Risk Factors Comparison 2024-03-21 to 2023-03-28 Form: 10-K

Legend: **New Text** ~~Removed Text~~ Unchanged Text Moved Text Section

Investing in our securities involves a high degree of risk. You should carefully consider the following risk factors together with all of the other information included in this Form 10- K. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we presently consider to be immaterial could also adversely affect us. If any of the following risks come to fruition, our business, financial condition, results of operations, cash flows, and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our stock could decline, and you could lose all or part of your investment. ~~RISK FACTORS Investing in our common stock involves substantial risks. You should carefully consider the following risk factors before making an investment decision. Additional risks and uncertainties not presently known to us or that we presently consider to be immaterial could also adversely affect us. If any of those risks or uncertainties come to fruition, our business, financial condition, results of operations, cash flows, and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you could lose all or part of your investment.~~ Risks Related to Our Business and Operations Due to our accumulated deficit, recurring and negative cash flow from operations for the year ended December 31, ~~2022~~ **2023** there is substantial doubt about our ability to continue as a going concern. Our audited consolidated financial statements for the year ended December 31, ~~2022~~ **2023** were prepared on a going concern basis in accordance with generally accepted accounting principles in the United States. The going concern basis assumes that we will continue in operation for the next 12 months and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business. Thus, our consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern. Our recurring losses, negative cash flow, need for additional capital, and the uncertainties surrounding our ability to raise such capital raise substantial doubt about our ability to continue as a going concern. For us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of business, we must sell our products directly to end- users and through distributors, establish profitable operations through increased sales, decrease expenses, generate cash from operations or raise additional funds when needed. Our goal is to improve our financial condition and ultimately improve our financial results by increasing revenues through expanding awareness of the benefits of our dental lasers among dental specialists and general practitioners and reducing expenses. However, if we are unable to do so on a timely basis, we will be required to seek additional capital. In that event, we would seek additional funds through various financing sources, including the sale of our equity and debt securities, however, there can be no guarantees that such funds will be available on commercially reasonable terms, if at all. If we are unable to raise additional capital, increase sales or reduce expenses, we will be unable to continue to fund our operations, develop our products, realize value from our assets, and discharge our liabilities in the normal course of business. If we become unable to continue as a going concern, we could have to liquidate our assets, and potentially realize significantly less than the values at which they are carried on our financial statements, and stockholders could lose all or part of their investment in our common stock. The ~~COVID- 19 pandemic has adversely affected,~~ **Report of Independent Registered Public Accounting Firm from Macias Gini & O' Connell LLP contains** ~~and~~ **an** ~~may~~ **explanatory paragraph regarding our ability to** continue ~~to adversely affect, our business, results of operations and financial condition. In addition, similar risks related to health epidemics and other outbreaks or pandemics may adversely affect our business, results of operations and financial condition. We face risks related to health epidemics and other outbreaks, including the global outbreak of the novel coronavirus and the disease caused by it, COVID- 19. During 2020, the spread of the novel coronavirus led to disruption and volatility in the global capital markets. If such disruption and volatility recurs, there could be an increase to our cost of capital and an adverse effect on our ability to access the capital markets. In addition, efforts to contain the COVID- 19 pandemic led to travel restrictions, prohibitions on public gatherings and closures of dental offices and clinics throughout much of Europe and the United States. The ability of our salespeople to call on dental customers during these closures was~~ **as a going concern** ~~greatly limited. In addition, most dental shows and workshops scheduled in 2020 were canceled and many were moved to virtual gatherings in 2021~~. We have experienced net losses for each of the past three years, and we could experience additional losses and have difficulty achieving profitability in the future. We had an accumulated deficit of $ ~~296~~ **316** . ~~2~~ **8** million as of December 31, ~~2022~~ **2023** . We recorded net losses of $ ~~28~~ **20** . 6 million, $ ~~16~~ **28** . ~~2~~ **6** million, and $ 16. ~~8~~ **2** million for the years ended December 31, **2023,** 2022, **and** 2021 ~~, and 2020~~, respectively. In order to achieve profitability, we must increase net revenue through new sales and control our costs. Failure to increase our net revenue and decrease our costs could cause our stock price to decline and could have a material adverse effect on our business, financial condition, and results of operations. We are vulnerable to continued global economic uncertainty and volatility in financial markets. Our business is highly sensitive to changes in general economic conditions as a seller of capital equipment to end users in dental professional practices. Financial markets inside the United States and internationally have experienced extreme disruption in recent times, including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, and declining valuations of investments. We believe these disruptions are likely to have an ongoing adverse effect on the world economy. A continued economic downturn and financial market disruptions could have a material adverse effect on our business, financial condition, and results of operations. Also, the imposition of economic sanctions on Russia as a result of the conflict in Ukraine could prevent us from performing existing contracts and pursuing new growth opportunities, which could adversely affect our business, financial condition and results of operations **. Furthermore, sustained uncertainty about, or worsening of, geopolitical tensions, including further escalation of war between Russia**

and Ukraine, further escalation in the conflict between the State of Israel and Hamas, as well as further escalation of tensions between the State of Israel and various countries in the Middle East and North Africa, could result in a global economic slowdown and long- term changes to global trade. Any or all of these factors could negatively affect Mobix Labs' business, results of operations, financial condition and growth . We may need to raise additional capital in the future, and if we are unable to secure adequate funds on terms acceptable to us, we could be unable to execute our business plan. As of the date of this report, we do not have cash on hand to fund our proposed plan of operations over the next 12 months. In order to continue our proposed operations beyond that date we will need to either achieve a significant level of continuing cash flow from operations or raise additional funds through the issuance of equity or debt securities in the public or private markets, or through a collaborative arrangement or sale of assets. Additional financing opportunities may not be available to us, or if available, may not be on favorable terms. The availability of financing opportunities will depend, in part, on market conditions, and the outlook for our business. Any future issuance of equity securities or securities convertible into equity securities could result in substantial dilution to our stockholders, and the securities issued in such a financing could have rights, preferences or privileges senior to those of our common stock. In addition, if we raise additional funds through debt financing, we could be subject to debt covenants that place limitations on our operations. We could not be able to raise additional capital on reasonable terms, or at all, or we could use capital more rapidly than anticipated. If we cannot raise the required capital when needed, we may not be able to satisfy the demands of existing and prospective customers, we could lose revenue and market share and we may have to curtail our capital expenditures. If we are unable to achieve and sustain an adequate level of profitability or obtain sufficient capital in the future, we could have to curtail our capital expenditures. Any curtailment of our capital expenditures could result in a reduction in net revenue, reduced quality of our products, increased manufacturing costs for our products, harm to our reputation, or reduced manufacturing efficiencies and could have a material adverse effect on our business, financial condition, and results of operations. Our success depends, in part, on our relationships with, and the efforts of, third- party distributors. We rely on exclusive