Risk Factors Comparison 2023-06-21 to 2022-06-29 Form: 10-K

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Our contract manufacturing operations involve the controlled use of hazardous materials and chemicals. We are subject to federal, state and local laws and regulations in the United States governing the use, manufacture, storage, handling and disposal of hazardous materials and chemicals. Although we believe that our procedures for using, handling, storing and disposing of these materials comply with legally prescribed standards, we may incur significant additional costs to comply with applicable laws in the future. Also, even if we are in compliance with applicable laws, we cannot completely eliminate the risk of contamination or injury resulting from hazardous materials or chemicals. As a result of any such contamination or injury, we may incur liability **,** or local, city, state or federal authorities may curtail the use of these materials and interrupt our business operations. In the event of an accident, we could be held liable for damages or penalized with fines, and the liability could exceed our resources. Compliance with applicable environmental laws and regulations is expensive, and current or future environmental regulations may impair our contract manufacturing operations, which could materially harm our business, financial condition and results of operations **. Our business, financial condition, and results of operations may be adversely affected by pandemics or similar public health crises. Public health crises such as pandemics or similar outbreaks may affect our operations and those of third parties on which we rely, including our customers and suppliers. Our business, financial condition, and results of operations may be affected by: disruptions in our customers' abilities to fund, develop, or bring to market products as anticipated; delays in or disruptions to the conduct of clinical trials by our customers; cancellations of contracts or confirmed orders from our customers; and inability, difficulty, or additional cost or delays in obtaining key raw materials, components, and other supplies from our existing supply chain; among other factors caused by a public health crises. For example, the COVID- 19 pandemic led to the implementation of various responses, including government- imposed quarantines, travel restrictions and other public health safety measures. The extent to which future pandemics impact our operations and / or those of our customers and suppliers will depend on future developments, which are highly uncertain and unpredictable, including the duration or recurrence of outbreaks, potential future government actions, new information that will emerge concerning the severity and impact of that pandemic and the actions to contain the pandemic or address its impact in the short and long term, among others. The business disruptions associated with a global pandemic could impact the business, product development priorities and operations of our customers and suppliers. For example, disruptions in supply chains and disruptions to the operations of the FDA and other drug regulatory authorities, could result in, among other things, delays of inspections, reviews, and approvals of our customers' products, as well as the volume and timing of orders from these customers. Such disruptions could result in delays in the development programs of our customers or impede the commercial efforts for our customers' approved products, resulting in potential reductions or delays in orders from our customers which could have a material negative effect on our business in the future** . Potential product liability claims, errors and omissions claims in connection with services we perform and potential liability under indemnification agreements between us and our officers and directors could adversely affect us. We manufacture products intended for use in humans. These activities could expose us to risk of liability for personal injury or death to persons using such products. We seek to reduce our potential liability through measures such as contractual indemnification provisions with customers (the scope of which may vary by customer, and the performances of which are not secured) and insurance maintained by us and our customers. We could be materially adversely affected if we are required to pay damages or incur defense costs in connection with a claim that is outside the scope of the indemnification agreements, if the indemnity, although applicable, is not performed in accordance with its terms or if our liabilities exceed the amount of applicable insurance or indemnity. In addition, we could be held liable for errors and omissions in connection with the services we perform. Although we currently maintain product liability and errors and omissions insurance with respect to these risks, such coverage may not be adequate or continue to be available on terms acceptable to us. ~~14~~ We also indemnify our officers and directors for certain events or occurrences while the officer or director is serving at our request in such capacity. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. Although we have a director and officer insurance policy that covers a portion of any potential exposure, we could be materially and adversely affected if we are required to pay damages or incur legal costs in connection with a claim above such insurance limits. **14** Any claims beyond our insurance coverage limits, or that are otherwise not covered by our insurance, may result in substantial costs and a reduction in our available capital resources. We maintain property insurance, employer' s liability insurance, product liability insurance, general liability insurance, business interruption insurance, and directors' and officers' liability insurance, among others. Although we maintain what we believe to be adequate insurance coverage, potential claims may exceed the amount of insurance coverage or may be excluded under the terms of the policy, which could cause an adverse effect on our business, financial condition and results from operations. Generally, we would be at risk for the loss of inventory that is not within customer specifications. These amounts could be significant. In addition, in the future we may not be able to obtain adequate insurance coverage or we may be required to pay higher premiums and accept higher deductibles in order to secure adequate insurance coverage. Third parties may claim that our services or our customer' s products infringe on or misappropriate their intellectual property rights. Any claims that our services infringe the rights of third parties, including claims arising from any of our customer engagements, regardless of their merit or resolution, could be costly and may divert the efforts and attention of our management and technical personnel. We may not prevail in such proceedings, given the complex technical issues and inherent uncertainties in intellectual property litigation. If such proceedings

