay such indebtedness or be able to borrow or raise additional equity in an amount sufficient to repay such indebtedness. Even if we are able to obtain new financing, it may not be on commercially reasonable terms or on terms acceptable to us. As a result of these restrictions, we may be: • limited in how we conduct our business and execute our business strategy; • unable to raise additional debt or equity financing to fund our operations; or • unable to**

compete effectively or to take advantage of new business opportunities. These restrictions may also affect our ability to grow in accordance with our growth plans. If we fail to successfully improve our customer experience, including by continuing to develop new product offerings and enhancing our existing product offerings and enhancing our digital experience and developing our technology infrastructure, our ability to attract new customers and retain existing customers may be materially ~~and~~ adversely affected ~~by~~ **, and we may not be able to comply with the covenants in our senior secured notes. Our customers have a wide variety of options for purchasing food, including traditional and online grocery stores and restaurants, and consumer tastes and preferences may change from time to time, including as they did in 2020 and parts of 2021 as a result of** the COVID- 19 pandemic ~~in~~ **and the resulting restrictions that were affected throughout most of** the United States ~~. The continuing spread of COVID- 19 globally~~ , **which limited some** ~~and in particular, continued and future outbreaks~~ of ~~COVID- 19 in the~~ **these** ~~United States~~ **options for consumers. Our ability to retain existing customers** , ~~could materially~~ **attract new customers** and ~~adversely impact~~ **increase customer engagement with us will depend in part on** our ~~business~~ **ability to successfully improve our customer experience** , including ~~as~~ **by having sufficient funds to continue creating and introducing new product offerings, improving upon and enhancing our existing product offerings and strengthening our customers' digital interactions with our brand and products through an enhanced technology infrastructure, including online and mobile. As** a result ~~of the loss of adequate labor~~ , **we** ~~whether as a result of heightened absenteeism or challenges in recruiting and retention or otherwise, prolonged closures, or series of temporary closures, of one or more fulfillment centers as a result of a COVID- 19 outbreak, a government order or otherwise, or supply chain or carrier interruptions or delays. Further, the COVID- 19 pandemic has had, and could continue to have, a negative impact on economic conditions, which~~ may ~~adversely impact consumer demand~~ **introduce significant changes to our existing product offerings, develop and introduce new and unproven product offerings, revise our customers' digital experiences and /** ~~for~~ - **or** ~~meal kits~~ **offer our products through new distribution channels. If our new or enhanced product offerings are unsuccessful** , ~~which~~ **including because they fail to generate sufficient net revenue or operating profit to justify our investments in them, or if we are unable to timely develop enhancements to our technology infrastructure, we** may ~~have a material adverse effect on~~ **be unable to attract or retain customers, and** our business ~~, financial condition and operating results. To the extent any of these events occur, our business, financial condition~~ and operating results could be materially ~~and~~ adversely affected. ~~The extent~~ **Furthermore, new or shifting customer demands, tastes or interests, superior competitive offerings or a deterioration in our product quality or our ability** to ~~which ability to~~ bring new or enhanced product offerings to market quickly and efficiently could negatively affect the attractiveness of our products and the economics of our business and require us to make substantial changes to and additional investments in our product offerings or business model.In addition,we frequently experiment with and test different product offerings and marketing and pricing strategies,such as our ~~recent~~ implementation of a shipping charge on all subscription meal kit and wine orders **in 2021 and our new meal and wine price increase implemented in the second quarter of 2022** ,as well as our customers' digital experiences,including by updating our online and mobile platforms.If these experiments,tests and updates are unsuccessful,or if the product offerings and strategies we introduce based on the results of such experiments,tests and updates do not perform as expected,our ability to retain existing customers,attract new customers,and increase customer engagement may be adversely affected ~~,which may result in a breach of certain covenants in our senior secured term loan~~ .Developing and launching new product offerings or enhancements to our existing product offerings involves significant risks and uncertainties,including risks related to the reception of such product offerings by our existing and potential future customers,increases in operational complexity,unanticipated delays or challenges in implementing such offerings or enhancements,increased strain on our operational and internal resources (including an impairment of our ability to accurately forecast demand and related supply),inability to adequately support new offerings or enhancements with sufficient **technology and** marketing investment and negative publicity in the event such new or enhanced product offerings are perceived to be unsuccessful.In addition,as a result of both the increased demand we saw as a result of the impact the COVID- 19 pandemic **had** ~~impacts our business will depend on 25future developments, including the duration and severity of the COVID- 19 pandemic, the level of COVID- 19 vaccination rates in various areas of the United States, any re- introduction of restrictions~~ on consumer behaviors ~~, the length of time for economic~~ and **due** ~~operating conditions~~ to **pandemic** ~~return to prior levels, together with resulting consumer behaviors, and numerous other uncertainties, all of which remain uncertain. We continue to monitor our operations and government recommendations and we have made modifications to our normal operations as a result of the COVID~~ - ~~19 pandemic. Our fulfillment centers have experienced~~ **related labor shortages, in 2020 we delayed** , and may ~~experience~~ in the future ~~, disruptions in production, including as a result of planned or unplanned pauses in production to implement additional safety measures, as well as a result of worker absenteeism at higher than normal rates and / or challenges in hiring and retaining sufficient workforce. Such disruptions have caused, and could continue to cause, delayed~~ -- **delay** ~~or canceled orders~~ , **launching certain new product offerings** or **cut back on** ~~the decision to close~~ certain weekly cycles ~~early~~ **in order to remove some operational complexities to meet demand levels** , ~~each of~~ which ~~could~~ **may** have an adverse effect on our ~~brand and~~ **ability to retain** ~~our~~ - **or attract new customers. In addition, in connection with our expense reduction efforts introduced in December 2022, we expect to be less focused on new product development in 2023. Significant new initiatives have in the past resulted in, and any new initiatives may in the future** ~~results~~ - **result in,** ~~of operations. These~~ operational **challenges affecting our business. In addition** ~~risks related to COVID- 19 have impacted~~ , **developing** and **launching** ~~may continue to impact, the timing of~~ certain new product **offerings and enhancements** ~~launches. In addition, in response~~ to ~~enhancements to~~ our existing product offerings may involve significant capital investments and such investments may not prove to be justified.Any of the foregoing risks and challenges could materially adversely affect our ability to attract and retain customers as well as our visibility into expected operating results,and could materially adversely affect our business,financial condition and operating results.If we do not successfully maintain,operate and optimize our fulfillment centers and logistics channels,and manage our ongoing real property and operational needs,our business,financial condition and operating results could be materially adversely affected.If we do not successfully maintain,operate and optimize our fulfillment centers,or if we vacate these facilities,or repurpose parts of these facilities as part of our operating efficiency initiatives or otherwise,we may experience insufficient or excess fulfillment capacity,increased costs,impairment charges or other harm to our business.For example,following the closure of the Arlington **,Texas** fulfillment center in the first half of 2020,we temporarily reopened it in January 2021 to leverage existing assets to meet forecasted demand while we continued to identify and implement other operating efficiencies in our other fulfillment centers;we then closed the Arlington fulfillment center in April 2021,consolidating production volume at our other fulfillment centers.We have encountered in the past,and may encounter in the future,both as a result of the COVID- 19 pandemic **and otherwise** , ~~our corporate~~ **higher levels of worker absenteeism and difficulty in hiring a sufficient number of** employees **to adequately staff our fulfillment centers** , ~~including~~ **causing us to use higher levels of temporary workers through third parties, generally at greater cost and providing lower levels of performance, and to cancel** ~~our~~ - **or** ~~test kitchen employees cancel or~~ delay customer orders and close some weekly offering cycles early to manage demand.If we do not have sufficient fulfillment capacity or experience problems or delays in fulfilling orders,our customers may experience delays in receiving their meal deliveries,receive deficient orders and / or have their orders canceled,which could harm our reputation and our customer relationships and could materially adversely affect our business,financial condition and operating results.In addition,any disruption in,or the loss of operations at,one or more of our fulfillment centers,even on a short- term basis,whether as a result of COVID- 19 or otherwise,could delay or postpone production of our products,which could materially adversely affect our business,financial condition and operating results.If events or circumstances indicate that the carrying value of our long- lived assets may not be recoverable,we may be required to recognize impairment charges on any of our assets.For example,in 2017 we recorded impairment charges of $ 9.5 million on long- lived assets primarily related to the transition of all of our Jersey City fulfillment center operations to our fulfillment center in Linden, **New Jersey** , as well as **our decision to no longer pursue the planned build- out of the Fairfield, California facility, which lease was terminated on March 30, 2020. We also rely on fixed duration leases for our** other **real properties, including for our headquarters in New York, New York, which we entered into in October 2019 and expires in December 2024. If we are unable to timely enter into suitable lease agreements or extensions for any of our real properties, we may incur additional unanticipated costs associated with identifying and securing an alternative premise, suffer disruptions to our operations as a result of any necessary transition, face** ~~employees~~ - **employee** ~~outside~~ **attrition or experience other harm to our business. In May 2021, we entered into an agreement to sublease the remainder** of ~~into suitable lease agreements or extensions for any of our real properties,we may incur additional unanticipated costs associated with identifying and securing an alternative premise,suffer disruptions to our operations as a result of any necessary transition,face employee attrition or experience other harm to our business.In May 2021,we entered into an agreement to sublease the remainder of~~ our Arlington fulfillment center,which sublease is expected to continue through the duration of our existing lease for the fulfillment center. **See " We have implemented significant reorganization activities in our business,including the closure of our fulfillment center in Arlington,Texas in 2020.These and other reorganization activities could have long- term adverse effects on our business,including additional attrition in personnel and the failure to achieve the anticipated benefits and savings from these activities " for more information.** We have designed and built our own fulfillment center infrastructure,including customizing third **-** party inventory and package handling software systems,which is tailored to meet the specific needs of our business.Furthermore,we are continuing to expand the use of automated production equipment and processes in our fulfillment centers **. To the extent we add capacity** , ~~have generally been~~ **capabilities** and automated production equipment and processes to our fulfillment centers,our fulfillment operations will become increasingly complex and challenging.Any failure to hire,train and / or retain employees capable of operating our fulfillment centers could materially adversely affect our business,financial condition and operating results.We also may be unable to procure and implement automated production equipment and processes on a timely basis,and they may not operate as intended or achieve anticipated cost efficiencies.For example,suppliers could miss their equipment delivery schedules,new production lines and operations could improve less rapidly than expected,or not at all,the equipment or processes could ~~require required~~ - **require** ~~to~~ **longer design time than anticipated or redesigning after installation** , and **new production technology may involve equipment and processes with** ~~more recently given the option to, work remotely since the end of the first quarter of 2020,~~ which **we are not fully experienced. Difficulties we experience in further automating our fulfillment processes could impair our ability to reduce costs and could materially adversely affect our business, financial condition and operating results. Furthermore, we currently, and** may **in the future continue** to,contract with third parties to conduct certain of our fulfillment processes and operations on our behalf.Interruptions or failures in these services,or operational impacts arising from transitioning between these third **-** party providers,could delay or prevent the delivery of our products and adversely affect our ability to fulfill our customers' orders.In addition,any disruption in the operation of our fulfillment centers,including due to factors such as earthquakes,extreme weather,fires,floods,public health crises,such as pandemics and epidemics,government- mandated closures,power losses,telecommunications failures,acts of war or terrorism,human errors and similar events or disruptions,could materially adversely affect our business,financial condition and operating results.We may incur future capital expenditures in our fulfillment centers in order to optimize and drive efficiency in our operations.For a discussion of our projected future capital expenditures and risks related to such capital expenditures,see " Management' s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources." **If we** ~~In executing our growth strategy and continuing to~~ expand our product offerings **in the future** ~~and grow our customer base~~ ,we may be unable to effectively increase our fulfillment capacity or effectively control expansion related expenses.In addition,as we continue to execute ~~the acceleration~~ our ~~growth~~ strategy,we may experience problems fulfilling orders in a timely manner or in a manner our customers expect,or our customers may experience delays **in receiving their purchases,or** , if ~~prolonged~~ **in the**

future we grow faster than anticipated , ~~have~~ **we may exceed our fulfillment center capacity sooner than we anticipate,** ~~an~~ **any** ~~adverse impact on the productivity~~ of ~~certain parts of our workforce,~~ which could **harm** our reputation and our relationships with our customers.Many of the expenses and investments with respect to our fulfillment centers are fixed,and any expansion of such fulfillment centers ~~24will~~ -- **will** require additional investment of capital.We expect to continue to incur certain capital expenditures in the future for our fulfillment center operations.We may incur such expenses or make such investments in advance of expected sales,and such expected sales may not occur.The timing and amount of our projected capital expenditures is dependent upon a number of factors and may vary significantly from our estimates.We cannot assure you that we will have sufficient capital resources to fund future capital expenditures or if any future capital expenditures will be timely or effectively integrated into our existing operations,any adjustments to production volume,including transitions between fulfillment centers,will be completed on an efficient and timely basis without adversely impacting our operations,that our fulfillment software systems will continue to meet our business needs,or that we will be able to execute on our strategic plans or recruit qualified managerial and operational personnel necessary to support our strategic plans.In addition,we intend to reduce spending on capital expenditures,to the extent needed,if we are unable to deliver results from our ~~growth~~ strategy,or otherwise effectively manage expenses and cash flows,in order to **manage our business and** comply with the financial covenants in our senior secured **notes** ~~term loan~~ ,which will ~~negatively and materially~~ negatively **and materially** impact **net revenue and our ability to execute our strategy. Any changes to our overall fulfillment capacity** ~~our~~ - **or existing fulfillment center** ~~business and results of~~ operations **will put pressure on our managerial, financial, operational, technological and other resources** . Our business depends on a strong and trusted brand, and any failure to maintain, protect or enhance our brand, including as a result of events outside our control, could materially adversely affect our business. We have developed a strong and trusted brand, and we believe our future success depends on our ability to maintain and grow the value of the Blue Apron brand. Maintaining, promoting and positioning our brand and reputation will depend on, among other factors, the success of our food safety, quality assurance, marketing and merchandising efforts and our ability to provide a consistent, high ~~–~~quality customer experience. Any negative publicity, regardless of its accuracy, could materially adversely affect our business. Brand value is based in large part on perceptions of subjective qualities, and any incident that erodes the loyalty of our customers or suppliers, including adverse publicity or a governmental investigation or litigation, could significantly reduce the value of our brand and significantly damage our business. We believe that our customers hold us and our products to a high food safety standard. Therefore, real or perceived quality or food safety concerns or failures to comply with applicable food regulations and requirements, whether or not ultimately based on fact and whether or not involving us (such as incidents involving our competitors), could cause negative publicity