and non- exclusive third- party distributors for a portion of our sales in North America and a majority of our sales in countries outside of the U. S. For the fiscal years ended December 31, **2023,** 2022, **and** 2021 ~~, and 2020~~ , revenue from distributors accounted for approximately **31 %,** 30 %, **and** 35 ~~%, and 29~~ % of our total net revenue, respectively. Our distributors have significant discretion in determining the efforts and resources they apply to the sale of our products, and we face significant challenges and risks in expanding, training, and managing our third- party distributors, particularly given their geographically dispersed operations. Our distributors may not commit the necessary resources to market and sell our products to the level of our expectations, and, regardless of the resources they commit, they may not be successful. From time to time, we may face competition or pricing pressure from one or more of our non- exclusive distributors in certain geographic areas where those distributors are selling inventory to the same customer base as us. Additionally, most of our distributor agreements can be terminated with limited notice, and we may not be able to replace any terminating distributor in a timely manner or on terms agreeable to us, if at all. If we are not able to maintain our distribution network, if our distribution network is not successful in marketing and selling our products, or if we experience a significant reduction in, cancellation, or change in the size and timing of orders from our distributors, our revenues could decline significantly and lead to an inability to meet operating cash flow requirements, which would have a material adverse effect on our business, financial condition, and results of operations. Dentists and patients have been hesitant in adopting laser technologies, and our inability to overcome this hesitation could limit the market acceptance of our products and our market share. Our dental laser systems represent relatively new technologies in the dental market. Only a small percentage of dentists use lasers to perform dental procedures. Our future success will depend on our ability to increase demand for our products by demonstrating to a broad spectrum of dentists and patients the potential performance advantages of our laser systems over traditional methods of treatment and over competitive laser systems, and our inability to do so could have a material adverse effect on our business, financial condition, and results of operations. Historically, we have experienced long sales cycles because dentists have been, and could continue to be, slow to adopt new technologies on a widespread basis. As a result, we generally are required to invest a significant amount of time and resources to educate dentists about the benefits of our products in comparison to competing products and technologies before completing a sale, if any. Any failure in our efforts to train dental practitioners could result in the misuse of our products, reduce the market acceptance of our products and have a material adverse effect on our business, financial condition, and results of operations. There is a learning process involved for dental practitioners to become proficient users of our laser systems. It is critical to the success of our sales efforts to adequately train a sufficient number of dental practitioners. Convincing dental practitioners to dedicate the time and energy necessary for adequate training is challenging, and we cannot provide assurance that we will be successful in these efforts. If dental practitioners are not properly trained, they could misuse or ineffectively use our products, or could be less likely to appreciate our laser systems. This could also result in unsatisfactory patient outcomes, patient injury, negative publicity, FDA regulatory action, or lawsuits against us, any of which could negatively affect our reputation and sales of our laser systems. If future data proves to be inconsistent with our clinical results or if competitors' products present more favorable results our revenues could decline and our business, financial condition, and results of operations could be materially and adversely affected. If new studies or comparative studies generate results that are not as favorable as our clinical results, our revenues could decline. Additionally, if future studies indicate that our competitors' products are more effective or safer than ours, our revenues could decline. Furthermore, dental practitioners could choose not to purchase our laser systems until they receive additional published long- term clinical evidence and recommendations from prominent dental practitioners that indicate our laser systems are effective for dental applications. Our ability to use net operating loss carryforwards could be limited. Our ability to use our federal and state NOL carryforwards to offset potential future taxable income is dependent upon our generation of future taxable income before the expiration dates of the NOL carryforwards, and we cannot predict with certainty when, or whether we will generate sufficient taxable income to use all our NOL carryforwards. As of December 31, ~~2022~~ **2023** , **we** ~~the Company~~ had U. S. federal net operating loss carryforwards of $

110 ~~87. 6~~ million. Of the total U. S. federal net operating loss carryforwards as of December 31, ~~2022~~ **2023** , $ 11. ~~9~~ **8** million is subject to a 20 year carryover period which will be fully expired by 2038. Losses generated beginning in 2018 will carryover indefinitely. **We** ~~The Company~~ had state net operating loss carryforwards of $ **80** ~~50. 3~~ million as of December 31, ~~2022~~ **2023** . **Our** ~~Net operating loss carryforwards of the Company are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e. g. the~~ net operating loss carryforwards **are** ~~), the Company is no longer~~ subject to **review and possible adjustment** ~~U. S. federal, state or local examinations~~ by ~~tax~~ **the taxing** authorities ~~for years prior to 2017~~ . There are no tax examinations currently in progress. In the future, **our** ~~the Company' s~~ ability to utilize ~~its~~ **our** net operating loss carryforwards, tax credits, and built- in items of deduction, including capitalized start- up costs and research and development costs, may be significantly limited due to changes in ownership. These changes in ownership can limit the amount of these tax benefits that can be utilized each year to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three- year period resulting in an ownership change of more than 50 % of the outstanding stock of a company by certain stockholders or public groups. Due to the valuation allowance against deferred tax assets as of December 31, ~~2022~~ **2023** , the net effect of any further limitation will have no impact on results of operations. Refer to Note 5- Income Taxes for further discussion. We could incur problems in manufacturing our products. In order to grow our business, we must expand our manufacturing capabilities to produce the systems and accessories necessary to meet any demand we may experience. We could encounter difficulties in increasing the production of our products, including problems involving production capacity and yields, quality control and assurance, component supply, and shortages of qualified personnel. In addition, before we can begin to expand the commercial manufacture of our products, we must ensure that any such expansion of our manufacturing facilities, processes, and quality systems, and the manufacture of our laser systems, will comply with FDA regulations governing facility compliance, quality control, and documentation policies and procedures. In addition, our manufacturing facilities are subject to periodic inspections by the FDA, as well as various state agencies and foreign regulatory agencies. From time to time, we could expend significant resources in obtaining, maintaining, and addressing our compliance with these requirements. Our success will depend in part upon our ability to manufacture our products in compliance with the FDA' s Quality System Regulation and other regulatory requirements. We have experienced quality issues with components of our products supplied by third parties, and we could continue to do so. Our future success depends on our ability to manufacture our products on a timely basis with acceptable manufacturing costs, while at the same time maintaining good quality control and complying with applicable regulatory requirements, and an inability to do so could have a material adverse effect on our product sales, cash collections from customers, and our ability to meet operating cash flow requirements, which could have a material adverse effect on our business, financial condition, and results of operations. We could be subject to significant warranty obligations if our products are defective, which could have a material adverse effect on our business, financial condition, and results of operations. In manufacturing our products, we depend upon third parties for the supply of various components. Many of these components require a significant degree of technical expertise to design and produce. If we fail to adequately design, or if our suppliers fail to produce components to specification, or to comply with Quality System Regulation, or if the suppliers, or we, use defective materials or workmanship in the manufacturing process, the reliability and performance of our products will be