result in an adverse outcome, we could be required, among other things, to pay substantial damages, discontinue the use of the infringing technology, expend significant resources to develop non- infringing technology, license such technology from the third party claiming infringement (which license may not be available on commercially reasonable terms or at all) and / or cease the manufacture, use or sale of the infringing processes or offerings, any of which could have a material adverse effect on our business. In addition, our customers' products may be subject to claims of intellectual property infringement and such claims could materially affect our business if their products cease to be manufactured and they have to discontinue the use of the infringing technology which we may provide. Any of the foregoing could affect our ability to compete or could have a material adverse effect on our business, financial condition and results of operations. We depend on key personnel and the loss of key personnel could harm our business and results of operations. We depend on our ability to attract and retain qualified scientific and technical employees, as well as a number of key executives. These employees may voluntarily terminate their employment with us at any time. We may not be able to retain key personnel, or attract and retain additional qualified employees. We do not maintain key- man or similar policies covering any of our senior management or key personnel. Our inability to attract and retain key personnel would have a material adverse effect on our business. We have federal and state net operating loss, or NOL, carry forwards which ~~, if we were to become profitable,~~ could be used to offset / defer federal and state income taxes. Our ability to use such carry forwards to offset future taxable income may be subject to certain limitations related to changes in ownership of our stock and decisions by California and other states to limit or suspend NOL carry forwards. As of April 30, ~~2022~~ **2023** , we had federal and state NOL carry forwards of approximately $ ~~384~~ **442. 4** million and $ ~~312~~ **294. 7** million, respectively. These NOL carry forwards could potentially be used to offset certain future federal and state income tax liabilities. The federal net operating loss carry forwards generated prior to January 1, 2018 expire in fiscal years 2024 through 2038 **, unless previously utilized** . The federal net operating loss generated after January 1, 2018 of $ ~~19~~ **77** . ~~6~~ **9** million can be carried forward indefinitely. Utilization of net operating losses generated subsequent to 2020 are limited to 80 % of future taxable income. However, utilization of NOL carry forwards may be subject to a substantial annual limitation pursuant to Section 382 of the Internal Revenue Code of 1986, as amended, as well as similar state provisions due to ownership changes that have occurred previously or that could occur in the future. In general, an ownership change, as defined by Section 382, results from transactions increasing the ownership of certain stockholders or public groups in the stock of a corporation by more than 50 percentage points over a three- year period. A Section 382 analysis has been completed through the fiscal year ended April 30, 2022, which it was determined that no such change in ownership had occurred. However, ownership changes occurring subsequent to April 30, 2022 may impact the utilization of our NOL carry forwards and other tax attributes. Additionally, states may impose other limitations on the use of state NOL carry forwards. Any limitation may result in expiration of a portion of the carry forwards before utilization. If we were not able to utilize our carry forwards, we would be required to use our cash resources to pay taxes that would otherwise have been offset, thereby reducing our liquidity. 15 We have recorded significant deferred tax assets, and we might never realize their full value, which would result in a ~~change~~ **charge** against our earnings. As of April 30, ~~2022~~ **2023** , we had deferred tax assets of $ ~~115~~ **113** . ~~1~~ **6** million. Realization of our deferred tax assets is dependent upon our generating sufficient taxable income in future years to realize the tax benefit from those assets. Deferred tax assets are reviewed on a periodic basis for realizability. A charge against our earnings would result if, based on the available evidence, it is more likely than not that some portion of the deferred tax asset will not be realized beyond our existing valuation allowance, if any. This could be caused by, among other things, deterioration in performance, adverse market conditions, adverse changes in applicable laws or regulations, including changes that restrict the activities of or affect the services provided by our business and a variety of other factors. If a deferred tax asset net of our valuation allowance, if any, was determined to be not realizable in a future period, the charge to earnings would be recognized as an expense in our results of operations in the period the determination is made. Additionally, if we are unable to utilize our deferred tax assets, our cash flow available to fund operations