and lost confidence in our company, brand or products, which could in turn harm our reputation and sales, and could materially adversely affect our business, financial condition and operating results. In addition, social media platforms and other forms of Internet- based communications provide individuals with access to broad audiences, and the availability of information on social media platforms is virtually immediate, as can be its impact. Many social media platforms immediately publish the content their participants post, often without filters or checks on accuracy of the content posted. Furthermore, other Internet-based or traditional media outlets may in turn reference or republish such social media content to an even broader audience. Information concerning us, regardless of its accuracy, may be posted on such platforms at any time. Information posted may be adverse to our interests or may be inaccurate, each of which may materially harm our brand, reputation, performance, prospects and business, and such harm may be immediate and we may have little or no opportunity to respond or to seek redress or a correction. The value of our brand also depends on effective customer support to provide a high- quality customer experience, which requires significant personnel expense. If not managed properly, this expense could impact our profitability. Failure to manage or train our own or outsourced customer support representatives properly, or our inability to hire and / or retain sufficient customer support representatives in sufficient numbers could result in lower- quality customer support and / or increased customer response times, compromising our ability to handle customer complaints effectively. For example, **we have experienced** ~~in light of ongoing nationwide~~ labor shortages **in** ~~, both as a result of~~ the **past** ~~COVID- 19 pandemic~~ and ~~otherwise~~ , **if** we **experience any future labor shortages, we may** have ~~encountered in the past and may encounter in the future~~ difficulty hiring and retaining customer support representatives, resulting in increased customer response times. ~~26As~~ **As** we have seen disruptions in labor availability from time to time, whether as a result of the COVID- 19 pandemic, general market trends or otherwise, we have had to, and may in the future have to, cancel or delay some customer orders, and we have closed, and may continue to close, some weekly offering cycles early to manage demand. **Environmental** ~~In addition~~ , ~~we~~ **social and governance matters may impact our business and reputation. There has been increased focus, including by consumers, investors and other stakeholders, as well as by governmental and non- governmental organizations, on ESG matters. We** have ~~had to,~~ and **plan** ~~may again have~~ to **continue undertaking ESG initiatives. Any failure** ~~, pause production at a fulfillment center in order~~ to **meet** ~~implement our COVID- 19 sanitation procedures, which has resulted, and could again result in, delayed or~~ **our ESG commitments** ~~canceled orders. These actions or other actions that we may take in response to the COVID- 19 pandemic that have the effect of delaying or canceling orders~~ could negatively impact our **business** ~~ability to maintain~~ , ~~protect~~ **financial condition and operating results. These impacts could be difficult and costly to overcome. We are also subject to an ESG covenant under** ~~or~~ **our** ~~enhance~~ **senior secured notes which may require us to pay a 1 % fee upon repayment of the senior secured notes at maturity if we fail to meet that covenant, however, if we timely repay the senior secured notes on the accelerated payment schedule agreed to in March 2023, this fee would be waived. In addition, achieving our ESG initiatives may result in increased costs in our supply chain, fulfillment, and /** ~~our~~ - **or corporate business operations,** ~~brand~~ -- **and could deviate from our initial estimates and have a material adverse effect on our business and financial condition. In addition, standards and research regarding ESG initiatives could change and become more onerous for both for us and our third- party suppliers and vendors to meet successfully. Evolving data and research could undermine our claims and beliefs that we have made in reliance on current research, which could also result in costs, a decrease in**

net revenue, and negative market perception that could have a material adverse effect on our business and financial condition. Increased competition presents an ongoing threat to the success of our business. We expect competition in food sales generally, and with companies providing food delivery in particular, to continue to increase. We compete with other meal kit, food and meal delivery companies, the supermarket industry, including online supermarket retailers, and a wide array of food retailers (including natural and organic, specialty, conventional, mass, discount and other food retail formats). We also compete with a wide array of casual dining and quick ~~-~~service restaurants and other food service businesses in the restaurant industry, as well as a broad range of online wine retailers, wine specialty stores and retail liquor stores. In addition, we compete with food manufacturers, consumer packaged goods companies, and other food and ingredient producers. We believe that our ability to compete depends upon many factors both within and beyond our control, including: ~~•~~ **•** our **cash resources and related** marketing efforts; ~~•~~ **•** the flexibility and variety of our product offerings relative to our competitors, and our ability to timely launch new product initiatives; ~~•~~ **•** the quality and price of products offered by us and our competitors; ~~•~~ **•** our reputation and brand strength relative to our competitors; ~~•~~ **•** customer satisfaction; ~~•~~ **•** consumer tastes and preferences and trends in consumer spending, which have changed, and may continue to change, in response to macroeconomic factors, like inflation, the impact of the COVID- 19 pandemic or otherwise; ~~•~~ **•** the size and composition of our customer base; ~~•~~ **•** the convenience of the experience that we provide; ~~•~~ **•** the strength of our food safety and quality program; ~~•~~ **•** our ability to comply with, and manage the costs of complying with, laws and regulations applicable to our business ~~, including the regulations relating to COVID- 19~~; and ~~•~~ **•** our ability to cost- effectively source and distribute the products we offer and to manage our operations. Some of our current competitors have, and potential competitors may have, longer operating histories, larger or more efficient fulfillment infrastructures, greater technical capabilities, significantly greater financial, marketing and other resources and larger customer bases than we do. In addition, business combinations and consolidation in and across the industries in which we compete could further increase the competition we face and result in competitors with significantly greater resources and customer bases than us. Further, some of our other current or potential competitors may be smaller, less regulated, and have a greater ability to reposition their product offerings than companies that, like us, operate at a larger scale. These factors may allow our competitors to derive greater sales and profits from their existing customer base, acquire customers at lower costs, respond more quickly than we can to changes in consumer demand and tastes, or otherwise compete with us effectively, which may adversely affect our business, financial ~~27condition~~ -- **condition** and operating results. These competitors may engage in more extensive research and development efforts, undertake more far- reaching marketing campaigns and adopt more aggressive pricing policies, which may allow them to build larger customer bases or generate additional sales more effectively than we do **. Our deliberate decision to reduce marketing expenses for 2023 may negatively impact our ability to compete which may have a material adverse impact on our ability to acquire or retain customers**. In addition, as the COVID- 19 pandemic' s impact on consumer behaviors has tapered, and consumers seek out other dining options or resume traveling, we **have and** may **continue to** see an increase in competition, which may be significant **,** and which could have an adverse effect on our business, financial condition and operating results. Food safety and food- borne illness incidents or advertising or product mislabeling may materially adversely affect our business by exposing us to lawsuits, product recalls or regulatory enforcement actions, increasing our operating costs and reducing demand for our product offerings. Selling food for human consumption involves inherent legal and other risks, and there is increasing governmental scrutiny of and public awareness regarding food safety. Unexpected side effects, illness, injury or death related to allergens, food ~~-~~borne illnesses or other food safety incidents (including food tampering or contamination) caused by products we sell, or involving suppliers that supply us with ingredients and other products, could result in the discontinuance of sales of these products or our relationships with such suppliers, or otherwise result in increased operating costs or harm to our reputation. Shipment of adulterated products, even if inadvertent, can result in criminal or civil liability. Such incidents could also expose us to product liability, negligence or other lawsuits brought by consumers, consumer agencies or others. Any claims brought against us may exceed or be outside the scope of our existing or future insurance policy coverage or limits. Any judgment against us that is in excess of our insurance policy limits or not covered by our policies or not subject to insurance would have to be paid from our cash reserves, which would reduce our capital resources, which could impact our ability to execute ~~and accelerate~~ our ~~growth~~ strategy and / or comply with the **accelerated repayment obligations or** minimum liquidity covenant in our senior secured **notes** ~~term loan~~. The occurrence of food ~~-~~borne illnesses or other food safety incidents could also adversely affect the price and availability of affected ingredients, resulting in higher costs, disruptions in supply and a reduction in our sales. Furthermore, any instances of food contamination, whether or not caused by our products, could subject us or our suppliers to a food recall pursuant to the Food Safety Modernization Act of the United States Food and Drug Administration, or FDA, and comparable state laws. The risk of food contamination may be also heightened further due to changes in government funding or a government shutdown. Our meat and poultry suppliers may operate only under inspection by the United States Department of Agriculture, or USDA. While USDA meat and poultry inspections are considered essential services, a government shutdown or lapse in funding may increase the risk that inspectors perform their duties inadequately, fail to report for work, or leave their positions without prompt replacement, potentially compromising food safety. We have been in the past, and could be in the future, subject to food recalls. Food recalls could result in significant losses due to their costs, the destruction of product inventory, lost net revenues due to customer credits and refunds, lost future sales due to the unavailability of the product for a period of time and potential loss of existing customers and a potential negative impact on our ability to retain existing customers and attract new customers due to negative consumer experiences or as a result of an adverse impact on our brand and reputation. In addition, food companies have been subject to targeted, large- scale tampering as well as to opportunistic, individual product tampering, and we could be a target for product tampering. Forms of tampering could include the introduction of foreign material, chemical contaminants and pathological organisms into consumer products as well as product substitution. Beginning in July 2019, FDA requirements require companies like us to analyze, prepare and implement " food defense " mitigation strategies specifically to address tampering designed to inflict widespread public health harm. If we do not adequately address the possibility, or any actual instance, of product tampering, we could face possible seizure or recall of our products and the imposition of civil or criminal sanctions, which could materially adversely affect our business, financial condition and operating results. ~~28Changes~~ -- **Changes** in consumer tastes and preferences or in consumer spending due to inflation or otherwise, and other economic or financial market conditions could materially adversely affect our business. Our operating results may be materially adversely affected by changes in consumer tastes and preferences. Our future success depends in part on our ability to anticipate the tastes, eating habits and lifestyle preferences of consumers and to offer products that appeal to consumer tastes and preferences. Consumer tastes and preferences may change from time to time and can be affected by a number of different trends and other factors that are beyond our control. For example, our net revenue could be materially adversely affected by changes in consumer demand in response to nutritional and dietary trends, dietary concerns regarding items such as calories, sodium, carbohydrates or fat, or concerns regarding food safety. Our competitors may react more efficiently and effectively to these changes than we can. We cannot provide any assurances regarding our ability to respond effectively to changes in consumer health perceptions or our ability to adapt our product offerings to trends in eating habits. If we fail to anticipate, identify or react to these changes and trends, or to introduce new and improved products on a timely basis, or if we cease offering such products or fail to maintain partnerships that react to these changes and trends, we may experience reduced demand for our products, which ~~may cause us to breach the minimum subscription count covenant in our senior secured term loan, which~~ could materially adversely affect our business, financial condition and operating results. In addition, the business of selling food products over the Internet is dynamic and continues to evolve. The market segment for food delivery has grown significantly, and this growth may not continue or may decline, including specifically with respect to the meal solutions sector. If customers cease to find value in this model or otherwise lose interest in our product offerings or our business model generally, we may not acquire new customers in numbers sufficient to sustain growth in our business or retain existing customers at rates consistent with our business model, which ~~may cause us to breach the minimum subscription count covenant in our senior secured term loan, and our business, financial condition and operating results~~ could be materially adversely ~~affected~~ -- **affect our business, financial condition, and operating results** . Furthermore, preferences and overall economic conditions, such as inflation, that impact consumer confidence and spending, including discretionary spending, could have a material impact on our business. Economic conditions affecting disposable consumer income such as employment levels, business conditions, higher rates of inflation, slower growth or recession, market volatility, negative ~~impacts on the economy from the COVID- 19 pandemic and related uncertainty, negative~~ financial news, changes in housing market conditions, the availability of credit, interest rates, tax rates, new or increased tariffs, fuel and energy costs, the effect of natural disasters or acts of terrorism, and other matters, could reduce consumer spending or cause consumers to shift their spending to lower ~~-~~priced alternatives, each of which could materially adversely affect our business, financial condition and operating results. In addition to an adverse impact on demand for our products, uncertainty about, or a decline in, economic conditions could have a significant impact on our suppliers, logistics providers and other business partners, including resulting in financial instability, inability to obtain credit to finance operations and insolvency. Certain of our suppliers, and their manufacturing and assembly activities, are located outside the United States, and as a result our operations and performance depend on both global and regional economic conditions. These and other economic factors could materially adversely affect our business, financial condition and operating results. Our ability to source quality ingredients and other products is critical to our business, and any disruption to our supply or supply chain could materially adversely affect our business. We depend on frequent deliveries of ingredients and other products from a variety of local, regional, national and international suppliers, and some of our suppliers may depend on a variety of other local, regional, national and international suppliers to fulfill the purchase orders we place with them. The availability of such ingredients and other products at competitive prices depends on many factors beyond our control, including the number and size of farms, ranches, vineyards and other suppliers that provide crops, livestock and other raw materials that meet our quality and production standards. We rely on our suppliers, and their supply chains, to meet our quality and production standards and specifications and supply ingredients and other products in a timely and safe manner. We have developed and implemented a series of measures to ensure the safety and quality of our third- party supplied products, including using ~~29contract~~ -- **contract** specifications, certificates of identity for some products or ingredients, sample testing by suppliers and sensory based testing. However, no safety and quality measures can eliminate the possibility that suppliers may provide us with defective or out ~~-~~of ~~-~~specification products against which regulators may take action or which may subject us to litigation or require a recall. Suppliers may provide us with food that is or may be unsafe, food that is below our quality standards or food that is improperly labeled. In addition to a negative customer experience, we could face possible seizure or recall of our products and the imposition of civil or criminal sanctions if we incorporate a defective or out ~~-~~of ~~-~~ specification item into one of our deliveries. Furthermore, there are many factors beyond our control which could cause shortages or interruptions in the supply of our ingredients and other products, including adverse weather, environmental factors, natural disasters, prolonged utility outages, unanticipated demand, shipping and distribution issues, labor problems, public health crises, such as pandemics and epidemics, changes in law or policy, food safety issues by our suppliers and their supply chains, and the financial health of our suppliers and their supply chains. For example, any ~~prolonged~~ **future** negative impact on our supply chain as a result of the COVID- 19 **, or other,** pandemic, **weather, gas prices** or otherwise, could materially and adversely impact our business, financial condition and operating results. Production of the agricultural products used in our business may also be materially adversely affected by drought, water scarcity, temperature extremes, scarcity of agricultural labor, changes in government agricultural programs or subsidies, import restrictions, scarcity of suitable agricultural land, crop conditions, crop or animal diseases or crop pests. Failure to take adequate steps to mitigate the likelihood or potential effect of such events, or to effectively manage such events if they occur, may materially adversely affect our business, financial condition and operating results, particularly in circumstances where an ingredient or product is sourced from a single supplier or location. In addition, unexpected delays in deliveries from suppliers that ship directly to our fulfillment centers or increases in transportation costs, including through increased fuel costs, could materially adversely affect our business, financial condition and operating results. Labor shortages or work stoppages in the transportation industry, long ~~–~~term disruptions to the national transportation infrastructure, reduction in capacity and industry ~~–~~specific regulations such as hours ~~–~~of ~~–~~service rules that lead to delays or interruptions of deliveries ~~, whether as a result of the COVID- 19 pandemic or otherwise,~~ could also materially adversely affect our business, financial condition and operating results. We currently source certain of our ingredients from suppliers located outside of the United States. Any event causing a disruption or delay of imports from suppliers located outside of the United States, including weather, drought, crop ~~–~~related diseases, the imposition of import or export restrictions, restrictions on the transfer of funds or increased tariffs, destination ~~–~~based taxes, value ~~–~~added taxes, quotas or increased regulatory requirements, could increase the cost or reduce the supply of our ingredients and the other materials required by our product offerings, which could materially adversely affect our business, financial condition and operating results. Furthermore, our suppliers' operations may be adversely affected by political and financial instability, resulting in the disruption of trade from exporting countries, restrictions on the transfer of funds or other trade disruptions, each of which could adversely affect our access or ability to source ingredients and other materials used in our product offerings on a timely or cost- effective basis. ~~Environmental, social and governance matters may impact our business and reputation. There has been increased focus, including by consumers, investors and other stakeholders, as well as by governmental and non- governmental organizations, on environmental, social and governance, or ESG, matters.