compromised. We have experienced such non- compliance with manufacturing specifications in the past and could continue to experience such non- compliance in the future, which could lead to higher costs and reduced margins. Our products could contain defects that cannot be repaired easily and inexpensively, and we have experienced in the past and could experience in the future some or all of the following: • loss of customer orders and delay in order fulfillment; • damage to our brand reputation; • increased cost of our warranty program due to product repair or replacement; • inability to attract new customers; • diversion of resources from our manufacturing and engineering and development departments into our service department; and • legal action. Product liability claims against us could be costly and could harm our reputation. The sale of dental and medical devices involves the risk of product liability claims against us. Claims could exceed our product liability insurance coverage limits. Our insurance policies are subject to various standard coverage exclusions, including damage to the product itself, losses from recall of our product, and losses covered by other forms of insurance such as workers compensation. We cannot be certain that we will be able to successfully defend any claims against us, nor can we be certain that our insurance will cover all liabilities resulting from such claims. In addition, we cannot provide assurance that we will be able to obtain such insurance in the future on terms acceptable to us, or at all. Regardless of merit or eventual outcome, any product liability claim brought against us could result in harm to our reputation, decreased demand for our products, costs related to litigation, product recalls, loss of revenue, an increase in our product liability insurance rates, or the inability to secure coverage in the future, and could have a material adverse effect on our business by reducing cash collections from customers and limiting our ability to meet our operating cash flow requirements. Our suppliers may not supply us with a sufficient amount or adequate quality of materials, which could have a material adverse effect on our business, financial condition, and results of operations. Our business depends on our ability to obtain timely deliveries of materials, components, and subassemblies of acceptable quality and in acceptable quantities from third- party suppliers. We generally purchase components and subassemblies from a limited group of suppliers through purchase orders, rather than written supply contracts. Consequently, many of our suppliers have no obligation to continue to supply us on a long- term basis. In addition, our suppliers manufacture products for a range of customers, and fluctuations in demand for the products those suppliers manufacture for others could affect their ability to deliver components for us in a timely manner. Moreover, our suppliers could encounter financial hardships, be acquired, or experience other business events unrelated to our demand for components, which could inhibit or prevent their ability to fulfill our orders and satisfy our requirements. Certain components of our products, particularly specialized components used in our laser systems, are currently available only from a single source or limited sources. For example, the crystal, fiber, and hand pieces used in our Waterlase systems are each supplied by a separate single supplier. Our dependence on single- source suppliers involves several risks, including limited control over pricing, availability, quality, and

delivery schedules. If any of our suppliers cease to provide us with sufficient quantities of our components in a timely manner or on terms acceptable to us, or ceases to manufacture components of acceptable quality, we could incur manufacturing delays and sales disruptions while we locate and engage alternative qualified suppliers, and we might be unable to engage acceptable alternative suppliers on favorable terms. In addition, we could need to reengineer our components, which could require product redesign and submission to the FDA of a 510 (k) application, which could significantly delay production. Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive procedures. We are continually in the process of identifying and qualifying alternate source suppliers for our key components. There can be no assurance, however, that we will successfully identify and qualify an alternate source supplier for any of our key components or that we could enter into an agreement with any such alternate source supplier on terms acceptable to us, or at all. We have significant international sales and are subject to risks associated with operating internationally. International sales comprise a significant portion of our net revenue, and we intend to continue to pursue and expand our international business activities. For the fiscal years ended December 31, **2023,** 2022, **and** 2021 ~~, and 2020~~ , international sales accounted for approximately **31 %,** 30 %, **and** 35 ~~%, and 29~~ % of our net revenue, respectively. Political, economic, and health conditions outside the United States, could make it difficult for us to increase our international revenue or to operate abroad. For example, efforts to contain the outbreak of COVID- 19 in Asia and Europe included travel restrictions and closures of dental offices and clinics, significantly adversely impacting our international sales in 2022 and 2021. In addition, international operations are subject to many inherent risks, which could have a material adverse effect on our revenues and operating cash flow, including among others: • adverse changes in tariffs and trade restrictions; • political, social, and economic instability and increased security concerns; • fluctuations in foreign currency exchange rates; • longer collection periods and difficulties in collecting receivables from foreign entities; • exposure to different legal standards; • transportation delays and difficulties of managing international distribution channels; • reduced protection for our intellectual property in some countries; • difficulties in obtaining domestic and foreign export, import, and other governmental approvals, permits, and licenses, and compliance with foreign laws; • the imposition of governmental controls; • unexpected changes in regulatory or certification requirements; • difficulties in staffing and managing foreign operations; and • potentially adverse tax consequences and the complexities of foreign value- added tax systems. We believe that international sales will continue to represent a significant portion of our net revenue, and we intend to expand our international operations further. In international markets where our sales are denominated in U. S. dollars, an increase in the relative value of the dollar against the currency in such markets could indirectly increase the price of our products in those markets and result in a decrease in sales. We do not currently engage in any transactions as a hedge against risks of loss due to foreign currency fluctuations. However, we could do so in the future. Security breaches of our information technology systems could harm our reputation and customer relationships. Such breaches could subject us to significant reputational, financial, legal, and operational consequences. We rely on information systems in our business to obtain, rapidly process, analyze and manage data. Any failure by us or our third- party service providers to prevent or mitigate security breaches and improper access to or disclosure of our data could lead to a material disruption of our information systems and loss of business information. In addition, computer malware, viruses, software vulnerabilities, social engineering (predominantly spear phishing attacks), ransomware and general hacking have become more prevalent in the business environment, have occurred on our systems in the past, and may occur on our systems in the future. Such an attack could result in, among other things: the theft, destruction, loss, unavailability, misappropriation or release of confidential data and intellectual property; operational or business delays; cyber extortion; liability for a breach of personal financial and health information belonging to our customers and their patients or to our employees; and damage to our reputation. Any of these results could have a material adverse effect on our business due to the time and expense to respond to such an attack, recover data, and remediate information system weaknesses, each of which would disrupt our daily business operations. Further, such an attack would expose us to a risk of loss, regulatory investigations, or litigation and possible liability, including under laws that protect the privacy of personal information ~~. In December 2021, we experienced a cybersecurity attack that caused a brief network disruption and impacted certain systems. We have taken actions to strengthen our existing systems and implement additional prevention measures, but there is no assurance that such actions will be effective~~ . Our revenue and operating results fluctuate due to seasonality and other factors, so you should not rely on quarter- to- quarter comparisons of our operating results as an indication of our future performance. Our revenue typically fluctuates from quarter to quarter due to a number of factors, many of which are beyond our control. Revenue in the first quarter typically is lower than average, and revenue in the fourth quarter