could be adversely affected. Depending on future circumstances, it is possible that we might never realize the full value of our deferred tax assets. Any future impairment charges related to a significant portion of our deferred tax assets could have an adverse effect on our financial condition and results of operations. **Our effective tax rate may fluctuate, and we may incur obligations in tax jurisdictions in excess of accrued amounts. Our effective tax rate is derived from a combination of applicable tax rates in the various places that we operate. In preparing our financial statements, we estimate the amount of tax that will become payable in each such place. Nevertheless, our effective tax rate may be different than experienced in the past due to numerous factors, including the impact of stock- based compensation, changes in the mix of our profitability between tax jurisdictions, the results of examinations and audits of our tax filings, our inability to secure or sustain acceptable agreements with tax authorities, changes in accounting for income taxes and changes in tax laws. Any of these factors could cause us to experience an effective tax rate significantly different from previous periods or our current expectations and may result in tax obligations in excess of amounts accrued in our financial statements. In addition, in the fourth quarter of fiscal 2022, we determined, based on our facts and circumstances, that it was more likely than not that our deferred tax assets would be realized and, as a result, we fully released our valuation allowance related to federal and state deferred tax assets. This resulted in a substantial increase in our reported net income and our earnings per share compared to our operating results for fiscal 2022. As such, fiscal 2022 net income is not indicative of the actual or future profitability trend of our business. Starting in fiscal 2023, we commenced recording income tax expense at an estimated tax rate that approximates statutory tax rates, which could result in a significant reduction in our net income and net income per share.** We may be subject to various litigation claims and legal proceedings. We, as well as certain of our directors and officers, may be subject to claims or lawsuits during the ordinary course of business. Regardless of the outcome, these lawsuits may result in significant legal fees and expenses and could divert management' s time and other resources. If the claims contained in these lawsuits are successfully asserted against us, we could be liable for damages and be required to alter or cease certain of our business practices. Any of these outcomes could cause our business, financial

performance and cash position to be negatively impacted. **16** We have become increasingly dependent on information technology and any breakdown, interruption or breach of our information technology systems could subject us to liability or interrupt the operation of our business, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. We are increasingly dependent upon sophisticated information technology systems and infrastructure in connection with the conduct of our business. We must constantly update our information technology infrastructure and our various current information technology systems throughout the organization may not continue to meet our current and future business needs. Furthermore, modification, upgrade or replacement of such systems may be costly. In addition, due to the size and complexity of these systems, any breakdown, interruption, corruption or unauthorized access to or cyber- attack on these systems could create system disruptions, shutdowns or unauthorized disclosure of confidential information. While we attempt to take appropriate security and cyber- security measures to protect our data and information technology systems and to prevent such breakdowns and unauthorized breaches and cyber- attacks, these measures may not be successful and these breakdowns and breaches in, or attacks on, our systems and data may not be prevented. Such breakdowns, breaches or attacks may cause business interruption and could have a material adverse effect on our business, financial condition, results of operations and cash flows and could cause the market value of our shares of common stock to decline, and we may suffer financial damage or other loss, including fines or criminal penalties because of lost or misappropriated information. Increasing attention to **ESG** ~~environmental, social and governance~~ matters may impact our business, financial results or stock price. Companies across all industries are facing increasing scrutiny from stakeholders related to their ~~environmental, social and governance (“~~ ESG ~~”)~~ practices and disclosures, including practices and disclosures related to climate change, diversity and inclusion and governance standards. Investor advocacy groups, certain institutional investors, lenders, investment funds and other influential investors are also increasingly focused on ESG practices and disclosures and in recent years have placed increasing importance on the implications and social cost of their investments. In addition, government organizations are enhancing or advancing legal and regulatory requirements specific to ESG matters. The heightened stakeholder focus on ESG issues related to our business requires the continuous monitoring of various and evolving laws, regulations, standards and expectations and the associated reporting requirements. A failure to adequately meet stakeholder expectations may result in noncompliance, the loss of business, reputational impacts, diluted market valuation, an inability to attract customers and an inability to attract and retain top talent. In addition, our adoption of certain standards or mandated compliance to certain requirements could necessitate additional investments that could have an adverse effect on our results of operations. ~~16~~ We may seek to grow our business through acquisitions of complementary businesses, and the failure to manage acquisitions, or the failure to integrate them with our existing