~~ We ~~have and plan to continue undertaking ESG initiatives. Any failure to meet our ESG commitments could negatively impact our business, financial condition and operating results. These impacts could be difficult and costly to overcome. In addition, achieving our ESG initiatives may result in increased costs in our supply chain, fulfillment, and / or corporate business operations, and could deviate from our initial estimates and have a material adverse effect on our business and financial condition. In addition, standards and research regarding ESG initiatives could change and become more onerous for both for us and our third- party suppliers and vendors to meet successfully. Evolving data and research could undermine our claims and beliefs that we have made in reliance on current research, which could also result in costs, a decrease in revenue, and negative market perception that could have a material adverse effect on our business and financial condition. 30We~~ have implemented significant reorganization activities in our business ~~, including the closure of our fulfillment center in Arlington, Texas in 2020~~ . These and other reorganization activities could have long- term adverse effects on our business, including additional attrition in personnel and the failure to achieve the anticipated benefits and savings from these activities. We have implemented significant reorganization activities in our business to adjust our cost structure, and we may engage in similar reorganization activities in the future. **For example, in December 2022, to better align internal resources with strategic priorities, we announced a reduction in corporate personnel, which resulted in a reduction of approximately 10 %, our corporate workforce, inclusive of both then current and vacant roles. As a result, we incurred approximately $ 1. 5 million of employee- related expenses, primarily consisting of severance payments, substantially all of which are cash expenditures to be paid in the first half of 2023.** In **addition, in** February 2020, we announced a plan to close our fulfillment center in Arlington, Texas. As part of this plan, in the first and second quarters of 2020 we transferred all of the remaining production volume from our Arlington, Texas fulfillment center to our Linden, New Jersey and Richmond, California fulfillment centers. ~~Previously, in the first quarter of 2019 we had transferred a substantial portion of production volume from our Arlington, Texas fulfillment center to our Linden, New Jersey fulfillment center. In addition, in the fall of 2018 and the fall of 2017, we implemented reductions in the number of our employees across our corporate offices and fulfillment centers.~~ These actions resulted and could result in the future in the loss of employees across various functions **through attrition or the need for further reductions** , the loss of institutional knowledge and expertise and the reallocation and combination of certain roles and responsibilities across our organization, all of which could adversely affect our operations. In addition, there is a risk of reduced employee morale and, as a result, we could face further employee attrition following a reorganization activity. We may also be unable to efficiently transition the production volume between our fulfillment centers or maintain our production efficiencies during or after any such transfer. For example, we temporarily reopened the Arlington fulfillment center in January 2021 to leverage existing assets to meet forecasted demand while we continued to identify and implement other operating efficiencies in our other fulfillment centers; we then closed the Arlington fulfillment center in April 2021, consolidating production volume at our other fulfillment centers. Other reorganization activities in which we may engage in the future, as well as other ongoing or future cost reduction activities, may reduce our available talent, assets, capabilities and other resources and could slow improvements in our products and services, adversely affect our ability to respond to competition and limit our ability to satisfy customer demands. As a result, our management may need to divert a disproportionate amount of its attention away from our day- to- day strategic and operational activities, and devote a substantial amount of time to managing the organizational changes brought about by ~~the~~ **our** reorganization. If we do not have sufficient resources, we may not be able to effectively manage the changes in our business operations resulting from the reorganization, which may result in weaknesses in our operations, risks that we may not be able to comply with legal and regulatory requirements, loss of business opportunities, loss of employees and reduced productivity among remaining employees. If we are unable to effectively manage these activities, our expenses may be higher than expected, and we may not be able to implement our business strategy or achieve the anticipated benefits and savings from any such activities. We may also determine to take additional measures to reduce costs, **especially if we do not receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions, secure alternative funding or raise additional capital, including from our the February 2023 ATM, the disposition of the pledged collateral, if any, or other financing sources** which could result in further disruptions to our operations and present additional challenges to the effective management of our company. For example, if we are unable to deliver results from our ~~growth~~ strategy, or otherwise effectively manage expenses and cash flows, we intend to **further** reduce spending, particularly in marketing and capital expenditures, to the extent needed in order to comply with the minimum liquidity ~~and subscription count covenants~~ - **covenant** in our senior secured **notes** ~~term loan~~ , which will negatively and materially impact net revenue and our ability to execute our ~~growth~~ strategy ~~. To the extent that we reduce marketing expenses or other costs to help manage our liquidity and remain in compliance with the minimum liquidity covenant in our senior secured term loan, there is a risk that such reductions will result in a lower subscription count, which itself could present a risk that we will not be able to comply with the minimum subscription count covenant in our senior secured term loan~~ . In addition, delays in implementing planned restructuring activities, unexpected costs, or the failure to meet targeted improvements may diminish the operational or financial benefits we realize from such actions. Any of the circumstances described above could materially adversely affect our business and operating and financial results. If we lose key management or fail to meet our need for qualified employees with specialized skills, our business, financial condition and operating results could be materially adversely affected. Our future success is dependent upon our ability to retain key management. Our executive officers and other management personnel are employees " at will " and could elect to terminate their employment with us at any time. For example, ~~we had three executive officers resign in each of 2020 and 2019, including the chief executive officer and one 31of our founders. Since~~ **since** 2017, we have had three different chief executive officers **and since 2018 we have had four chief financial officers and three individuals serving in the role of chief operating officers / chief supply chain officer** . We do not maintain " key person " insurance on the lives of any of our executive officers. Our future success is also dependent upon our ability to attract, retain and effectively deploy qualified employees, including management, possessing a broad range of skills and expertise. We may need to offer higher compensation and other benefits in order to attract and retain key personnel in the future, and, to attract top talent, we must offer competitive compensation packages before we have the opportunity to validate the productivity and effectiveness of new employees. Additionally, from time to time we have not been, and we may not in the future be, able to hire sufficient workforce quickly enough or to retain sufficient workforce, or if we ~~cannot grow net revenue~~ **do not receive the remaining $ 68. 2 million due to us in connection with the liquidity transactions or raise additional capital, including through the February 2023 ATM, the disposition of the pledged collateral, if any, or other financing sources** , we may not have adequate resources to meet our hiring needs, and we must effectively deploy our workforce in order to efficiently allocate our internal resources. **For example, in December 2022, in order to better align internal resources with strategic priorities, we announced a reduction in corporate personnel which resulted in a reduction of approximately 10 % of our total corporate workforce, inclusive of both then current and vacant roles and we may experience a negative impact of the workforce reduction on executing our strategy.** If we fail to ~~meet our hiring needs, successfully integrate our new hires~~ **hire or retain qualified employees,** or effectively deploy our existing personnel, our efficiency and ability to meet our forecasts, our ability to successfully execute on our strategic plan ~~to sustain net revenue growth~~ and our employee morale, productivity and retention could all suffer. Any of these factors could materially adversely affect our business, financial condition and operating results. Our past net revenue growth masked seasonal fluctuations in our operating results. If our net revenue declines or if it begins to increase at a more moderate rate, or as seasonal patterns become more pronounced, seasonality could have a material impact on our results. Our business is seasonal in nature, which impacts the levels at which customers engage with our products and brand, and, as a result, the trends of our revenue and our expenses fluctuate from quarter to quarter. For example, prior to the effect of the economic and social impact of the COVID- 19 pandemic, we historically anticipated that the first quarter of each year would generally represent our strongest quarter in terms of customer engagement. Conversely, during the summer months and the end of year holidays, when people are vacationing more often or have less predictable weekly routines, we historically anticipated lower customer engagement. In addition, our marketing strategies and expenditures, which may be informed by these seasonal trends, will impact our quarterly results of operations. These seasonal trends may cause our **net** revenue and our cash requirements to vary from quarter to quarter depending on the variability in the volume and timing of sales. We believe that these seasonal trends have affected and will continue to affect our quarterly results in the future. However, we cannot predict the impact that ~~the COVID- 19 pandemic~~ **macroeconomic trends such as inflation** may have on seasonality. Our past net revenue growth, due in part to the impact of the COVID- 19 pandemic on consumer behaviors, masked seasonality, but if our net revenue **continues to** ~~declines~~ **decline** or if it increases at a moderate rate, or if seasonal spending by our customers becomes more pronounced, seasonality could have a more significant impact on our operating results from period to period. **In addition, in the first and second quarters of 2022, we entered into sponsorship agreements with a related party under which we agreed to issue $ 27. 5 million of gift cards (net of promotional discounts), which may result in higher levels of card breakage revenue which may inflate net revenue or mask seasonality in future periods. As of the date of this Annual Report on Form 10- K, we have not yet received the remaining $ 12. 7 million relating to the Sponsorship Gift Cards Agreement. See Note 14 to the consolidated financial statements in this Annual Report on Form 10- K.** We rely on our proprietary technology and data to forecast customer demand and to manage our supply chain, and any failure of this technology **, or the quality of our data,** could materially adversely affect our business, financial condition and operating results. We rely on our proprietary technology and data to forecast demand and predict our customers' orders, determine the amounts of ingredients and other supply to purchase, and to optimize our in- bound and out- bound logistics for delivery and transport of our supply to our fulfillment centers and of our product offerings to customers. If this technology fails or produces inaccurate results at any step in this process — such as if the data we collect from customers is insufficient or incorrect, if we over or underestimate future demand, or if we fail to optimize delivery routes to our customers — we could experience increased food waste or shortages in key ingredients, the operational efficiency of our supply chain may suffer (including as a result of excess or shortage of fulfillment center capacity) or our customers may experience delays or failures in the delivery of our product offerings, for example by missing ingredients. Moreover, forecasts based on historical data, regardless of any historical patterns or the quality of the underlying data, are inherently uncertain, and unforeseen changes in consumer tastes or external events could result in material inaccuracy of our forecasts, which could result in disruptions in our business and our incurrence of significant costs and waste. Furthermore, any interruptions or delays in our ability to use or access our proprietary technology could lead to interruptions or delays in our supply chain. The occurrence of any of the foregoing risks could materially adversely affect our business, financial condition and operating results. ~~32The~~ -- **The** reliable and cost- effective storage, transport and delivery of ingredients and other products and our product offerings is critical to our business, and any interruptions, delays or failures could materially adversely affect our reputation, business, financial condition and operating results. We maintain arrangements with third parties to store ingredients and other products, to deliver ingredients and other products from our suppliers to our fulfillment centers and to transport ingredients and other products between our fulfillment centers. Interruptions or failures in these services could delay or prevent the delivery of these ingredients and other products to us and therefore adversely affect our ability to fulfill our customers' orders. These interruptions may be due to events that are beyond our control or the control of the third parties with whom we contract. We also maintain arrangements with third- party transport carriers to deliver the food products we sell to our customers. Interruptions, delays or failures in these carrier services could prevent the timely or proper delivery of these products, which may result in significant product inventory losses given the highly perishable nature of our food products. These interruptions may be due to events that are beyond our control or the control of these carriers, including adverse weather, natural disasters and public health crises, such as pandemics and epidemics. If these carriers experience performance problems or other difficulties, we may not be able to deliver orders in a timely manner and meet customer expectations, and our business and reputation could suffer. For example, carrier interruptions and delays as a result of the COVID- 19 pandemic or otherwise **have in the past, and** could **again in the future** impact our ability to deliver orders to our customers which could materially and adversely impact our business, financial condition and operating results. In addition, if we are not able to maintain acceptable pricing and other terms with these carriers, whether as a result of inflation or otherwise, and we do not increase the price of our product offerings, we may experience reduced operating margins. We rely on third- party transport carriers for the delivery of our wines to our customers. State and federal laws regulate the ability of transport carriers to transport wine, and carriers may be required to obtain licenses in order to deliver wine to our customers. Changes in our access to those carriers, including changes in prices and fuel surcharges or changes in our relationships with those carriers, changes in the laws allowing third party transport of wine, or regulatory discipline against licenses held by those carriers, could materially adversely affect our wine business. Delivery of the products we sell to our customers could also be affected or interrupted by the merger, acquisition, insolvency, or government shutdown of the carriers we engage to make deliveries. If the products we sell are not delivered in proper condition or on a timely basis, our business and reputation could