typically is stronger than average due to the buying patterns of dental practitioners. We believe that this trend exists because a significant number of dentists purchase their capital equipment towards the end of the calendar year in order to maximize their practice earnings while seeking to minimize their taxes. They often use certain tax incentives, such as accelerated depreciation methods for purchasing capital equipment, as part of their year- end tax planning. In addition, revenue in the third quarter could be affected by vacation patterns, which can cause revenue to be flat or lower than in the second quarter of the year. Our historical seasonal fluctuations could also be impacted by sales promotions used by large dental distributors that encourage end- of- quarter and end- of- year buying in our industry. The expenses we incur are based, in large part, on our expectations regarding future net revenue. Since many of our costs are fixed in the short term, we could be unable to reduce expenses quickly enough to avoid losses if we experience a decrease in expected net revenue. Accordingly, you should not rely on quarter- to- quarter comparisons of our operating results as an indication of our future performance. Litigation against us could be costly and time- consuming to defend and could materially and adversely affect our business, financial condition, and results of operations. We are from time to time involved in various claims, litigation matters and regulatory proceedings incidental to our business, including claims for damages arising out of the use of our products or services and claims relating to intellectual property matters, employment matters, commercial disputes, competition, sales and trading practices, environmental

matters, personal injury, and insurance coverage. Some of these lawsuits include claims for punitive as well as compensatory damages. The defense of these lawsuits could divert our management' s attention, and we could incur significant expenses in defending these lawsuits. In addition, we could be required to pay damage awards or settlements or become subject to unfavorable equitable remedies. Moreover, any insurance or indemnification rights that we could have may be insufficient or unavailable to protect us against potential loss exposures. Our manufacturing operations are consolidated primarily in one facility. A disruption at this facility could result in a prolonged interruption of our business and have a material adverse effect on our business, financial condition, and results of operations. Substantially all of our manufacturing operations are located at our **leased** facility in Corona, California, which is near known earthquake fault zones. Although we have taken precautions to safeguard our **leased** ~~facilities~~ **facility** including disaster recovery planning and off- site backup of computer data, a natural disaster such as an earthquake, fire, or flood, could seriously harm our facility and significantly disrupt our operations. Additionally, labor disputes, maintenance requirements, power outages, equipment failures, civil unrest, or terrorist attacks affecting our Corona, California facility could significantly disrupt our operations. Our business interruption insurance coverage may not cover all or any of our losses from natural disasters or other disruptions. If we lose our key management personnel, or are unable to attract or retain qualified personnel, it could adversely affect our ability to execute our growth strategy. Our success is dependent, in part, upon our ability to hire and retain management, engineers, marketing and sales personnel, and technical, research and other personnel who are in high demand and are often subject to competing employment opportunities. Our success will depend on our ability to retain our current personnel and to attract and retain qualified personnel in the future. Competition for senior management, engineers, marketing and sales personnel, and other specialized technicians is intense and we may not be able to retain our personnel. If we lose the services of any executive officers or key employees, our ability to achieve our business objectives could be harmed or delayed, which could have a material adverse effect on our daily operations, operating cash flows, results of operations, and ultimately share price. In general, our officers could terminate their employment at any time without notice for any reason. Failure to meet covenants in the Credit Agreements with our debt agreements could result in acceleration of our payment obligations thereunder, and we may not be able to find alternative financing. Under the Credit Agreement dated November 9, 2018, as amended from time to time, between BIOLASE, Inc. and SWK, we are required to maintain a specified amount of consolidated unencumbered liquid assets as of the end of each fiscal quarter, and, if we fall below ~~those~~ **certain** levels, generate minimum levels of revenue as of the end of each period specified in the Credit Agreement and maintain specified levels of consolidated EBITDA as of the end of each period specified in the Credit Agreement. Our ability to comply with these covenants may be affected by factors beyond our control. If we fail to comply with the covenants contained in the Credit Agreement or if the Required Lenders (as defined in the Credit Agreement) contend that we have failed to comply with these covenants or any other restrictions, it could result in an event of default under the Credit Agreement, which would permit or, in certain events, require SWK to declare all amounts outstanding thereunder to be immediately due and payable. There can be no assurances that we will be able to repay all such amounts or able to find alternative financing in an event of a default. Even if alternative financing is available in an event of a default under the Credit Agreement, it may be on unfavorable terms, and the interest rate charged on any new borrowings could be substantially higher than the interest rate under the Credit Agreement, thus adversely affecting cash flows, results of operations, and ultimately, our ability to meet operating cash flow requirements. The restrictive covenants in the Credit Agreement and BIOLASE' s obligation to make debt payments under the Credit Agreement may limit our operating and financial flexibility and may adversely affect the Company' s business, financial condition, and results of operations. The Credit Agreement imposes operating and financial restrictions and covenants, which may limit or prohibit our ability to, among other things: • incur additional indebtedness; • make investments, including acquisitions; • create liens; • make dividends, distributions or other restricted payments; • effect affiliate transactions; • enter into mergers, divisions, consolidations or sales of substantially all of our or our subsidiaries' assets; • change business activities and issue equity interests; or • sell material assets (without using the proceeds thereof to repay the obligations under the Credit Agreement). In addition, we are required to comply with certain financial covenants under the Credit Agreement as described above. Such restrictive covenants in the Credit Agreement and our repayment obligations under the Credit Agreement could have adverse consequences to us, including: • limiting our ability to use cash; • limiting our flexibility in operating our business and planning for, or reacting to, changes in our business and our industry; • requiring the dedication of a substantial portion of any cash flow from operations to the payment of principal of, and interests on, the indebtedness, thereby reducing the availability of such cash flow to fund our operations, working capital, capital expenditures, future business opportunities and other general corporate purposes; • restricting us from making strategic acquisitions or causing us to make non- strategic divestitures; • limiting our ability to obtain additional financing; • limiting our ability to adjust to changing market conditions; and • placing us at a competitive disadvantage relative to our competitors who are less highly leveraged. If we fail to comply with the terms of the Credit Agreement and there is an event of default, the creditor (s) may foreclose upon the assets securing our obligations thereunder. To secure the performance of our obligations under the Credit Agreement, we granted SWK security interests in substantially all of the assets of BIOLASE and certain of our foreign and domestic subsidiaries. Our failure to comply with the terms of the Credit Agreement could result in an event of default thereunder. In that event, SWK will have the option to (and, in certain circumstances, will have the obligation to) foreclose on the assets of BIOLASE and certain of our subsidiaries pledged as collateral under the Credit Agreement or the other documents executed in connection with the Credit Agreement. The foreclosure on the Company' s assets could severely and negatively impact our business, financial condition, and results of operations. If we fail to comply with the reporting obligations of the Exchange Act and Section 404 of the Sarbanes- Oxley Act, or if we fail to maintain adequate internal control over financial reporting, our business, financial condition, and results of operations, and investors' confidence in us, could be materially and adversely affected. As a public company, we are required to comply with the periodic reporting obligations of the Exchange Act, including preparing annual reports, quarterly reports, and current reports. Our failure to prepare and disclose this information in a timely manner and meet