business, could harm our financial condition and operating results. From time to time, we may consider opportunities to acquire other companies, products or technologies that may enhance our manufacturing capabilities, expand the breadth of our markets or customer base, or advance our business strategies. Potential acquisitions involve numerous risks, including: problems assimilating the acquired service offerings, products or technologies; issues maintaining uniform standards, procedures, quality control and policies; unanticipated costs associated with acquisitions; diversion of management’ s attention from our existing business; risks associated with entering new markets in which we have limited or no experience; increased legal and accounting costs relating to the acquisitions or compliance with regulatory matters; and unanticipated or undisclosed liabilities of any target. We have no current commitments with respect to any acquisition. We do not know if we will be able to identify acquisitions we deem suitable, whether we will be able to successfully complete any such acquisitions on favorable terms or at all, or whether we will be able to successfully integrate any acquired service offerings, products or technologies. Our potential inability to integrate any acquired service offerings, products or technologies effectively may adversely affect our business, financial condition, and results of operations. **17** Risks Related to Our Customers The consumers of the products we manufacture for our customers may significantly influence our business, financial condition, and results of operations. We depend on, and have no control over, consumer demand for the products we manufacture for our customers. Consumer demand for our customers’ products could be adversely affected by, among other things, delays in health regulatory approval, the inability of our customers to demonstrate the efficacy and safety of their products, the loss of patent and other intellectual property rights protection, the emergence of competing or alternative products, including generic drugs ~~,~~ **and** the degree to which private and government payment subsidies for a particular product offset the cost to consumers and changes in the marketing strategies for such products ~~and the outbreak of a pandemic such as the COVID- 19 pandemic~~ . Additionally, if the products we manufacture for our customers do not gain market acceptance, our revenues and profitability may be adversely affected. We believe that continued changes to the healthcare industry, including ongoing healthcare reform, adverse changes in government or private funding of healthcare products and services, legislation or regulations governing the privacy of patient information or patient access to care, or the delivery, pricing or reimbursement of pharmaceuticals and healthcare services or mandated benefits, may cause healthcare industry participants to purchase fewer services from us or influence the price that others are willing to pay for our services. Changes in the healthcare industry’ s pricing, selling, inventory, distribution or supply policies or practices could also significantly reduce our revenue and profitability. If production volumes of key products that we manufacture for our customers decline, our financial condition and results of operations may be adversely affected. Our customers’ failure to receive or maintain regulatory approval for their product candidates could negatively impact our revenues and profitability. Our success depends upon the regulatory approval of the products we manufacture. As such, if our customers experience a delay in, or **a** failure to receive, approval for any of their product candidates or fail to maintain regulatory approval of their products **,** and we are not able to manufacture these products, our revenue and profitability could be adversely affected. Additionally, if the FDA or a comparable foreign regulatory authority does not approve of our facilities for the manufacture of a customer product **,** or if it withdraws such approval in the future, our customers may choose to identify alternative manufacturing facilities and / or relationships, which could significantly impact our ability to expand our manufacturing capacity and capabilities and achieve profitability. We depend on spending and demand from our customers for our contract manufacturing and development services

and any reduction in spending or demand **, whether due to a deterioration in macroeconomic conditions or unfavorable research and development results,** could have a material adverse effect on our ~~business~~ **revenues and profitability** . The amount that our customers spend on the development and manufacture of their products or product candidates, particularly the amount our customers choose to spend on outsourcing these services to us, substantially impacts our revenue and profitability. ~~The~~ **During times of greater economic uncertainty, such as the biopharmaceutical industry is currently experiencing, our smaller customers with products in earlier stages of development tend to be much more negatively impacted due to the tightening of the access to capital. As a result, such earlier stage customers may be forced to delay or cancel our services in an effort to conserve cash which could have a material adverse effect on our revenues and profitability. In addition, the** outcomes of our customers' research, development and marketing also significantly influence the amount that our customers choose to spend on our services and offerings. Our customers determine the amounts that they will spend on our services based upon, among other things, the clinical and market success of their products, available resources ~~, access to capital~~ and their need to develop new products which, in turn, depend upon a number of other factors, including their competitors' research, development and product initiatives and the anticipated market for any new products, as well as clinical and reimbursement scenarios for specific products and therapeutic areas. Further, increasing consolidation in the pharmaceutical