suffer. Unionization activities may disrupt our operations and adversely affect our business. Although none of our employees is currently covered under a collective bargaining agreement, our employees may elect to seek to be represented by labor unions in the future. For example, in April 2018, a local labor union filed an election petition with the National Labor Relations Board seeking to represent certain employees at our Linden, New Jersey facility; however, such employees subsequently voted to not be represented by the union and one of our competitors recently faced a union election in three states. If a significant number of our employees were to become unionized and collective bargaining agreement terms were to deviate significantly from our current compensation and benefits structure, our business, financial condition and operating results could be materially adversely affected. In addition, a labor dispute involving some or all of our employees may harm our reputation, disrupt our operations and reduce our net revenues, and the resolution of labor disputes may increase our costs. Any failure to adequately store, maintain and deliver quality perishable foods could materially adversely affect our business, financial condition and operating results. Our ability to adequately store, maintain and deliver quality perishable foods is critical to our business. We store food products, which are highly perishable, in refrigerated fulfillment centers and ship them to our customers inside boxes that are insulated with thermal or corrugate liners and frozen refrigerants to maintain appropriate temperatures in transit and use refrigerated third- party delivery trucks to support temperature control for shipments to certain locations. Keeping our food products at specific temperatures maintains freshness and enhances food safety. In the event of extended power outages, natural disasters or other catastrophic occurrences, failures of the refrigeration systems in our fulfillment centers or third- party delivery trucks, failure to use adequate packaging to maintain appropriate temperatures, ~~33or~~ **or** other circumstances both within and beyond our control, our inability to store highly perishable inventory at specific temperatures could result in significant product inventory losses as well as increased risk of food ~~-~~borne illnesses and other food safety risks. Improper handling or storage of food by a customer — without any fault by us — could result in food ~~-~~borne illnesses, which could nonetheless result in negative publicity and harm to our brand and reputation. Further, we contract with third parties to conduct certain fulfillment processes and operations on our behalf. Any failure by such third party to adequately store, maintain or transport perishable foods could negatively impact the safety, quality and merchantability of our products and the experience of our customers. The occurrence of any of these risks could materially adversely affect our business, financial condition and operating results. Disruptions in our data and information systems could harm our reputation and our ability to run our business. We rely extensively on data and information systems for our supply chain, order processing, fulfillment operations, financial reporting, human resources and various other operations, processes and transactions. Furthermore, a significant portion of the communications between, and storage of personal data of, our personnel, customers and suppliers depends on information technology. Our data and information systems are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, security breaches (including breaches of our transaction processing or other systems that could result in the compromise of confidential customer data), catastrophic events, data breaches and usage errors by our employees or third- party service providers. Our data and information technology systems may also fail to perform as we anticipate, and we may encounter difficulties in adapting these systems to changing technologies or expanding them to meet the future needs of our business. If our systems are breached, damaged or cease to function properly, we may have to make significant investments to fix or replace them, suffer interruptions in our operations, incur liability to our customers and others or face costly litigation, and our reputation with our customers may be harmed. We also rely on third parties for a majority of our data and information systems, including for third- party hosting and payment processing. If these facilities fail, or if they suffer a security breach or interruption or degradation of service, a significant amount of our data could be lost or compromised and our ability to operate our business and deliver our product offerings could be materially impaired. In addition, various third parties, such as our suppliers and payment processors, also rely heavily on information technology systems, and any failure of these systems could also cause loss of sales, transactional or other data and significant interruptions to our business. Any material interruption in the data and information technology systems we rely on, including the data or information technology systems of third parties, could materially adversely affect our business, financial condition and operating results. Our business is subject to data security risks, including security breaches. We, or our third- party vendors on our behalf, collect, process, store and transmit substantial amounts of information, including information about our customers **and suppliers** . We take steps to protect the security and integrity of the information we collect, process, store or transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this information despite such efforts. Security breaches, computer malware, computer hacking attacks and other compromises of information security measures have become more prevalent in the business world and may occur on our systems or those of our vendors in the future. Large Internet companies and websites have from time to time disclosed sophisticated and targeted attacks on portions of their websites, and an increasing number have reported such attacks resulting in breaches of their information security. We and our third- party vendors are at risk of suffering from similar attacks and breaches. Although we take steps to maintain confidential and proprietary information on our information systems, these measures and technology may not adequately prevent security breaches and we rely on our third- party vendors to take appropriate measures to protect the security and integrity of the information on those information systems. Because techniques used to obtain unauthorized access to or to sabotage information systems change frequently and may not be known until launched against us, we may be unable to anticipate or prevent these attacks. In addition, we have experienced, and may experience in the future, a " credentials stuffing " incident, which is where a third party is able to illicitly obtain a customer' s identification and password credentials on the dark web to access a customer' s account and certain account data. **We have also experienced, and may experience in the future, fraudulent use of promotional coupons or gift card codes.** Any actual or suspected security breach or other compromise of our security measures or those of our third- party vendors, whether as a result of hacking efforts, denial ~~-~~of ~~-~~service attacks, viruses, malicious software, break ~~-~~ins, ~~34phishing~~ -- **phishing** attacks, social engineering or otherwise, could harm our reputation and business, damage our brand and make it harder to retain existing customers or acquire new ones, require us to expend significant capital and other resources to address the breach, and result in a violation of applicable laws, regulations or other legal obligations. Our insurance policies may not be adequate to reimburse us for direct losses caused by any such security breach or indirect losses due to resulting customer attrition. We rely on email and other messaging services to connect with our existing and potential customers. Our customers may be targeted by parties using fraudulent spoofing and phishing emails to misappropriate passwords, payment information or other personal information or to introduce viruses through Trojan horse programs or otherwise through our customers' computers, smartphones, tablets or other devices. Despite our efforts to mitigate the effectiveness of such malicious email campaigns through product improvements, spoofing and phishing may damage our brand and increase our costs. Any of these events or circumstances could materially adversely affect our business, financial condition and operating results. We are subject to risks associated with payments to us from our customers and other third parties, including risks associated with fraud. Nearly all of our customers' payments are made by credit card or debit card. We currently rely exclusively on one third- party vendor to provide payment processing services, including the processing of payments from credit cards and debit cards, and our business would be disrupted if this vendor becomes unwilling or unable to provide these services to us and we are unable to find a suitable replacement on a timely basis. We are also subject to payment brand operating rules, payment card industry data security standards and certification requirements, which could change or be reinterpreted to make it more difficult or impossible for us to comply. If we fail to comply with these rules or requirements, we may be subject to fines and higher transaction fees and lose our ability to accept credit and debit card payments from customers, which would make our services less convenient and attractive to our customers and likely result in a substantial reduction in net revenue. We may also incur losses as a result of claims that the customer did not authorize given purchases, fraud, erroneous transmissions and customers who have closed bank accounts or have insufficient funds in their accounts to satisfy payments owed to us. We are subject to, or voluntarily comply with, a number of other laws and regulations relating to the payments we accept from our customers and third parties, including with respect to money laundering, money transfers, privacy, and information security, and electronic fund transfers. These laws and regulations could change or be reinterpreted to make it difficult or impossible for us to comply. If we were found to be in violation of any of these applicable laws or regulations, we could be subject to civil or criminal penalties and higher transaction fees or lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers or facilitate other types of online payments, which may make our services less convenient and less attractive to our customers and diminish the customer experience. The termination of, or material changes to, our relationships with key suppliers or vendors could materially adversely affect our business, financial condition and operating results. We currently depend on a limited number of suppliers for some of our key ingredients. We strive to work with suppliers that engage in certain growing, raising or farming standards that we believe are superior to conventional practices and that can deliver products that are specific to our quality, food safety and production standards. Currently, there are a limited number of meat and seafood suppliers that are able to simultaneously meet our standards and volume requirements. As such, these suppliers could be difficult to replace if we were no longer able to rely on them. We also work with suppliers that produce specialty or unique ingredients for us. It can take a significant amount of time and resources to identify, develop and maintain relationships with certain suppliers, including suppliers that produce specialty or unique products for us. In the event of any disruptions to our relationships with our suppliers of specialty products, the ingredients they produce for us would be difficult to replace. The termination of, or material changes to, arrangements with key suppliers or vendors, disagreements with key suppliers or vendors as to payment or other terms, or the failure of a key supplier or vendor to meet its contractual obligations to us may require us to contract with alternative suppliers or vendors. For example, the failure of a key supplier to meet its obligations to us or otherwise deliver ingredients at the volumes that meet our quality and production standards could require us to make purchases ~~35from~~ -- **from** alternative suppliers or make changes to our product offerings. If we have to replace key suppliers or vendors, we may be subject to pricing or other terms less favorable than those we currently enjoy, and it may be difficult to identify and secure relationships with alternative suppliers or vendors that are able to meet our volume requirements, food safety and quality or other standards. If we cannot replace or engage suppliers or vendors who meet our specifications and standards in a short period of time, we could encounter increased expenses, shortages of ingredients and other items, disruptions or delays in customer shipments or other harm. In this event, we could experience a significant reduction in sales and incur higher costs for replacement goods and customer refunds during the shortage or thereafter, any of which could materially adversely affect our business, financial condition and operating results. In our wine business, we rely on the use of third- party alternating proprietorship winemaking facilities. We rely on the host or owner of such facilities to ensure that the facilities are operational and maintained in good condition. Changes in those facilities or our access to those facilities, including changes in prices or changes in our relationships with the third parties who own and operate those facilities, or regulatory discipline against licenses held by those third parties, or any failure by such third parties to maintain their facilities in good condition, may impair our ability to produce wines at such facilities and could materially adversely affect our wine business. Our results could be adversely affected by natural disasters, public health crises, **such as pandemics and epidemics,** political crises or other catastrophic events. Natural disasters, such as hurricanes, tornadoes, floods, earthquakes, droughts and other adverse weather and climate conditions; crop **pests** or **diseases;** animal diseases ~~; crop pests~~ ; unforeseen public health crises, such as pandemics and epidemics, such as the COVID- 19 pandemic; political crises, such as terrorist attacks, war and other political instability or uncertainty; or other catastrophic events, whether occurring in the United States or internationally, could disrupt our operations or the operations of one or more of our suppliers or vendors. In particular, these types of events could impact our supply chain from or to the impacted region given our dependency on frequent deliveries of ingredients and other products from a variety of local, regional and national suppliers. In addition, these types of events could adversely affect consumer spending in the impacted regions or our ability to deliver our products to our customers safely, cost- effectively or at all. To the extent any of these events occur, our business, financial condition and operating results could be materially and adversely affected. **We have identified a material weakness in our internal controls over financial reporting related to ineffective information technology general controls.** Failure to establish and maintain effective internal controls in accordance with Section 404 of the Sarbanes- Oxley Act **in the future** could have a material adverse effect on our business and stock price. As a public company, we are required to comply with the rules of the SEC implementing Sections 302 and 404 of the Sarbanes- Oxley Act, which requires management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. We are required to disclose changes made in our internal controls and procedures on a quarterly basis and to make annual assessments of our internal control over financial reporting pursuant to Section 404. **In addition** ~~As an emerging growth company~~ , **as** ~~our independent registered public accounting firm will not be required to attest to the effectiveness~~ of **January 1, 2023,** ~~our internal control over financial reporting pursuant to Section 404 until the date~~ we are no longer an emerging growth company **and therefore** ~~. At such time~~ , **as an accelerated filer with annual revenues greater than $ 100 million,** our **independent registered public accounting firm is now required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404. Our** independent registered public accounting firm, and management, may issue a report that is adverse in the event it is not satisfied with the level at which our controls are documented, designed or operating. To comply with the requirements of being a public company, we have undertaken various actions, and may need to take additional actions, such as implementing new internal controls and procedures and hiring additional accounting or internal audit staff. Testing and maintaining internal control can divert our management' s attention from other matters that are important to the operation of our business. Additionally, when evaluating our internal control over financial reporting, we may identify material weaknesses **and significant deficiencies and, as of December 31, 2022, our management has identified a material weakness in internal controls related to ineffective information technology general controls. The material weakness did not result in any identified misstatements to the financial statements and there were no changes to previously identified financial results. Management has developed and is implementing a remediation plan to address the material weakness. However, we cannot assure you** that ~~we may~~ **the testing of the operational effectiveness of the new control will be complete within a specific timeframe. There is no assurance that another material weaknesses or significant deficiencies will** not **occur or that we will** be able to remediate **such material weaknesses or significant deficiencies** in time to meet the applicable deadline imposed upon us for compliance with the requirements of Section 404. If we identify any material weaknesses in our internal control over financial reporting or are unable to comply with the requirements of Section 404 in a timely manner or assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting ~~once we are no longer an emerging growth company~~ , investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our Class A common stock could be materially adversely ~~36affected~~ -- **affected** , and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC or other regulatory authorities, which could require additional financial and management resources. Risks Related to Our Intellectual ~~PropertyWe~~ -- **Property We** may be accused of infringing or violating the intellectual property rights of others. Other parties have claimed or may claim in the future that we infringe or violate their trademarks, patents, copyrights, domain names, publicity rights or other proprietary rights. Such claims, regardless of their merit, could result in litigation or other proceedings and could require us to expend significant financial resources and attention by our management and other personnel that otherwise would be focused on our business operations, result