our reporting obligations in their entirety could subject us to penalties under federal securities laws and regulations of the ~~NASDAQ~~ **Nasdaq** Stock Market, LLC (" ~~NASDAQ~~ **Nasdaq** "), expose us to lawsuits, and restrict our ability to access financing on favorable terms, or at all. In addition, pursuant to Section 404 of the Sarbanes- Oxley Act, we are required to evaluate and provide a management report of our systems of internal control over financial reporting. During the course of the evaluation of our internal control over financial reporting, we could identify areas requiring improvement and could be required to design enhanced processes and controls to address issues identified through this review. This could result in significant delays and costs to us and require us to divert substantial resources, including management time, from other activities. Any failure to maintain compliance with the requirements of Section 404 on a timely basis could result in the loss of investor confidence in the reliability of our financial statements, which in turn could, negatively impact the trading price of our stock, and adversely affect investors' confidence in the Company and our ability to access capital markets for financing. Risks Related to Our Intellectual Property If the patents that we own or license, or our other intellectual property rights, do not adequately protect our technologies, we could lose market share to our competitors and be unable to operate our business profitably. Our future success depends, in part, on our ability to obtain and maintain patent protection for our products and technology, to preserve our trade secrets and to operate without infringing the intellectual property of others. We rely on patents to establish and maintain proprietary rights in our technology and products. We currently possess a number of issued patents and patent applications with respect to our products and technology. However, we cannot ensure that any additional patents will be issued, that the scope of any patent protection will be effective in helping us address our competition, or that any of our patents will be held valid if subsequently challenged. It is also possible that our competitors could independently develop similar or more desirable products, duplicate our products, or design products that circumvent our patents. The laws of foreign countries may not protect our products or intellectual property rights to the same extent as the laws of the United States. In addition, there have been recent changes in the patent laws and rules of the U. S. Patent and Trademark Office, and there could be future proposed changes that, if enacted, have a significant impact on our ability to protect our technology and enforce our intellectual property rights. If we fail to protect our intellectual property rights adequately, our competitive position could be adversely affected, and there could be a material adverse effect on our business, financial condition, and results of operations. If third parties claim that we infringe their intellectual property rights, we could incur liabilities and costs and have to redesign or discontinue selling certain products, which could have a material adverse effect on our business, financial condition, and results of operations. We face substantial uncertainty regarding the impact that other parties' intellectual property positions will have on dental and other medical laser applications. The medical technology industry has in the past been characterized by a substantial amount of litigation and related administrative proceedings regarding patents and intellectual property rights. From time to time, we have received, and we expect to continue to receive, notices of claims of infringement, misappropriation, or misuse of other parties' proprietary rights. Some of these claims could lead to litigation. We may not prevail in any future intellectual property infringement litigation given the complex technical issues and inherent uncertainties in litigation. Any claims, with or without merit, could be time-consuming and distracting to management, result in costly litigation, or cause product shipment delays. Adverse determinations in litigation could subject us to significant liability and could result in the loss of proprietary rights. A successful lawsuit against us could also force us to cease selling or redesign products that incorporate the infringed intellectual property. Additionally, we could be required to seek a license from the holder of the intellectual property to use the infringed technology, and we may not be able to obtain a license on acceptable terms, or at all. Refer to Item 3- Legal Proceedings for discussion on such a pending litigation. Risks Related to Our Regulatory Environment Changes in government regulation, failure to comply with government regulation or the inability to obtain or maintain necessary government approvals could have a material adverse effect on our business, financial condition, and results of operations. Our products are subject to extensive government regulation, both in the United States and globally in other countries. To clinically test, manufacture, and market products for human use, we must comply with regulations and safety standards set by the FDA and comparable state and foreign agencies. Regulations adopted by the FDA are wide- ranging and govern, among other things, product design, development, manufacture and control testing, labeling control, storage, advertising, marketing, and sales. Generally, products must meet regulatory standards as safe and effective for their intended use before being marketed for human applications. The clearance and approval process is expensive, time- consuming, and uncertain. Failure to comply with applicable regulatory requirements of the FDA can result in an enforcement action, which could include a variety of sanctions, including fines, injunctions, civil penalties, recall or seizure of our products, operating restrictions, partial suspension, or total shutdown of production and criminal prosecution. The failure to receive or maintain requisite approvals for the use of our products or processes, or significant delays in obtaining such clearances or approvals, could prevent us from developing, manufacturing, and marketing products and services necessary for us to remain competitive. If we develop new products and applications or make any significant modifications to our existing products or labeling, we will need to obtain additional regulatory clearances or approvals. Any modification that could significantly affect a product' s safety or effectiveness, or that would constitute a change in its intended use, will require a new FDA 510 (k) clearance. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer' s determination. If the FDA disagrees with a manufacturer' s determination, the FDA can require the manufacturer to cease marketing and / or recall the modified device until 510 (k) clearance or PMA is obtained. If 510 (k) clearance is denied and a PMA application is required, we could be required to submit substantially more data and conduct human clinical testing and would very likely be subject to a significantly longer review period. Products sold in international markets are also subject to the regulatory requirements of each respective country or region. The regulations of the European Union require that a device have the CE Mark, indicating conformance with European Union laws and regulations before it can be marketed in the European Union. The regulatory international review process varies from country to country. We rely on our distributors and sales representatives in the foreign countries in which we market our products to comply with the regulatory laws of such countries. Failure to comply with the laws of such countries could prevent us from continuing to sell

products in such countries. In addition, unanticipated changes in existing regulatory requirements or the adoption of new requirements could impose significant costs and burdens on us, which could increase our operating expenses. Changes in health care regulations in the U. S. and elsewhere could adversely affect the demand for our products as well as the way in which we conduct our business and operations. For example, in 2010, President Obama signed the Affordable Care Act into law, which included various reforms impacting Medicare coverage and reimbursement, including revision to prospective payment systems, any of which could adversely impact any Medicare reimbursements received by our end- user customers. New legislation may be enacted as President Biden and Congress consider further reform. In addition, as a result of the focus on health care reform, there is risk that Congress could implement changes in laws and regulations governing health care service providers, including measures to control costs, and reductions in reimbursement levels. We cannot be sure that government or private third- party payers will cover and reimburse the procedures using our products, in whole or in part, in the future, or that payment rates will be adequate. If providers cannot obtain adequate coverage and reimbursement for our products, or the procedures in which they are used, our business, results of operations, and financial condition could suffer **. Additionally, we may be subject to the Excise Tax (as defined below) included