industry may impact such spending, particularly in the event that any of our customers choose to develop or acquire integrated manufacturing operations. Any reduction in customer spending on biologics development and related services as a result of these and other factors could have a material adverse effect on our business, financial condition, and results of operations. ~~17~~ **18** If we are unable to protect the confidentiality of our customers' proprietary information, we may be subject to claims. Many of the formulations used and processes developed by us in the manufacture of our customers' products are subject to trade secret protection, patents or other intellectual property protections owned or licensed by such customer. While we make significant efforts to protect our customers' proprietary and confidential information, including requiring our employees to enter into agreements protecting such information, if any of our employees ~~breaches~~ -- **breach** the non- disclosure provisions in such agreements, or if our customers make claims that their proprietary information has been disclosed, our reputation may suffer damage and we may become subject to legal proceedings that could require us to incur significant expense and divert our management' s time, attention and resources. Risks Related to the Industry in Which We Operate Failure to comply with existing and future regulatory requirements could adversely affect our business, financial condition, and results of operations. Our industry is highly regulated. We are required to comply with the regulatory requirements of various local, state, provincial, national and international regulatory bodies having jurisdiction in the countries or localities in which we manufacture products or in which our customers' products are distributed. In particular, we are subject to laws and regulations concerning development, testing, manufacturing processes, equipment and facilities, including compliance with CGMPs, import and export, and product registration and listing, among other things. As a result, most of our facilities are subject to regulation by the FDA, as well as regulatory bodies of other jurisdictions where our customers have marketing approval for their products including, but not limited to, the EMA, ANVISA and / or Health Canada, depending on the countries in which our customers market and sell the products we manufacture on their behalf. As we expand our operations, we may be exposed to more complex and new regulatory and administrative requirements and legal risks, any of which may require expertise in which we have little or no experience. It is possible that compliance with new regulatory requirements could impose significant compliance costs on us. Such costs could have a material adverse effect on our business, financial condition and results of operations. These regulatory requirements impact many aspects of our operations, including manufacturing, developing, storage, distribution, import and export and record keeping related to customers' products. Noncompliance with any applicable regulatory requirements can result in government refusal to approve: (i) facilities for testing or manufacturing products or (ii) products for commercialization. The FDA and other regulatory agencies can delay, limit or deny approval for many reasons, including: · changes to the regulatory approval process, including new data requirements for product candidates in those jurisdictions, including the United States, in which our customers may be seeking approval; · that a customer' s product candidate may not be deemed to be safe or effective; ~~and~~ · the inability of the regulatory agency to provide timely responses as a result of its resource constraints; **and** · that the manufacturing processes or facilities may not meet the applicable requirements. In addition, if new legislation or regulations are enacted or existing legislation or regulations are amended or are interpreted or enforced differently, we may be required to obtain additional approvals or operate according to different manufacturing or operating standards. This may require a change in our development and manufacturing techniques or additional capital investments in our facilities. Any related costs may be significant. If we fail to comply with applicable regulatory requirements in the future, then we may be subject to warning letters and / or civil or criminal penalties and fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, restrictions on the import and export of our products, debarment, exclusion, disgorgement of profits, operating restrictions and criminal prosecution and the loss of contracts and resulting revenue losses. Inspections by regulatory authorities that identify any deficiencies could result in remedial actions, production stoppages or facility closure, which would disrupt the manufacturing process and supply of product to our customers. In addition, such failure to comply could expose us to contractual and product liability claims, including claims by customers for reimbursement for lost or damaged active pharmaceutical ingredients or recall or other corrective actions, the cost of which could be significant. **19** In addition, certain products we manufacture must undergo pre- clinical and clinical evaluations relating to product safety and efficacy before they are approved as commercial therapeutic products. The regulatory authorities having jurisdiction in the countries in which our customers intend to market their products may delay or put on hold clinical trials or delay approval of a product or determine that the product is not approvable. The FDA or other regulatory agencies can delay approval of a drug if our manufacturing facility, including any newly commissioned facility, is not able to demonstrate compliance with CGMPs, pass other aspects of pre- approval inspections or properly scale up to produce commercial supplies. The FDA and comparable government authorities having jurisdiction in the countries in which we or our customers intend to market their products have the authority to