in injunctions against us that prevent us from using material intellectual property rights, or require us to pay damages to third parties. We may need to obtain licenses from third parties who allege that we have infringed or violated their rights, but such licenses may not be available on terms acceptable to us or at all. In addition, we may not be able to obtain or use on terms that are favorable to us, or at all, licenses or other rights with respect to intellectual property that we do not own, which would require us to develop alternative intellectual property. To the extent we rely on open **-** source software, we may face claims from third parties that claim ownership of the open **-** source software or derivative works that were developed using such software, or otherwise seek to enforce the terms of the applicable open **-** source license. Similar claims might also be asserted regarding our in- house software. These risks have been amplified by the increase in intellectual property claims by third parties whose sole or primary business is to assert such claims. As knowledge of our business expands, we are likely to be subject to intellectual property claims against us with increasing frequency, scope and magnitude. We may also be obligated to indemnify affiliates or other partners who are accused of violating third parties' intellectual property rights by virtue of those affiliates or partners' agreements with us, and this could increase our costs in defending such claims and our damages. Furthermore, such affiliates and partners may discontinue their relationship with us either as a result of injunctions or otherwise. The occurrence of these results could harm our brand or materially adversely affect our business, financial position and operating results. We may not be able to adequately protect our intellectual property rights. We regard our customer lists and other consumer data, trademarks, service marks, domain names, copyrights, trade dress, trade secrets, know ~~-~~how, proprietary technology and similar intellectual property as critical to our future success. We cannot be sure that our intellectual property portfolio will not be infringed, violated or otherwise challenged by third parties, or that we will be successful in enforcing, defending or ~~combatting~~ - **combating** any such infringements, violations, or challenges. We also cannot be sure that the law might not change in a way that would affect the nature or extent of our intellectual property ownership. We rely on patent, registered and unregistered trademark, copyright and trade secret protection and other intellectual property protections under applicable law to protect these proprietary rights. While we have taken steps toward procuring trademark registration for several of our trademarks in key countries around the world and have entered or may enter into contracts to assist with the procurement and protection of our trademarks, we cannot assure you that our common law, applied ~~-~~for, or registered trademarks are valid and enforceable, that our trademark registrations and applications or use of our trademarks will not be challenged by known or unknown third parties, or that any pending trademark or patent applications will issue or provide us with any competitive advantage. Effective intellectual property protection may not be available to us or may be challenged by third parties. Furthermore, regulations governing domain names may not protect our trademarks and other proprietary rights that may be displayed on or in conjunction with our website and other marketing media. We may be unable to prevent third parties from acquiring or retaining domain names that are similar to, infringe upon, or diminish the value of our trademarks and other proprietary rights. We also rely on confidentiality, supplier, license and other agreements with our employees, suppliers and others. There is no guarantee that these third parties will comply with these agreements and refrain from misappropriating our proprietary rights. Misappropriation of our proprietary rights could materially adversely affect our business, financial position and operating results. ~~37We~~ **We** may not be able to discover or determine the extent of any unauthorized use or infringement or violation of our intellectual property or proprietary rights. Third parties also may take actions that diminish the value of our proprietary rights or our reputation. The protection of our intellectual property may require the expenditure of significant financial and managerial resources. Moreover, the steps we take to protect our intellectual property may not adequately protect our proprietary rights or prevent third parties from continuing to infringe or misappropriate these rights. We also cannot be certain that others will not independently develop or otherwise acquire equivalent or superior technology or other intellectual property rights, which could materially adversely affect our business, financial condition and operating results. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to obtain and use information that we regard as proprietary. Litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement or invalidity. Such litigation could be costly, time ~~-~~consuming and distracting to management, result in a diversion of resources, the impairment or loss of portions of our intellectual property and could materially adversely affect our business, financial condition and operating results. Furthermore, our efforts to enforce our intellectual property rights may be met with defenses, counterclaims and countersuits attacking the validity and enforceability of our intellectual property rights. These steps may be inadequate to protect our intellectual property. We will not be able to protect our intellectual property if we are unable to enforce our rights or if we do not detect unauthorized use of our intellectual property. Despite our precautions, it may be possible for unauthorized third parties to use information that we regard as proprietary to create product offerings that compete with ours. Risks Related to Government Regulation of Our Food ~~OperationsWe~~ -- **Operations We** are subject to extensive governmental regulations, which require significant expenditures and ongoing compliance efforts. We are subject to extensive federal, state and local regulations. Our food processing facilities and products are subject to inspection by the USDA, the FDA and various state and local health and agricultural agencies. Applicable statutes and regulations governing food products include rules for labeling the content of specific types of foods, the nutritional value of that food and its serving size, as well as rules that protect against contamination of products by food ~~-~~borne pathogens and food production rules addressing the discharge of materials and pollutants and animal welfare. Many jurisdictions also provide that food producers adhere to good manufacturing or production practices (the definitions of which may vary by jurisdiction) with respect to processing food. Recently, the food safety practices of the meat processing industry and produce industry have been subject to intense scrutiny and oversight by the USDA and FDA, respectively, and the FDA has begun to evaluate the possible need for new regulations for e- commerce food delivery companies, and future food- borne illness outbreaks or other food safety incidents related to meat or produce could lead to further governmental regulation of our business or of our suppliers. In addition, our fulfillment centers are subject to various federal, state and local laws and regulations relating to workplace safety and workplace health. Our fulfillment centers and offices, as applicable ~~are~~ **continue to** also **be** subject to additional FDA, Centers for Disease Control and Prevention, Occupational Safety and Health Administration regulations and guidelines and local guidelines relating to ~~mitigating the spread~~

~~of~~ COVID- 19. Failure to comply with all applicable laws and regulations could subject us ~~or~~ **,** our suppliers **or other strategic partners** to civil remedies, including fines, injunctions, product recalls or seizures and criminal sanctions, any of which could have a material adverse effect on our business, financial condition and operating results. Furthermore, compliance with current or future laws or regulations ~~, including those related to mitigating the spread of COVID- 19,~~ could require us to make significant expenditures or otherwise materially adversely affect our business, financial condition and operating results. Even inadvertent, non- negligent or unknowing violations of federal, state or local regulatory requirements could expose us to adverse governmental action and materially adversely affect our business, financial condition and operating results. The Federal Food, Drug, and Cosmetic Act, or FDCA, which governs the shipment of foods in interstate commerce, generally does not distinguish between intentional and unknowing, non- negligent violations of the law' s ~~38requirements~~ -- **requirements** . Most state and local laws operate similarly. Consequently, almost any deviation from subjective or objective requirements of the FDCA or state or local law leaves us vulnerable to a variety of civil and criminal penalties. In the future, we may deploy new equipment, update our facilities or occupy new facilities. These activities require us to adjust our operations and regulatory compliance systems to meet rapidly changing conditions. Although we have adopted and implemented systems to prevent the production of unsafe or mislabeled products, any failure of those systems to prevent or anticipate an instance or category of deficiency could result in significant business interruption and financial losses to us. The occurrence of events that are difficult to prevent completely, such as the introduction of pathogenic organisms from the outside environment into our facilities, also may result in the failure of our products to meet legal standards. Under these conditions we could be exposed to civil and criminal regulatory action. In some instances **,** we may be responsible or held liable for the activities and compliance of our third- party vendors ~~and~~ **,** suppliers **or other strategic partners** , despite limited visibility into their operations. Although we monitor and carefully select our third- party vendors ~~and~~ **,** suppliers **, or other strategic partners** , they may fail to adhere to regulatory standards, our safety and quality standards or labor and employment practices, and we may fail to identify deficiencies or violations on a timely basis or at all. In addition, a statute in California called the Transparency in Supply Chains Act of 2010 requires us to audit our suppliers with respect to certain risks related to slavery and human trafficking and to mitigate any such risks in our operations, and any failure to disclose issues or other non- compliance could subject us to action by the California Attorney General. We cannot assure you that we will always be in full compliance with all applicable laws and regulations or that we will be able to comply with any future laws and regulations. Failure to comply with these laws and regulations could materially adversely affect our business, financial condition and operating results. Changes to law, regulation or policy applicable to foods could leave us vulnerable to adverse governmental action and materially adversely affect our business, financial condition and operating results. The food industry is highly regulated. We invest significant resources in our efforts to comply with the local, state and federal food regulatory regimes under which we operate. However, we cannot assure you that existing laws and regulations will not be revised or that new, more restrictive laws, regulations, guidance or enforcement policies will not be adopted or become applicable to us, our suppliers or the products we distribute. We also operate under a business model that is relatively new to the food industry, in which we rapidly source, process, store and package meal ingredients — including fresh fruits and vegetables, and poultry, beef and seafood, each of which may be subject to a unique regulatory regime — and ship them directly to consumers in the course of e- commerce transactions. Our business model leaves our business particularly susceptible to changes in and reinterpretations of compliance policies of the FDA and other government agencies, and some of our competitors may interpret the applicability of the same or similar laws and regulations to their businesses differently than we interpret them. Furthermore, it is unclear how the FDA may interpret and enforce certain recently promulgated regulations, such as the requirements regarding food defense mitigation strategies, or if the FDA will adopt new regulations for e- commerce food delivery companies, which present considerable future uncertainty. Recent and ongoing changes in senior federal government officials and policy priorities create additional uncertainty. Our existing compliance structures may be insufficient to address the changing regulatory environment and changing expectations from government regulators regarding our business model. This may result in gaps in compliance coverage or the omission of necessary new compliance activity. Our facilities and operations are governed by numerous and sometimes conflicting registration, licensing and reporting requirements. Our fulfillment centers are required to be registered with the federal government and, depending on their location, are also subject to the authority of state and local governments. In some cases, disparate registration and licensing requirements lead to legal uncertainty, inconsistent government classifications of our operations and unpredictable governmental actions. Regulators may also change prior interpretations of governing licensing and registration requirements. Our relatively new business model leaves us particularly susceptible to these factors. If we misapply or misidentify licensing or registration requirements, fail to maintain our registrations or licenses or otherwise ~~39violate~~ -- **violate** applicable requirements, our products may be subject to seizure or recall and our operations subject to injunction. This could materially adversely affect our business, financial condition and operating results. Similarly, we are required to submit reports to the FDA' s Reportable Food Registry in the event that we determine a product may present a serious danger to consumers. The reporting requirement may be triggered based on a subjective assessment of incomplete and changing facts. Our inventory moves very rapidly throughout our supply and distribution chain. Should we fail, in a timely fashion, to identify and report a potentially reportable event which, subsequently, is determined to have been reportable, government authorities may institute civil or criminal enforcement actions against us, and may result in civil litigation against us or criminal charges against certain of our employees. This could materially adversely affect our business, financial condition and operating results. Good manufacturing process standards and food safety compliance metrics are complex, highly subjective and selectively enforced. The federal regulatory scheme governing food products establishes guideposts and objectives for complying with legal requirements rather than providing clear direction on when particular standards apply or how they must be met. For example, FDA regulations referred to as Hazard Analysis and Risk ~~-~~ Based Preventive Controls for Human Food require that we evaluate food safety hazards inherent to our specific products and operations. We must then implement " preventive controls " in cases where we determine that qualified food safety personnel would recommend that we do so. Determining what constitutes a food safety hazard, or what a qualified food safety expert might recommend to prevent such a hazard, requires evaluating a variety of situational factors. This analysis is necessarily subjective, and a government regulator may find our analysis or conclusions inadequate. Similarly, the standard of " good manufacturing practice " to which we are held in our food production operations relies on a hypothesis regarding what individuals and organizations qualified in food manufacturing and food safety would find to be appropriate practices in the context of our operations. Our business model, and the scale and nature of our operations, have relatively few meaningful comparisons among traditional food companies. Government regulators may disagree with our analyses and decisions regarding the good manufacturing practices appropriate for our operations. Decisions made or processes adopted by us in producing our products are subject to after ~~-~~the ~~-~~fact review by government authorities, sometimes years after the fact. Similarly, governmental agencies and personnel within those agencies may alter, clarify or even reverse previous interpretations of compliance requirements and the circumstances under which they will institute formal enforcement activity. It is not always possible accurately to predict regulators' responses to actual or alleged food ~~-~~production deficiencies due to the large degree of discretion afforded regulators. We may be vulnerable to civil or criminal enforcement action by government regulators if they disagree with our analyses, conclusions, actions or practices. This could materially adversely affect our business, financial condition and operating results. Packaging, labeling and advertising requirements are subject to varied interpretation and selective enforcement. We operate under a novel business model in which we source, process, store and package meal ingredients and ship them directly to consumers. Most FDA requirements for mandatory food labeling are decades old and were adopted prior to the advent of large- scale, direct ~~-~~to ~~-~~consumer food sales and e- commerce platforms. Consequently, we, like our competitors, must make judgments regarding how best to comply with labeling and packaging regulations and industry practices not designed with our specific business model in mind. Government regulators may disagree with these judgments, leaving us open to civil or criminal enforcement action. This could materially adversely affect our business, financial condition and operating results. We are subject to detailed and complex requirements for how our products may be labeled and advertised, which may also be supplemented by guidance from governmental agencies. Generally speaking, these requirements divide information into mandatory information that we must present to consumers and voluntary information that we may present to consumers. Packaging, labeling, disclosure and advertising regulations may describe what mandatory information must be provided to consumers, where and how that information is to be displayed physically on our materials or elsewhere, the terms, words or phrases in which it must be disclosed, and the penalties for non- compliance. ~~40Voluntary~~ -- **Voluntary** statements made by us or by certain third parties, whether on package labels or labeling, on websites, in print, in radio, on social media channels, or on television, can be subject to FDA regulation, Federal Trade Commission, or FTC, regulation, USDA regulation, state and local regulation, or any combination of the foregoing. These statements may be subject to specific requirements, subjective regulatory evaluation, and legal challenges by