in the Inflation Reduction Act (" IRA ") enacted in August 2022 in connection with redemptions of our common stock, Series H Convertible Redeemable Preferred Stock, or Series J Convertible Redeemable Preferred Stock. In particular, an excise tax is imposed on " covered corporations " (generally, publicly- traded domestic corporations) equal to 1 % of the fair market value of certain stock repurchased after December 31, 2022 (the " Excise Tax "). It is likely that the Excise Tax will generally apply to any redemptions of shares of our Series H Convertible Redeemable Preferred Stock or common stock after December 31, 2022, and any redemption of shares of our Series J Convertible Redeemable Preferred Stock. The Excise Tax base is reduced by the fair market value of any issuances of the covered corporation' s stock during its taxable year. The fair market value of any of shares our Series H Convertible Redeemable Preferred Stock, Series J Convertible Redeemable Preferred Stock, or common stock that are redeemed may exceed the fair market value of any of our stock issued during the same taxable year. Consequently, the Excise Tax may reduce the amount of cash we have available to shareholders** . We could be subject to or otherwise affected by federal and state health care laws, including fraud and abuse and health information privacy and security laws, and we could face substantial penalties if we are unable to fully comply with such regulations. We are directly or indirectly, through our customers, subject to extensive regulation by both the federal government and the states and foreign countries in which we conduct our business. If our past or present operations are found to be in violation of governmental laws or regulations to which we or our customers are subject, we may be subject to penalties, including civil, criminal and administrative penalties, damages, fines, disgorgement, individual imprisonment, possible exclusion from participation in federal and state funded healthcare programs, contractual damages, and the curtailment or restricting of our operations, as well as additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non- compliance with these laws. This could harm our ability to operate our business and our financial results. If we are required to obtain permits or licensure under these laws that we do not already possess, we could become subject to substantial additional regulation or incur significant expense. Any penalties, damages, fines, or curtailment or restructuring of our operations could be significant. The risk of potential non- compliance is increased by the fact that many of these laws have not been fully interpreted by applicable regulatory authorities or the courts, and their provisions are open to a variety of interpretations and additional legal or regulatory change. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management' s attention from the operation of our business, damage our reputation, and cause a material adverse effect on sales, cash collections, and our ability to meet operating cash flow requirements. Changes to the reimbursement rates for procedures performed using our products and measures to reduce healthcare costs may adversely impact our business. Dentists and other health care providers that purchase and use our products may rely on third- party payers, including Medicare, Medicaid, and private payers to cover and reimburse all or part of the cost of the procedures performed using our products. As a result, coverage and reimbursement of the procedures using our products is dependent in part on the policies of these payers. There is a significant trend in the healthcare industry by public and private payers to contain or reduce their costs, including by taking the following steps, among others: decreasing the portion of costs payers will cover, ceasing to provide full payment for certain products or procedures depending on outcomes, or not covering certain products or procedures at all. If payers implement any of the foregoing with respect to our procedures performed using our products, it would have an adverse impact on our revenue and results of operations. There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal, and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future. Any reduction in reimbursement rates for dental procedures using our products may adversely affect our customers' businesses and cause them to enact cost reduction measures, which could result in reduced demand for our product or additional pricing pressures. We could be exposed to liabilities under the FCPA, and any determination that we violated the FCPA could have a material adverse effect on our business, financial condition, and results of operations. In light of our operations outside the United States, we are subject to the FCPA, which generally prohibits companies and their intermediaries from offering to pay, promising to pay, or authorizing the payment of money or anything of value to non- U. S. officials for the purpose of influencing any act or decision of the foreign official in his / her capacity or to secure any other improper advantage to obtain or retain business. Violation of the anti- bribery provisions of the FCPA can result in criminal fines of up to $ 2 million and civil penalties of up to $ 23, 011 for each violation. Individuals, including officers, directors, stockholders, and agents of companies, can be subject to a criminal fine of up to $ 250, 000 and imprisonment, in addition to civil penalties of up to $ 23, 011, per violation. Also, under the alternative fines provision of the FCPA an individual or entity can be fined an amount of up to twice the gross pecuniary gain or loss from a violation. We could be held liable for actions taken by our distributors in violation of the FCPA, even though such partners are foreign companies that may not be subject to the FCPA. Any determination that we

violated the FCPA could result in sanctions that could have a material adverse effect on our business, financial condition, and results of operations. Product sales or introductions could be delayed or canceled as a result of the FDA regulatory requirements applicable to laser products, dental devices, or both, which could cause our sales or profitability to decline and have a material adverse effect on our business, financial condition, and results of operations. The process of obtaining and maintaining regulatory approvals and clearances to market a medical device from the FDA and similar regulatory authorities abroad can be costly and time- consuming, and we cannot provide assurance that such approvals and clearances will be granted. Pursuant to FDA regulations, unless exempt, the FDA permits commercial distribution of a new medical device only after the device has received 510 (k) clearance or is the subject of an approved PMA. The FDA will clear marketing of a medical device through the 510 (k) process if it is demonstrated that the new product is substantially equivalent to other 510 (k)- cleared products. The PMA process is more costly, lengthy and uncertain than the 510 (k) process, and must be supported by extensive data, including data from preclinical studies, and human clinical trials. Because we cannot provide assurance that any new products, or any product enhancements, that we develop will be subject to the shorter 510 (k) clearance process, significant delays in the introduction of any new products or product enhancement could occur. We cannot provide assurance that the FDA will not require a new product or product enhancement to go through the lengthy and expensive PMA process. Delays in obtaining regulatory clearances and approvals could: • delay or eliminate commercialization of products we develop; • require us to perform costly additional procedures; • diminish any competitive advantages that we may attain; and • reduce our ability to collect revenues or royalties. Although we have obtained 510 (k) clearance from the FDA to market our dental laser systems, we cannot provide assurance that we will not be required to obtain new clearances or approvals for modifications or improvements to our products. Our marketed products may be used by healthcare practitioners for indications that are not cleared or approved by the FDA. If the FDA finds that we marketed our products in a manner that promoted off- label use, we may be subject to civil or criminal penalties. Under the United States Federal Food, Drug, and Cosmetic Act and other laws, we are prohibited from promoting our products for off- label uses. This means that we may not make claims about the use of any of our marketed medical device products outside of their approved or cleared indications, and that our website, advertising, promotional materials and training methods and materials may not promote or encourage unapproved uses. Note, however, that the FDA does not generally restrict healthcare providers from prescribing products for off- label uses (or using products in an off- label manner) in their practice of medicine. Should the FDA determine that our activities constitute the promotion of off- label uses, the FDA could bring action to prevent us from distributing our devices for the off- label use and could impose fines and penalties on us and our executives. In addition, failure to follow FDA rules and guidelines relating to promotion and advertising can result in, among other things, the FDA' s refusal to approve or clear other products in our pipeline, the withdrawal of an approved product from the market, product