plaintiffs. FDA, FTC, USDA and state ~~-~~and local ~~-~~level regulations and guidance can be confusing and subject to conflicting interpretations. Guidelines, standards and market practice for, and consumers' understandings of, certain types of voluntary statements, such as those characterizing the nutritional and other attributes of food products, continue to evolve rapidly, and regulators may attempt to impose civil or criminal penalties against us if they disagree with our approach to using voluntary statements. Furthermore, in recent years the FDA has increased enforcement of its regulations with respect to nutritional, health and other claims related to food products, and plaintiffs have commenced legal actions against a number of companies that market food products positioned as " natural " or " healthy, " asserting false, misleading and deceptive advertising and labeling claims, including claims related to such food being " all natural " or that they lack any genetically modified ingredients. Should we become subject to similar claims or actions, consumers may avoid purchasing products from us or seek alternatives, even if the basis for the claim is unfounded, and the cost of defending against any such claims could be significant. The occurrence of any of the foregoing risks could materially adversely affect our business, financial condition and operating results. Risks Related to Government Regulation of our Wine ~~BusinessIf~~ -- **Business If** we do not comply with the specialized regulations and laws that regulate the alcoholic beverage industry, our business could be materially adversely affected. Alcoholic beverages are highly regulated at both the federal and state levels. Regulated areas include production, importation, product labeling, taxes, marketing, pricing, delivery, ownership restrictions, prohibitions on sales to minors, and relationships among alcoholic beverage producers, wholesalers and retailers. We cannot assure you that we will always be in full compliance with all applicable regulations or laws, that we will be able to comply with any future regulations and laws, that we will not incur material costs or liabilities in connection with compliance with applicable regulatory and legal requirements, or that such regulations and laws will not materially adversely affect our wine business. We rely on various internal and external personnel with relevant experience complying with applicable regulatory and legal requirements, and the loss of personnel with such expertise could adversely affect our wine business. Licenses issued by state and federal alcoholic beverage regulatory agencies are required in order to produce, sell and ship wine. We have state and federal licenses, and must remain in compliance with state and federal laws in order to keep our licenses in good standing. Compliance failures can result in fines, license suspension or license revocation. In some cases, compliance failures can also result in cease **-** and **-** desist orders, injunctive proceedings or other criminal or civil penalties. If our licenses do not remain in good standing, our wine business could be materially adversely affected. Our wine business relies substantially on state laws that authorize the shipping of wine by out ~~-~~of ~~-~~state producers directly to in ~~-~~state consumers. Those laws are relatively new in many states, and it is common for the laws to be modified or regulators to change prior interpretations of governing licensing requirements. Adverse changes to laws or their interpretation allowing a producer to ship wine to consumers across state lines could materially adversely affect our wine business. Other Risks Related to Government ~~RegulationGovernment~~ **Regulation Government** regulation of the Internet, e- commerce and other aspects of our business is evolving, and we may experience unfavorable changes in or failure to comply with existing or future regulations and laws. We are subject to a number of regulations and laws that apply generally to businesses, as well as regulations and laws specifically governing the Internet and ecommerce and the marketing, sale and delivery of goods and services over the Internet. Existing and future regulations and laws may impede the growth and availability of the Internet and online services and may limit our ability to operate our business. These laws and regulations, which continue to evolve, ~~41cover~~ -- **cover** taxation, tariffs, privacy and data protection, data security, pricing, content, copyrights, distribution, mobile and other communications, advertising practices, electronic contracts, sales procedures, automatic subscription renewals, credit card processing procedures, consumer protections, the provision of online payment services, unencumbered Internet access to our services, the design and operation of websites, and the characteristics and quality of product offerings that are offered online. We cannot guarantee that we have been or will be fully compliant in every jurisdiction, as it is not entirely clear how existing laws and regulations governing issues such as property ownership, sales and other taxes, consumer protection, libel and personal privacy apply or will be enforced with respect to the Internet and e- commerce, as many of these laws were adopted prior to the advent of the Internet and e- commerce and do not contemplate or address the unique issues they raise. Moreover, as e- commerce continues to evolve, increasing regulation and enforcement efforts by federal and state agencies and the prospects for private litigation claims related to our data collection, privacy policies or other e- commerce practices become more likely. In addition, the adoption of any laws or regulations, or the imposition of other legal requirements, that adversely affect our ability to market, sell, and deliver our products could decrease our ability to offer, or customer demand for, our offerings, resulting in lower net revenue, and existing or future laws or regulations could impair our ability to expand our product offerings, which could also result in lower net revenue and make us more vulnerable to increased competition. Future regulations, or changes in laws and regulations or their existing interpretations or applications, could also require us to change our business practices, raise compliance costs or other costs of doing business and materially adversely affect our business, financial condition and operating results. Failure to comply with privacy ~~-~~related obligations, including federal and state privacy laws and regulations and other legal obligations, or the expansion of current or the enactment of new privacy ~~-~~related obligations could materially adversely affect our business. A variety of federal and state laws and regulations govern the collection, use, retention, sharing, transfer and security of customer data. We also may choose to comply with, or may be required to comply with, self- regulatory obligations or other industry standards with respect to our collection, use, retention, sharing or security of customer data. We strive to comply with all applicable laws, regulations, self- regulatory requirements, policies and legal obligations relating to privacy, data usage, and data protection. It is possible, however, that these laws, regulations and other obligations may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and which may conflict with other rules or requirements or our practices. We cannot guarantee that our practices have complied, comply, or will comply fully with all such laws, regulations, requirements and obligations. We have posted our privacy policy which describes our practice related to the collection, use and disclosure of customer data on our website and in our mobile application. Any failure, or perceived failure, by us to comply with our posted privacy policy or with any federal or state laws, regulations, self- regulatory requirements, industry standards, or other legal obligations could result in claims, proceedings or actions against us by governmental entities, customers or others, or other liabilities, or could result in a loss of customers, any of which could materially adversely affect our business, financial condition and operating results. In addition, a failure or perceived failure to comply with industry standards or with our own privacy policy and practices could result in a loss of customers and could materially adversely affect our business, financial condition and operating results. Additionally, existing privacy ~~-~~related laws, regulations, self- regulatory obligations and other legal obligations are evolving and are subject to potentially differing interpretations. Various federal and state legislative and regulatory bodies may expand current laws or enact new laws regarding privacy matters, and courts may interpret existing privacy ~~-~~related laws and regulations in new or different manners. For example, we are subject to the California Consumer Privacy Act of 2018, which came into effect on January 1, 2020 and its successor, the California Privacy Rights Act, which **took** ~~will take~~ effect ~~in~~ **on** January **1,** 2023, which require, among other things, that companies that process information on California residents to provide new disclosures to California consumers, allows such consumers to opt out of data sharing with third parties and provides a new cause of action for data breaches. Some other states have adopted, and many other states are considering, similar legislation. While we have invested and may continue to invest in readiness to comply with the applicable legislation, the effects of these new and evolving laws, regulations, and other obligations potentially are far- reaching and may require us to further modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. ~~42Changes~~ -- **Changes** in privacy ~~-~~related laws, regulations, self- regulatory obligations and other legal obligations, or changes in industry standards or consumer sentiment, such as our need to adjust our digital marketing in response to the ongoing elimination of cookie- based tracking, could require us to incur substantial costs or to change our business practices, including changing, limiting or ceasing altogether the collection, use, sharing, or transfer of data relating to consumers. Any of these effects could materially adversely affect our business, financial condition and operating results. Our failure to collect state or local sales, use or other similar taxes could result in substantial tax liabilities, including for past sales, as well as penalties and interest, and our business could be materially adversely affected. In general, we have not historically collected state or local sales, use or other similar taxes in any jurisdictions in which we do not have a tax nexus, in reliance on court decisions or applicable exemptions that restrict or preclude the imposition of obligations to collect state and local sales, use and other similar taxes with respect to online sales of our products. In addition, we have not historically collected state or local sales, use or other similar taxes in certain jurisdictions in which we do have a physical presence in reliance on applicable exemptions. On June 21, 2018, the U. S. Supreme Court decided, in South Dakota v. Wayfair, Inc., that state and local jurisdictions may, at least in certain circumstances, enforce a sales and use tax collection obligation on remote vendors that have no physical presence in such jurisdiction. A number of states have already begun, or have positioned themselves to begin, requiring sales and use tax collection by remote vendors and / or by online marketplaces. The details and effective dates of these collection requirements vary from state to state. It is possible that one or more jurisdictions may assert that we have liability for periods for which we have not collected sales, use or other similar taxes, and if such an assertion or assertions were successful it could result in substantial tax liabilities, including for past sales as well as penalties and interest, which could materially adversely affect our business, financial condition and operating results. Changes in tax treatment of companies engaged in e- commerce could materially adversely affect the commercial use of our sites and our business, financial condition and operating results. The decision of the U. S. Supreme Court in South Dakota v. Wayfair, Inc., discussed above, permits state and local jurisdictions, in certain circumstances, to impose sales and use tax collection obligation on remote vendors, and a number of states have already begun imposing such obligations on Internet vendors and online marketplaces. In addition, due to the global nature of the Internet, it is possible that various states ~~or, if we choose to expand internationally in the future, foreign countries,~~ might attempt to impose additional or new regulation on our business or levy additional or new sales, income or other taxes relating to our activities. Tax authorities at the ~~international,~~ federal, state **,** and local levels are currently reviewing the appropriate treatment of companies engaged in e- commerce. New or revised ~~international,~~ federal, state **,** or local tax regulations may subject us or our customers to additional sales, income **,** and other taxes. New or revised taxes and, in particular, sales taxes, value ~~-~~ added taxes and similar taxes (including sales and use taxes that we may be required to collect as a result of the Wayfair decision) are likely to increase costs to our customers and increase the cost of doing business online (including the cost of compliance processes necessary to capture data and collect and remit taxes), and such taxes may decrease the attractiveness of purchasing products over the Internet. Any of these events could materially adversely affect our business, financial condition and operating results. Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations which could subject our business to higher tax liability. We may be limited in the portion of net operating loss carryforwards that we can use in the future to offset taxable income for U. S. federal and state income tax purposes. As of December 31, **2022 and** 2021 ~~and 2020~~ , we had U. S. federal net operating loss carryforwards of $ ~~460~~ **563** . 9 million and $ ~~397~~ **460** . ~~5~~ **9** million, respectively, and state net operating loss carryforwards of $ ~~197~~ **249** . 7 million and $ ~~153~~ **197** . ~~2~~ **7** million, respectively, that are available to offset future tax liabilities. Of the $ ~~460~~ **563** . 9 million of federal net operating loss carryforwards, $ 221. ~~5~~ **4** million was generated before January 1, 2018 and is subject to a 20- year carryforward period. The remaining $ ~~239~~ **342** . ~~4~~ **5** million can be carried forward indefinitely, but is subject to an 80 % taxable income limitation, in any future taxable year. The pre- 2018 federal and all state net operating losses will begin to expire in 2032 and 2033, respectively, if not utilized. Furthermore, Section 382 of the Internal Revenue Code of 1986, as amended **(** ~~, or~~ " the Code " **)** , limits the ability of a company that undergoes an " ownership change " (generally defined as a greater than 50 percentage point cumulative ~~43change~~ -- **change** (by value) in the equity ownership of certain stockholders over a rolling three- year period) to utilize net operating loss carryforwards and tax credit carryforwards and certain built- in losses recognized in years after the ownership change. Future changes in our stock ownership, some of which may be outside of our control, could result in an ownership change under Section 382 of the Code. In addition, Section 383 of the Code generally limits the amount of tax liability in any post- ownership change year that can be reduced by pre- ownership change tax credit carryforwards. If we were to undergo an " ownership change, " it could materially limit our ability to utilize our net operating loss carryforwards and other deferred tax assets. Risks Related to Our Class A Common ~~StockThe~~ --- **Stock We may not be able to remain in compliance with the New York Stock Exchange' s requirements for the continued listing of our Class A common stock on the exchange. On December 21, 2022, we were notified by the New York Stock Exchange (the " NYSE ") that we were no longer in compliance with the NYSE' s continued listing standards set forth in Section 802. 01B of the NYSE Listed Company Manual because our average global market capitalization over a consecutive 30 trading- day period was less than $ 50. 0 million and, at the same time, our last reported stockholders' equity was less than $ 50. 0 million. If our average global market capitalization over a consecutive 30 trading- day period drops below $ 15. 0 million, the NYSE will initiate delisting proceedings. As required by the NYSE, on January 6, 2023, we notified the NYSE of our intent to cure the deficiency and restore our compliance with the NYSE continued listing standards. In accordance with applicable NYSE procedures, on February 6, 2023, we submitted a plan advising the NYSE of the definitive actions we have taken and are taking, that would bring us into compliance with the NYSE continued listing standards within 18 months of receipt of the written notice. On February 28, 2023, the NYSE accepted the plan and our Class A common stock will continue to be listed and traded on the NYSE during the 18- month period from December 21, 2022, subject to our compliance with other NYSE continued listing standards and continued periodic review by the NYSE of our progress with respect to our plan. We can provide no assurances that we will be able to satisfy any of the steps outlined in the plan approved by the NYSE and maintain the listing of our shares on the NYSE. In addition, on December 21, 2022, we were notified by the NYSE that we no longer satisfied the continued listing compliance standard set forth Section 802. 01C of the NYSE Listed Company Manual because the average closing price of our Class A common stock was less than $ 1. 00 per share over a consecutive 30- day trading period. The notice has no immediate impact on the listing of our Class A common stock which will continue to trade on the NYSE during the applicable cure period. We are closely monitoring the closing share price of our Class A common stock and are considering all available options. We intend to regain compliance with the NYSE listing standards by pursing measures that are in our best interest and the best interests of our shareholders, which could include seeking to effect a reverse stock split. Although we anticipate that we will regain compliance with Section 802. 01C of the NYSE Listed Company Manual within the cure period, the price of our Class A common stock is influenced by many factors, many of which are beyond our control. There is no assurance that our efforts will be successful, nor is there any assurance that we will remain in compliance with Section 802. 01C of the NYSE Listed Company Manual or other NYSE continued listing standards in the future. A delisting of our Class A common stock could negatively impact our company and holders of our Class A common stock, including by reducing the willingness of investors to hold our Class A common stock because of the resulting decreased price, liquidity and trading of our Class A common stock, limited availability of price quotations, and reduced news and analyst coverage. These developments may also require brokers trading in our Class A common stock to adhere to more stringent rules and may limit our ability to raise capital by issuing additional shares of Class A**