recalls, fines, disgorgement of profits, operating restrictions, injunctions, or criminal prosecutions. Any of these adverse regulatory actions could result in substantial costs and could significantly and adversely impact our reputation and divert management' s attention and resources, which could have a material adverse effect on our business. Our products are subject to recalls and other regulatory actions after receiving FDA clearance or approval. The FDA and similar governmental bodies in other countries have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. A government mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors, or design defects, including errors in labeling or other safety issues. Any recall would divert management' s attention and financial resources and harm our reputation with customers. Any recall involving our laser systems would be particularly harmful to us, because our laser systems comprise such an important part of our portfolio of products. However, any recall could have a material adverse effect on our business, financial condition, and results of operations. If we or our third- party manufacturers fail to comply with the FDA' s QSR, our business would suffer. We and our third- party manufacturers are required to demonstrate and maintain compliance with the FDA' s QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage, and shipping of our product. The FDA enforces the QSR through periodic unannounced inspections. We anticipate that in the future we will be subject to such inspections. Our failure, or the failure of our third- party manufacturers, to take satisfactory corrective action in response to an adverse QSR inspection could result in enforcement actions, including a public warning letter, a shutdown of our manufacturing operations, a recall of our product, civil or criminal penalties, or other sanctions, which could have a material adverse effect on our business, financial condition, and results of operations. If our product causes or contributes to a death or a serious injury, or malfunctions in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions. Under the FDA' s medical device reporting regulations, medical device manufacturers are required to report to the FDA information that a device has or may have caused or contributed to a death or serious injury or has malfunctioned in a way that would be likely to cause or contribute to death or serious injury if the malfunction of the device were to recur. If we fail to report these events to the FDA within the required timeframes, or at all, the FDA could take enforcement action against us. Any such adverse event involving our devices could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as mounting a defense to a legal action, if one were to be brought, would require the dedication of our time and capital, distract management from operating our business, and could have a material adverse effect on our business, financial condition, and results of operations. Risks Related to Our **Common** Stock Failure to meet ~~NASDAQ~~ **Nasdaq** ' s continued listing requirements could result in the delisting of our common stock, negatively impact the price of our common stock and negatively impact our ability to raise additional capital. On January 11, 2023, **we** ~~BIOLASE, Inc. (the " Company ")~~ received a deficiency letter from the Listing Qualifications Department (the " Staff ") of the Nasdaq Stock Market (" Nasdaq ") notifying **us** ~~the Company~~ that, for the last 30 consecutive business days, ending on January 10, 2023, the bid price for **our** ~~the Company' s~~ common stock had closed below the minimum $ 1. 00 per share requirement for continued inclusion on the Nasdaq Capital Market pursuant to

Nasdaq Listing Rule 5550 (a) (2) (the " Bid Price Rule "). In accordance with Nasdaq rules, **we were** ~~the Company has been~~ provided an initial period of 180 calendar days, or until July 10, 2023 **, to regain compliance with the Bid Price Rule. On June 8, 2023, we were notified by the Staff of Nasdaq that we did not meet the minimum closing bid price requirement of $ 1. 00 for continued listing, as set forth in the Bid Price Rule, as the Staff has determined that as of June 8, 2023, the Company' s securities had a closing bid price of $ 0. 10 or less for ten consecutive trading days, from May 24, 2023 through June 7, 2023. As such, the Staff had determined to delist the Company' s common stock from the Nasdaq Capital Market and to suspend trading of the common stock at the opening of business on June 20, 2023, and file a Form 25- NSE with the SEC. We timely requested a hearing to appeal this determination, which stayed the suspension of our common stock pending the panel' s decision. We subsequently requested the Panel grant us a temporary exception to regain compliance with the Bid Price Rule. On July 5, 2023, the Panel granted us an exception until August 11, 2023 to demonstrate bid price compliance subject to us taking the following actions: (i) on July 20, 2023, we obtain stockholder approval for a reverse stock split at a ratio that is sufficient to regain and maintain long term compliance with the Bid Price Rule; (ii) on or before July 31, 2023, we effect a reverse stock split and, thereafter, maintain a $ 1. 00 closing bid price for a minimum of ten consecutive business days; and (iii) on August 11, 2023, we demonstrated compliance with the Bid Price Rule, by evidencing a closing bid price of $ 1. 00 or more per share for a minimum of ten consecutive trading sessions. On July 20, 2023, we held a special meeting of our stockholders where the stockholders approved an amendment to our Certificate of Incorporation to effect a reverse stock split of our common stock, at a ratio between one- for- two (1: 2) and one- for- one hundred (1: 100). Immediately after the special meeting, our Board approved the 2023 Reverse Stock Split. On July 26, 2023, we filed an amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the 2023 Reverse Stock Split, which became effective on July 27, 2023. On August 14, 2023, we received a letter from the Nasdaq Office of General Counsel confirming the decision of the Panel that we currently demonstrate compliance with the requirements for continued listing on the Nasdaq Capital Market. On March 4, 2024, we received a deficiency letter from the Staff of Nasdaq notifying us that, for the last 30 consecutive business days, ending on March 1, 2024, the bid price for our common stock had closed below the minimum $ 1. 00 per share requirement for continued inclusion on the Nasdaq Capital Market pursuant to the Bid Price Rule. In accordance with Nasdaq rules, we were provided an initial period of 180 calendar days, or until September 3, 2024** (the " Compliance Date "), to regain compliance with the Bid Price Rule. ~~If~~ **Compliance is generally achieved if** , at any time before the Compliance Date, the bid price for the Company' s common stock closes at $ 1. 00 or more for a minimum of 10 consecutive business days **. However** , the Staff ~~will provide written notification to the~~ **may, in its discretion, require a** ~~Company~~ **company to satisfy the applicable bid price requirement for a period in excess of 10 consecutive business days, but generally no more than 20 consecutive business days, before determining** that it **has demonstrated an ability to maintain long- term** ~~complies~~ **compliance** ~~with the Bid Price Rule~~. If **we do** ~~the Company does~~ not regain compliance with the Bid Price Rule by the Compliance Date, **we** ~~the Company~~ may be eligible for an additional 180 calendar day compliance period. To qualify, **we** ~~the Company~~ would need to provide written notice of ~~its~~ **our** intention to cure the deficiency during the additional compliance period, by effecting a reverse stock split, if necessary, provided that ~~it~~ **we** ~~meets~~ **meet** the continued listing requirement for the market value of publicly held shares and all other initial listing standards, with the exception of the bid price requirement. If **we do** ~~the Company does~~ not regain compliance with the Bid Price Rule by the Compliance Date and ~~is~~ **are** not eligible for an additional compliance period at that time, the Staff will provide written notification to **us** ~~the Company~~ that ~~its~~ **our** common stock may be delisted. At that time, **we** ~~the Company~~ may appeal the Staff' s delisting determination to a ~~NASDAQ~~ **Nasdaq** Listing Qualifications Panel. **We** ~~The Company intends~~ **intend** to monitor the closing bid price of ~~its~~ **our** common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Rule. **On November 14** ~~We have received deficiency letters from NASDAQ in the past. Most recently~~, ~~in May 2021~~ **2023** , we received a deficiency letter from ~~NASDAQ~~ **the Staff** notifying us that ~~we violated~~ **, based on our stockholders' equity of $ 332, 000 as of September 30, 2023, as reported in** the ~~Bid Price Rule. After receiving an additional six months to achieve~~ **our Quarterly Report on Form 10- Q for the quarterly period ended September 30, 2023, we were no longer in** compliance with the ~~Bid Price~~ **minimum stockholders' equity requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing** Rule **5550 (b) (** ~~, in April 2022 we effected~~ 1 ~~for 25 reverse stock split in order~~ **), which requires listed companies to maintain stockholders' equity of at least $ 2. 5 million. We were provided until December 29, 2023 to provide Nasdaq with a specific plan** to achieve **and sustain** compliance with the ~~Bid Price Rule If~~ **foregoing listing requirement, which plan was provided to Nasdaq on December 22, 2023. Nasdaq subsequently requested that** we ~~cannot~~ **submit a plan with greater detail, which we submitted to Nasdaq on January 22, 2024. On February 13, 2024, the Staff provided notice to us that it had granted the Company an extension to** regain compliance with **Nasdaq Listing** ~~the Bid Price~~ Rule **5550 (b) (1)** , **conditioned upon us undertaking and closing no later than March 31, 2024 the February 2024 Offering (as defined below) that we subsequently consummated on February 15, 2024 and publicly disclose evidence of compliance with the minimum stockholders' equity requirement. On February 16, 2024, the Staff provided notice that based on our Current Report on Form 8- K dated February 12, 2024, the Staff had determined that we complied with Nasdaq Listing Rule 5550 (b) (1). However, in the event we fail to evidence compliance with such rule upon the filing of our periodic report for the period ending March 31, 2024, with the SEC and Nasdaq, we may be subject to delisting. In the event we do not satisfy these terms, the Staff will provide written notification that our securities will be delisted. At that time, we may appeal the Staff' s determination to a Hearings Panel. We intend to attempt to take actions to restore our compliance with Nasdaq' s listing requirements, but we can provide no assurance that we will be able to do so. Any perception that we may not regain compliance or a delisting of** our common stock **by Nasdaq could adversely affect** ~~will be subject to delisting. If that were to occur~~ -- **our ability to attract new investors** , **decrease the liquidity of the outstanding shares of** our

common stock ~~would be subject to rules that impose~~ **, reduce the price at which such shares trade and increase the transaction costs inherent in trading such shares with overall negative effects for our stockholder. In** ~~additional~~ **addition, delisting of** ~~sales practice requirements on broker- dealers who sell~~ our **common stock from Nasdaq** ~~securities. The additional burdens imposed upon broker- dealers by these requirements~~ could ~~discourage~~ **deter** broker- dealers from ~~effecting transactions~~ **making a market in or otherwise seeking or generating interest** in our common stock ~~. This would adversely affect the ability of investors to trade~~ **, and might deter certain institutions and persons from investing in** our common stock ~~and~~ **. In the event of a de- listing, we** would ~~adversely affect~~ **take actions to restore our compliance with** the ~~value of~~ **Nasdaq listing requirements, but we can provide no assurance that any such action taken by us would allow** our common stock ~~. These factors could contribute to lower~~ **become listed again, stabilize the market** ~~prices~~ **price** ~~and larger spreads in the bid and ask prices for~~ **or improve the liquidity of** our common stock **, prevent our common stock from dropping below the Nasdaq listing requirements** . Our stock price has been, and could continue to be, volatile. There has been significant volatility in the market price and trading volume of equity securities, which may be unrelated to the financial performance of the companies issuing the securities. These broad market fluctuations could negatively affect the market price of our stock. The market price and volume of our common stock could fluctuate, and in the past has fluctuated, more dramatically than the stock market in general. During the 12 months ended December 31, ~~2022~~ **2023** , the market price of our common stock has ranged from a high of $ ~~11~~ **75** . 00 per share to a low of $ ~~0~~ **1** . ~~59~~ **09** per share **and the closing price of our common stock on March 14, 2024 was $ 0. 1348** . Stockholders may not be able to resell their shares at or above the price they paid for them due to fluctuations in the market price of our stock caused by changes in our operating performance or prospects or other factors. Some factors, in addition to the other risk factors identified above, that could have a significant effect on our stock market price include but are not limited to the following: • actual or anticipated fluctuations in our operating results or future prospects; • our announcements or our competitors' announcements of new products; • the public' s reaction to our press releases, our other public announcements, and our filings with the SEC; • strategic actions by us or our competitors, such as acquisitions or restructurings; • new laws or regulations or new interpretations of existing laws or regulations applicable to our business; • changes in accounting standards, policies, guidance, interpretations, or principles; • changes in our growth rates or our competitors' growth rates; • developments regarding our patents or proprietary rights or those of our competitors; • our inability to raise additional capital as needed; • concerns or allegations as to the safety or efficacy of our products; • changes in financial markets or general economic conditions; • sales of stock by us or members of our management team, our Board, our significant stockholders, or certain institutional stockholders; and • changes in stock market analyst recommendations or earnings estimates regarding our stock, other comparable companies or our industry generally. Stockholders could experience substantial dilution of their investment as a result of future sales of our equity, subsequent exercises of our outstanding warrants and options, or the future grant of equity by us. As of the date of the filing of this ~~annual report on~~ Form 10- K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and / or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. Moreover, we may choose to raise additional capital from time to time, even if we believe we have sufficient funds for our current or future operating plans. To the extent that we raise additional funds through the future sale of equity or convertible securities, the issuance of such securities will result in dilution to our stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in the offering. Investors purchasing shares or other securities in the future could have rights superior to existing stockholders. In addition, stockholders could experience substantial dilution of their investment as a result of subsequent exercises of outstanding warrants and outstanding options and vesting of restricted stock units issued as compensation for services performed by employees, directors, consultants, and others, warrants issued in past sales of our equity, or the grant of future equity- based awards. As of December 31, ~~2022~~ **2023** , **approximately 55, 000** ~~an aggregate of 1. 0 million~~ shares of common stock were reserved for issuance under our equity incentive plans, approximately ~~30~~ **300** ~~, 000~~ of which were subject to options outstanding, ~~529~~ **51** , 000 of which were subject to restricted stock units outstanding or expected to be issued as of that date, **200** ~~32, 000 Stock~~ **stock** ~~Appreciation~~ **appreciation** ~~Rights~~ **rights** outstanding ~~,~~ and ~~403~~ **3** , ~~000~~ **500** phantom restricted stock units outstanding or expected to be issued as of that date. In addition, as of December 31, ~~2022~~ **2023** , **approximately** ~~1.~~ 4 **. 3** million shares of our common stock were subject to warrants at a weighted- average exercise price of $ ~~10~~ **11** . ~~17~~ **88** per share ~~. In June 2022, 726, 660 pre- funded warrants, and 1, 405, 405 warrants were issued and in January 2023 an additional 11, 403, 571 pre- funded warrants were issued. All pre- funded warrants issued in 2022 were fully exercised as of December 31, 2022~~ . To the extent that outstanding warrants or options are exercised or the convertible preferred stock is converted, our existing stockholders could experience dilution. We rely heavily on equity awards to motivate current employees and to attract new employees. The grant of future equity awards by us to our employees and other service providers could further dilute our stockholders' interests in the Company. Because we do not intend to pay cash dividends **on our common stock** , our stockholders will benefit from an investment in our common stock only if it appreciates in value. We intend to retain our future earnings, if any, to finance the expansion of our business and do not expect to pay any cash dividends **on our common stock** in the foreseeable future. As a result, the success of an investment in our **securities** ~~common stock~~ will depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value or even maintain the price at which our stockholders purchased their shares. If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our share price and trading volume could decline. The trading market for our common stock will depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. There can be no assurance that analysts will cover us or provide favorable coverage. If one or more of the analysts who cover us downgrade our stock or change their opinion of our stock, our share price would likely decline. If one or more of these analysts cease coverage of the Company or fail to regularly publish reports on the Company, we

could lose visibility in the financial markets, which could cause our share price or trading volume to decline.