common stock in the future. Delisting may adversely impact the perception of our financial condition, cause reputational harm with investors, our employees and parties conducting business with us, and limit our access to debt and equity financing. The perceived decrease in value of employee equity incentive awards may reduce their effectiveness in encouraging performance and retention. The market price of our Class A common stock has been and may ~~,~~ in the future be highly volatile **,** and could be subject to wide fluctuations in response to various factors, some of which are beyond our control, and which could result in substantial losses for investors purchasing our shares. The stock market in general and the market for our Class A common stock in particular has, from time to time, and may again, experience extreme volatility that has often been unrelated to the operating performance of particular companies. For example, since our initial public offering in June 2017, the market price of our Class A common stock has ranged from a high of $ 165. 00 (adjusted for the reverse stock split that occurred in June 2019) to a low of $ ~~2~~ **0** . ~~01~~ **61** . Some of the factors that may cause the market price of our Class A common stock to fluctuate include: ~~●~~ • price and volume fluctuations in the overall stock market from time to time; ~~●~~ • volatility in the market price and trading volume of comparable companies; ~~●~~ • actual or anticipated changes in our earnings or fluctuations in our operating results or in the expectations of securities analysts; ~~●~~ • announcements of new service offerings, strategic alliances or significant agreements by us or by our competitors; ~~●~~ • departure of key personnel; ~~●~~ • litigation involving us or that may be perceived as having an adverse effect on our business; ~~●~~ • changes in general economic, industry and market conditions and trends **, including as a result of high inflationary pressures** ; ~~●~~ • investors' general perception of us; ~~●~~ • sales or perceived sales of large blocks of our stock; and ~~●~~ • announcements regarding industry consolidation. In the past, following periods of volatility in the market price of a company' s securities, securities class action litigation has often been brought against that company. For example, we have been subject to several putative class action lawsuits alleging federal securities law violations in connection with our initial public offering, or IPO. Because of the past and the potential future volatility of our stock price, we may become the target of additional securities litigation in the future. Securities litigation could result in substantial costs and divert management' s attention and resources from our business. ~~44Our~~ -- **Our** quarterly operating results or other operating metrics may fluctuate significantly, which could cause the trading price of our Class A common stock to continue to decline. Our quarterly operating results and other operating metrics have fluctuated in the past and may in the future fluctuate as a result of a number of factors, many of which are outside of our control and may be difficult to predict, including: ~~●~~ • **the timing and amount of raising additional capital, if any; •** the level of demand for our service offerings and our ability to maintain ~~and increase~~ our customer base, • ~~including our ability to maintain higher levels of demand that has resulted and may result from our growth strategy and from the impact the COVID- 19 pandemic has had on consumer behaviors; ●~~ the timing and success of new service introductions by us or our competitors or any other change in the competitive landscape of our market; ~~●~~ • the mix of products sold; ~~●~~ • order rates by our customers; ~~●~~ • pricing pressure as a result of competition or otherwise; ~~●~~ • delays or disruptions in our supply chain; ~~●~~ • our ability to reduce costs; ~~●~~ • errors in our forecasting of the demand for our products, which could lead to lower net revenue or increased costs; ~~●~~ • seasonal or other variations in buying patterns by our customers; ~~●~~ • changes in and timing of sales and marketing and other operating expenses that we may incur; ~~●~~ • levels of customer credits and refunds; ~~●~~ • adverse litigation judgments, settlements or other litigation ~~-~~ related costs; ~~●~~ • food safety concerns, regulatory proceedings or other adverse publicity about us or our products; ~~●~~ • costs related to the acquisition of businesses, talent, technologies or intellectual property, including potentially significant amortization costs and possible write ~~-~~ downs; ~~●~~ • changes in consumer tastes and preferences and consumer spending habits; and ~~●~~ • general economic conditions ~~.~~ **, including general economic changes as a result of high inflationary pressures** Any one of the factors above or the cumulative effect of some or all of the factors above may result in significant fluctuations in our operating results. The variability and unpredictability of our quarterly operating results or other operating metrics could result in our failure to meet our expectations or those of any analysts that cover us or investors with respect to net revenue or other operating results for a particular period. If we fail to meet or exceed such expectations for these or any other reasons, the market price of our Class A common stock could continue to fall substantially, and we could face costly lawsuits, including securities class action suits. ~~45If~~ **If** securities or industry analysts do not publish research or reports about us, our business or our market, or if they publish negative evaluations of our stock or the stock of other companies in our industry, the price of our stock and trading volume could decline. The trading market for our Class A common stock is influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If the analyst (s) covering our business downgrade their evaluations of our stock or the stock of other companies in our industry, the price of our stock could decline. Since December 31, 2018, ~~twelve~~ **thirteen** of the analysts who formerly covered our stock have ceased to cover our stock and we currently have only ~~one~~ **four** ~~analyst~~ **analysts** covering our stock **, three of whom have commenced coverage last year** . If ~~the~~ **these** ~~remaining analyst~~ **analysts** ~~ceases~~ **cease** to cover our stock and other analysts do not begin to cover our stock, we could lose additional visibility in the market for our stock, which in turn could cause our stock price to decline further. The trading market for our Class A common stock is influenced by the research and reports that industry or financial analysts publish about us or our business. There can be no assurance that existing analysts will continue to cover us or that new analysts will begin to cover us. There is also no assurance that any covering analyst will provide favorable coverage. A lack of research coverage or adverse coverage may negatively impact the market price of our Class A common stock. In addition, if one or more of the analysts covering our business downgrade their evaluations of our stock or the stock of other companies in our industry, the price of our Class A common stock could decline. Because we do not expect to pay any dividends on our Class A common stock for the foreseeable future, investors may never receive a return on their investment. You should not rely on an investment in our Class A common stock to provide dividend income. We have never paid cash dividends to holders of our Class A common stock and do not anticipate that we will pay any cash dividends to holders of our Class A common stock in the foreseeable future. Instead, we plan to retain any earnings to maintain and support our existing operations. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any return on their investment. As a result, investors seeking cash dividends should not purchase our Class A common stock. ~~46Joseph~~ -- **Joseph** N. Sanberg and **certain of** his affiliates **and other related parties** beneficially own a significant portion of our outstanding Class A common stock, and therefore have significant influence over the outcome of matters subject to stockholder approval, including a change of control, which could make our Class A common stock less attractive to some investors or otherwise harm our stock price **, or such parties could sell their shares into the market, which could negatively impact the trading price of our Class A common stock** . As of February ~~15~~ **28** , ~~2022~~ **2023** , Mr. Sanberg and his affiliates beneficially own an aggregate of ~~16. 2 million~~ **8, 467, 864** shares of our outstanding Class A common stock ~~(including~~ **held directly, and Mr. Sanberg and his affiliates also beneficially own an additional** 9 ~~. 3 million~~ **, 021, 620** shares issuable upon exercise of warrants held by Mr. Sanberg' s affiliates ~~)~~, which collectively ~~represent~~ **represents** approximately ~~38~~ **22** . ~~7~~ **3** % of our outstanding capital stock. The shares underlying the warrants are only entitled to voting rights upon exercise **of such warrants** . ~~The~~ **In addition, we have agreed to issue 9, 823, 009 additional shares of Class A common stock to RJB at the closing of the transactions contemplated by the RJB Purchase Agreement (as amended). If that transaction closes, upon the issuance of the additional shares, Mr. Sanberg and his affiliates would own, assuming the exercise of all** warrants held by **them** ~~Mr. Sanberg' s affiliates are subject to a contractual limitation on exercise~~ , ~~capping~~ **approximately 31. 0 % of our outstanding capital stock. For additional information regarding** the beneficial ownership of Mr. Sanberg and his affiliates ~~at 33. 0 % until such date that no indebtedness remains outstanding under~~ **, see " Substantial sales of shares of our Class A common stock could cause the market price of our Class A common stock to decline and /** ~~our~~ - **or** ~~existing financing agreement~~ **result in dilution to our stockholders** . **"** Pursuant to ~~the~~ **a** purchase agreement **(** ~~, or~~ the **" 2021** Purchase Agreement **") among us** , ~~with~~ RJB ~~Partners LLC, or RJB, an affiliate of Mr. Sanberg,~~ and Mr. M. Salzberg, dated September 15, 2021, RJB is subject to a voting agreement, pursuant to which RJB agreed to cause all of our voting securities beneficially owned by it or certain of its affiliates, including Mr. Sanberg, in excess of 19. 9 % of the total voting power of our outstanding capital stock to be voted in proportion to, and accordance with, the vote of all of our stockholders, limiting the effective voting power of the securities beneficially held by Mr. Sanberg **. In addition** , ~~including securities issued~~ **under the August 2022 amendment** to **the** RJB **Purchase Agreement, we agreed at that time, effectively immediately following, and contingent upon, the RJB Second Closing, to appoint the individual designated by Joseph N. Sanberg to serve as a director on our board of directors until the expiration of the standstill period** in ~~connection~~ **the 2021 Purchase Agreement** with ~~the Capital Raise, to between 19. 9 % and 24. 3 %, depending on the number of outstanding shares of capital stock owned by~~ RJB ~~, its affiliates, and the votes of other stockholders~~ . As a result, ~~these stockholders will~~ **Mr. Sanberg and his affiliates** have significant influence over matters submitted to our stockholders for approval, including the election of directors and the approval of any merger, consolidation or sale of all or substantially all of our assets. This concentration of voting power might delay, defer or prevent a change in control or delay or prevent a merger, consolidation, takeover or other business combination involving us on terms that other stockholders may desire, which, in each case, could adversely affect the market price of our Class A common stock. ~~Substantial sales of shares of our Class A common stock could cause the market price of our Class A common stock to decline and / or result in dilution to our stockholders.~~ Sales of a substantial number of shares of our Class A common stock in the public market, or the perception that these sales might occur, could reduce the market price of our Class A common stock and could impair our ability to raise capital through the sale of additional equity or other securities. We are unable to predict the effect that such sales may have on the prevailing market price of our Class A common stock. As of February ~~15~~ **28** , ~~2022~~ **2023** , an aggregate of ~~1~~ **4** , ~~507~~ **790** , ~~597~~ **732** shares of our common stock remained available for future grants under our equity incentive plans **. The issuance of such shares would dilute the ownership of existing stockholders** . Shares registered under our registration statements on Form S- 8 are available for sale in the public market subject to vesting arrangements and exercise of options, and the restrictions of Rule 144 under the Securities Act of 1933, or the Securities Act. If these ~~additional~~ shares are sold, or if it is perceived that they will be sold, in the public market, the trading price of our Class A common stock could decline. Additionally, as of February ~~15~~ **28** , ~~2022~~ **2023** , the holders of an aggregate of approximately ~~3~~ **1** . ~~6~~ **9** million registrable securities **have rights, subject to certain conditions, to include their securities in registration statements that we may file for ourselves or other stockholders, inclusive of the 176, 991 shares of Class A common stock issued to Remember Bruce, LLC under the RJB Purchase Agreement. If the Second RJB Closing occurs, holders of an additional 9, 823, 009 shares of Class A common stock would** have rights, subject to certain conditions, to include their securities in registration statements that we may file for ourselves or other stockholders. If we were to register these securities for resale, they could be freely sold in the public market. If these additional securities are sold, or if it is perceived that they will be sold, in the public market, the trading price of our Class A common stock could decline. **In** ~~We currently have on file with the SEC a universal shelf registration statement which allows us to offer and sell registered Class A common stock, preferred stock, debt securities and warrants from time to time pursuant to one or more offerings of up to $ 75, 000, 000 in aggregate offering price at prices and terms to be determined at the time of sale. On August 10, 2020, we consummated an underwritten public offering of 4, 000, 000 shares of Class A common stock registered under our universal shelf registration statement. On June 18, 2021, we consummated an underwritten public offering of 5, 411, 900 shares of Class A common stock, including the 705, 900 shares issuable upon the underwriter' s exercise of its option to purchase additional shares, under our universal shelf registration statement. Following the August 2020 and June 2021 underwritten offerings, approximately $ 15. 0 million in aggregate offering price remains available for issuance under our universal shelf registration statement. 47In~~ connection with the amendment to our **prior** senior secured term loan, on the first day of each quarter that our senior secured **notes were** ~~term loan is~~ outstanding, beginning on or after July 1, 2021, we ~~are~~ **were** obligated to issue warrants to the lenders to purchase such number of shares of Class A common stock as equals 0. 50 % of the then outstanding shares of our common stock on a fully- diluted basis and we ~~are~~ **were** required to file a registration statement with the SEC to register for resale the shares of Class A common stock underlying the warrants. Pursuant to this obligation, **(i)** on July 1, 2021, we issued warrants to the lenders exercisable for an aggregate of 130, 350 shares of Class A common stock, **(ii)** on October 1, 2021, we issued warrants to the lenders exercisable for an aggregate of 133, 868 shares of Class A common stock ~~and~~ **, (iii)** on January 1, 2022 **we issued warrants to the lenders exercisable** for an aggregate of 224, 516 **shares of Class A common stock, and (iv) on April 1, 2022, we issued warrants to the lenders exercisable for an aggregate of 236, 016** shares of Class A common stock; all such warrants have been fully exercised **,** and a total of ~~488~~ **724** , ~~055~~ **750** shares have been issued to the lenders upon such exercises. We **have** filed registration statements for the resale of such shares with the SEC ~~on July 30, 2021, October 15, 2021 and January 14, 2022, respectively~~ . On September 15, 2021, in connection with the private placement with Mr. M. Salzberg pursuant to the **2021** Purchase Agreement, we issued to Mr. M. Salzberg (i) 300, 000 shares of Class A common stock, (ii) warrants to purchase 240, 000 shares of Class A common stock at an exercise price of $ 15. 00 per share, (iii) warrants to purchase 120, 000 shares of Class A common stock at an exercise price of $ 18. 00 per share, and (iv) warrants to purchase 60, 000 shares of Class A common stock at an exercise price of $ 20. 00 per share, for an aggregate purchase price of $ 3. 0 million. On November 4, 2021, in connection with the **2021** Purchase Agreement and concurrently with the closing of the rights offering, we issued to RJB an aggregate of (i) 6, 265, 813 shares of Class A common stock, (ii) warrants to purchase 5, 012, 354. 58219726 shares of Class A common stock at an exercise price of $ 15. 00 per share, (iii) warrants to purchase 2, 506, 177. 291098630 shares of Class A common stock at an exercise price of $ 18. 00 per share, and (iv) warrants to purchase 1, 253, 088. 645549316 shares of Class A common stock at an exercise price of $ 20. 00 per share, for an aggregate purchase price of $ 62. 7 million in two private placements **, which was financed, according to Mr. Sanberg' s Schedule 13D filed on November 15, 2021 through a loan secured by a pledge of such shares of Class A common stock** . On November 4, 2021, we entered into a registration rights agreement with RJB and Mr. M. Salzberg, pursuant to which RJB, Mr. M. Salzberg and their respective permitted transferees **, including pledgees,** have the right to request that we file a shelf registration statement with respect to all or a portion of the shares that they hold, which include (x) shares of Class A common stock held prior to the execution of the **2021** Purchase Agreement, and (y) shares of Class A common stock and shares underlying the warrants purchased in connection with the **2021** Purchase Agreement **. On December 10, 2021, we filed a registration statement for the resale of such shares and warrants with the SEC, which permits Mr. Sanberg, RJB, Mr. M. Salzberg and their respective permitted transferees, to sell such shares and / or warrants at any time and from time to time** . On February 14, 2022, in connection **with** a private placement with RJB pursuant to a purchase agreement **(** ~~, or~~ the **"** February Purchase Agreement **")** , we issued to RJB an aggregate of (i) 357, 143 shares of Class A common stock, (ii) warrants to purchase 285, 714 shares of Class A common stock at an exercise price of $ 15. 00 per share, (iii) warrants to purchase 142, 857 shares of Class A common stock at an exercise price of $ 18. 00 per share, and (iv) warrants to purchase 71, 429 shares of Class A common stock at an exercise price of $ 20. 00 per share, for an aggregate purchase price of $ 5. 0 million. On February 14, 2022, we entered into a registration rights agreement with RJB pursuant to which, among other things, RJB and its permitted transferees have the right to request that we file a shelf registration statement with respect to all or a portion of the shares of Class A common stock and shares underlying the warrants purchased in connection with the February Purchase Agreement. **On April 29, 2022, in connection with a private placement with RJB, pursuant to the RJB Purchase Agreement, we issued to (i) Long Live Bruce, LLC (" LLB "), which was assigned RJB' s rights to purchase the foregoing shares, an aggregate of 1, 666, 667 shares of Class A common stock for an aggregate purchase price of $ 20. 0 million, which was financed, according to Mr. Sanberg' s Schedule 13D filed on May 2, 2022 through a loan secured by a pledge of such shares of Class A common stock. On April 29, 2022, in connection with a separate private placement with Linda Findley, a director and our President and Chief Executive Officer, pursuant to a purchase agreement (the " Findley Purchase Agreement "), we issued to Ms. Findley an aggregate of 41, 666 shares of Class A common stock. On April 29, 2022, (i) we and RJB entered into an amendment and restatement of the registration rights agreement entered into with RJB in connection with the February 2022 private placement, pursuant to which, among other things, RJB and its permitted transferees, including pledgees, have the right to request that we file a shelf registration statement with respect to all or a portion of the shares Class A common stock purchased in connection with the RJB Purchase Agreement and the shares of Class A common stock and shares underlying the warrants purchased in connection with the February Purchase Agreement, and (ii) a registration rights agreement with Ms. Findley, pursuant to which, among other things, Ms. Findley and her permitted transferees, including pledgees, have the right to request that we file a shelf registration statement with respect to all or a portion of the shares of Class A common stock purchased in connection with the Findley Purchase Agreement. On August 7, 2022 we and RJB entered into an amendment to the amended and restated registration rights agreement to establish certain registration rights in respect of the 176, 991 shares of Class A common stock issued to Remember Bruce, LLC under the RJB Purchase Agreement in December 2022 and 9, 823, 009 additional shares of common stock that we have agreed to issue to RJB at the closing of the transactions contemplated by the RJB Purchase Agreement,, which are consistent with those registration rights in respect of the 1, 666, 667 shares of Class A common stock purchased by RJB on April 29, 2022. The stockholders above, or their permitted transferees, including pledgees, could decide to sell their shares of Class A common stock into the market at any time, including on a rapid basis, and in one or more block trades or series of transactions, which could negatively impact the trading price of our Class A common stock. On April 29, 2020, we filed a universal shelf registration statement on Form S- 3 with the SEC, as amended by Amendment No. 1 to Form S- 3 filed in July 2020 (the " 2020 Shelf "), to register for sale from time to time up to $ 75. 0 million of Class A common stock, preferred stock, debt securities and / or warrants in one or more offerings, which became effective on July 23, 2020. In addition, on November 7, 2022, we filed a universal shelf registration statement (the " 2022 Shelf ") on Form S- 3 with the SEC, to register for sale from time to time up to $ 100. 0 million of Class A common stock, preferred stock, debt securities and / or warrants in one or more offerings, which became effective on November 10, 2022. On October 3, 2022, we entered into an equity distribution agreement with Canaccord Genuity LLC, as sales agent (the " Sales Agent "), pursuant to which we could issue and sell shares of our**

Class A common stock having an aggregate offering price of up to $ 14, 999, 425 from time to time through the Sales Agent, pursuant to an “ at- the- market ” offering (the “ October 2022 ATM ”). The 4, 622, 772 shares of our Class A common stock issued and sold pursuant to the October 2022 ATM were issued and sold under our 2020 Shelf. In addition, on November 10, 2022, we entered into an equity distribution agreement with the Sales Agent, pursuant to which we could issue and sell shares of our Class A common stock having an aggregate offering price of up to $ 30. 0 million from time to time through the Sales Agent, pursuant to an “ at- the- market ” offering (the “ November 2022 ATM ”). The 28, 998, 010 million shares of our Class A common stock issued and sold pursuant to the November 2022 ATM were issued and sold under the 2022 Shelf. Furthermore, on February 10, 2023, we entered into an equity distribution agreement with the Sales Agent, pursuant to which we may issue and sell shares of our Class A common stock having an aggregate offering price of up to $ 70. 0 million from time to time through the Sales Agent, pursuant to an “ at- the- market ” offering (the “ February 2023 ATM ”). The shares of Class A common stock issued and sold pursuant to the February 2023 ATM have been, and will be, issued and sold under our 2022 Shelf. As of February 28, 2023, we have issued and sold 394, 483 shares of Class A common stock pursuant to the February 2023 ATM. Sales of additional amounts of shares of our Class A common stock or other securities convertible into shares of Class A common stock, including **the** ~~any additional~~ warrants ~~to be~~ issued to our **prior** lenders in connection with the amendment to our **prior** senior secured **notes** ~~term loan~~ and the warrants issued pursuant to the **2021** Purchase Agreement **and the February Purchase Agreement** , for which we **have filed or** are obligated to file shelf registrations with the SEC relating to the shares underlying those warrants, would dilute our stockholders’ ownership in us. The exclusion of our Class A common stock from major stock indexes could adversely affect the trading market and price of our Class A common stock. Prior to September 15, 2021, we had issued and outstanding shares of Class B common stock with ten votes per share. Since that date, all issued and outstanding shares of Class B common stock were converted into Class A common stock and all shares now consist of Class A common stock with one vote per share. However, because our certificate of incorporation authorizes the issuance of different classes of stock with different voting rights, our Class A common stock could be excluded from stock indexes that exclude the securities of companies with unequal voting rights. Exclusion ~~48from~~ -- **from** stock indexes could make it more difficult, or impossible, for some fund managers to buy the excluded securities, particularly in the case of index tracking mutual funds and exchange traded funds. The exclusion of our Class A common stock from major stock indexes could adversely affect the trading market and price of our Class A common stock. Anti- takeover provisions in our restated certificate of incorporation and our amended and restated bylaws, as well as provisions of Delaware law, might discourage, delay or prevent a change in control of our company or changes in our management and, therefore, depress the trading price of our Class A common stock. Our restated certificate of incorporation and amended and restated bylaws and Delaware law contain provisions that may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares of our Class A common stock. These provisions may also prevent or delay attempts by our stockholders to replace or remove our management. Our corporate governance documents include provisions: ~~•~~ **•** establishing a classified board of directors with staggered three- year terms so that not all members of our board are elected at one time, which will be fully phased out in 2024; ~~•~~ **•** providing that directors may be removed by stockholders only for cause and only with a vote of the holders of at least 66 ~~–~~2 / 3 % of the votes that all our stockholders would be entitled to cast for the election of directors; ~~•~~ **•** limiting the ability of our stockholders to call and bring business before special meetings and to take action by written consent in lieu of a meeting; ~~•~~ **•** requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors; ~~•~~ **•** authorizing blank check preferred stock, which could be issued with voting, liquidation, dividend and other rights superior to our Class A common stock; and ~~•~~ **•** limiting the liability of, and providing indemnification to, our directors and officers ~~. The special meeting provisions and super- majority vote required for the director removal described above will remain in place unless our stockholders approve an amendment to our restated certificate of incorporation to amend those provisions, which we plan to propose for consideration and approval at the 2022 annual meeting of stockholders~~ . As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation Law, which limits the ability of stockholders holding shares representing more than 15 % of the voting power of our outstanding voting stock from engaging in certain business combinations with us. Any provision of our restated certificate of incorporation or amended and restated bylaws, each as may be further amended and / or amended and restated from time to time, or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our Class A common stock, and could also affect the price that some investors are willing to pay for our Class A common stock. The existence of the foregoing provisions and anti- takeover measures could limit the price that investors might be willing to pay in the future for shares of our Class A common stock. They could also deter potential acquirers of our company, thereby reducing the likelihood that you could receive a premium for your Class A common stock in an acquisition. ~~49Our~~ -- **Our** restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the sole and exclusive forum for substantially all disputes between us and our stockholders. Our restated certificate of incorporation further provides that the federal district courts of the United States of America are the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. These choice of forum provisions could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees. Our restated certificate of incorporation provides that the Court of Chancery of the State of Delaware is the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of our company, (2) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee or stockholder of our company to us or our stockholders, (3) any action asserting a claim arising pursuant to any provision of the General Corporation Law or as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery or (4) any action asserting a claim governed by the internal affairs doctrine. This choice of forum provision may limit a stockholder' s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees, which may discourage such lawsuits against us and our directors, officers and other employees. Alternatively, if a court were to find this choice of forum provision contained in our restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could materially adversely affect our business, financial condition and operating results. Our restated certificate of incorporation further provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Some members of our management team have limited experience managing a public company. Some members of our management team have limited experience managing a publicly traded company, interacting with public company investors and / or complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently continue to manage being a public company subject to significant regulatory oversight and reporting obligations under the federal securities laws and the scrutiny of securities analysts and investors. These obligations and constituents require significant attention from our management team and could divert their attention away from the day- to- day management of our business, which could materially adversely affect our business, financial condition and operating results. The requirements of being a public company may strain our resources, divert management' s attention and affect our ability to attract and retain qualified board members. As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934 **(** ~~, or~~ the **"** Exchange Act **")** , the Sarbanes- Oxley Act of 2002, the listing requirements of the NYSE and other applicable securities rules and regulations. Compliance with these rules and regulations may continue to increase our legal and financial compliance costs, make some activities more difficult, time ~~-~~consuming or costly, and increase demand on our systems and resources, particularly after we are no longer an emerging growth company or a smaller reporting company. Among other things, the Exchange Act requires that we file annual, quarterly and current reports with respect to our business and operating results and maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management' s attention may be diverted from other business concerns, which could harm our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire even more employees in the future, which will increase our costs and expenses. As a public company, we are required to evaluate our internal controls and during the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting that we are unable to remediate before the end of the same fiscal year in which the material weakness is identified, we will be unable ~~50to~~ **to** assert that our internal controls are effective. If we are unable to assert that our internal control over financial reporting is effective, or if our auditors are unable to attest to management' s report on the effectiveness of our internal controls, which will be required after we are no longer an emerging growth company, we could lose investor confidence in the accuracy and completeness of our financial reports, which would cause the price of our Class A common stock to decline. **As of December 31, 2022, our management has identified a material weakness in internal controls related to ineffective information technology general controls. For a more detailed discussion of this material weakness, see the risk factor herein entitled" We have identified a material weakness in our internal controls over financial reporting related to ineffective information technology general controls. Failure to establish and maintain effective internal controls in accordance with Section 404 of the Sarbanes- Oxley Act in the future could have a material adverse effect on our business and stock price."** In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. To comply with evolving laws, regulations and standards, we may need to invest additional resources, and this investment may result in increased general and administrative expense and a diversion of management' s time and attention from revenue ~~-~~generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies, regulatory authorities may initiate legal proceedings against us and our business could be materially harmed. As a result of being a public company and the accompanying rules and regulations, it is more expensive for us to obtain director and officer liability insurance, and **,** in the future **,** we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers. We are ~~an " emerging growth company " and~~ a " smaller reporting company, " and the reduced disclosure requirements applicable to ~~emerging growth companies and~~ smaller reporting companies may make our Class A common stock less attractive to investors. We ~~are an " emerging growth company, " as defined in the Jumpstart Our Business Startups Act, or the JOBS Act, and may remain an emerging growth company until December 31, 2022 (the last day of our fiscal year following the fifth anniversary of our IPO), subject to specified conditions. For so long as we remain an emerging growth company, we are permitted, and intend, to rely on exemptions from certain disclosure requirements that are applicable to other public companies that are not emerging growth companies. We would cease to be an emerging growth company earlier if we have more than $ 1. 07 billion in annual revenue, we have more than $ 700 million in market value of our stock held by non- affiliates or we issue more than $ 1 billion of non- convertible debt securities over a three- year period. These exemptions include reduced disclosure obligations regarding executive compensation and exemptions from the requirements to hold non- binding advisory votes on executive compensation~~

~~and golden parachute payments, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes- Oxley Act, not being required to comply with certain requirements of Auditing Standard 3101 relating to providing a supplement to the auditor' s report regarding critical audit matters and not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation. Even after we no longer qualify as an emerging growth company, we may still~~ qualify as a smaller reporting company, which ~~would allow~~ **allows** us to take advantage of **certain** ~~many of the same~~ exemptions from disclosure requirements, including reduced disclosure obligations regarding executive compensation ~~and not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes- Oxley Act~~ . In general, we will qualify as a smaller reporting company for as long as we have less than $ 250 million of public float (calculated as the aggregate market value of our Class A common stock and Class B common stock held by non- affiliates, based on the closing price of our Class A common stock on the NYSE on the last business day of our second fiscal quarter). We cannot predict whether investors will find our Class A common stock less attractive if we rely on these exemptions. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and our stock price may be more volatile. ~~In addition, the JOBS Act provides that~~ **General Risk Factors Higher labor costs due to statutory** ~~an~~ **and** ~~emerging growth company can take advantage of~~ **regulatory changes could materially adversely affect our business, financial condition** ~~an~~ **and** ~~extended transition period~~ **operating results. Various federal and state labor laws, including new laws and regulations enacted in response to COVID- 19, govern our relationships with our employees and affect operating costs. These laws include employee classifications as exempt or non- exempt, minimum wage requirements, unemployment tax rates, workers' compensation rates, overtime, family leave, workplace health and safety standards, payroll taxes, citizenship requirements and other wage and benefit requirements** for ~~complying with new~~ **employees classified as non- exempt. As** ~~or~~ **our** ~~revised accounting standards. This allows an emerging growth company~~ **employees are paid at rates set at, or above but related** to **,** ~~delay the adoption of certain accounting standards until those~~ -- **the** ~~standards~~ **applicable minimum wage, further increases in the minimum wage** ~~would~~ **could increase our labor costs** ~~otherwise apply to private companies~~ . ~~We 51~~ **Significant additional government regulations could materially adversely affect our business, financial condition and operating results.**