withdraw product approval or suspend manufacture if there are significant problems with raw materials or supplies, quality control and assurance or the product we manufacture is adulterated or misbranded. If our manufacturing facilities and services are not in compliance with FDA and comparable government authorities, we may be unable to obtain or maintain the necessary approvals to continue manufacturing products for our customers, which would materially adversely affect our financial condition and results of operations. ~~18~~ We operate in a highly competitive market and competition may adversely affect our business. We operate in a market that is highly competitive. Our competition in the contract manufacturing market includes full- service contract manufacturers and large pharmaceutical companies offering third- party manufacturing services to fill their excess capacity. We may also compete with the internal operations of those pharmaceutical companies that choose to source their product offerings internally. In addition, most of our competitors may have substantially greater financial, marketing, technical or other resources than we do. Moreover, additional competition may emerge, particularly in lower- cost jurisdictions such as India and China, which could, among other things, result in a decrease in the fees paid for our services, which may adversely affect our financial condition and results of operations. Risks Related to the Ownership of Our Common Stock Our issuance of additional capital stock pursuant to our stock incentive plan, or in connection with financings, acquisitions, or otherwise will dilute the interests of other security holders and may depress the price of our common stock. We expect to issue additional capital stock in the future that will result in dilution to all other stockholders. We expect to grant equity awards to employees, directors and consultants under our stock incentive plan. We may also raise capital through equity financings in the future. As part of our growth strategy, we may seek to acquire companies and issue equity securities to pay for any such acquisition. Any such issuances of additional capital stock may cause stockholders to experience significant dilution of their ownership interests and the per share value of our common stock to decline. Furthermore, if we issue additional equity or convertible debt securities, the new equity securities could have rights senior to those of our common stock. For example, if we elect to settle our conversion obligation under our 1. ~~250~~ **25** % Convertible Senior Notes due 2026 (“ Convertible Notes ”) in shares of our common stock or a combination of cash and shares of our common stock, the issuance of such common stock may dilute the ownership interests of our stockholders and sales in the public market could adversely affect prevailing market prices. Our highly volatile stock price may adversely affect the liquidity of our common stock. The market price of our common stock has generally been highly volatile and is likely to continue to be highly volatile. For instance, the market price of our common stock has ranged from $ ~~3~~ **5** . ~~02~~ **08** to $ 34. 51 per share over the last three fiscal years ended April 30, ~~2022~~ **2023** . **20** The market price of our common stock may be significantly impacted by many factors including the following: · the loss of a significant customer; · significant changes in our financial results or that of our competitors, including our ability to continue as a going concern; · the ability to meet our revenue guidance; · the offering and sale of shares of our common stock, either sold at market prices or at a discount under an equity transaction; · significant changes in our capital structure; · published reports by securities analysts; · actual or purported short squeeze trading activity; · announcements of partnering transactions, joint ventures, strategic alliances, and any other transaction that involves the development, sale or use of our technologies or competitive technologies; · regulatory developments, including possible delays in the regulatory approval of our customers’ products which we manufacture; · outcomes of significant litigation, disputes and other legal or regulatory proceedings; · general stock trends in the biotechnology and pharmaceutical industry sectors; · public concerns as to the safety and effectiveness of the products we manufacture; · economic trends and other external factors including, but not limited to, interest rate fluctuations, economic recession, inflation, foreign market trends, national crisis, and disasters; and · healthcare reimbursement reform and cost-containment measures implemented by government agencies. These and other external factors have caused and may continue to cause the market price and demand for our common stock to fluctuate substantially, which may limit or prevent investors from readily selling their shares of our common stock, and may otherwise negatively affect the liquidity of our common stock. ~~19~~ Anti- takeover provisions in our certificate of incorporation, amended and restated bylaws, the Indenture, as well as provisions of Delaware law could prevent or delay a change in control of our company, even if such change in control would be beneficial to our stockholders. Provisions of our certificate of incorporation and amended and restated bylaws could discourage, delay or prevent a merger, acquisition or other change in control of our company, even if such change in control would be beneficial to our stockholders. These include: authorizing the issuance of “ blank check ” preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt; no provision for the use of cumulative voting for the election of directors; limiting the ability of stockholders to call special meetings; requiring all stockholder actions to be taken at a meeting of our stockholders (i. e. no provision for stockholder action by written consent); and establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings. Further, in connection with our Convertible Notes issuances, we entered into an indenture dated as of March 12, 2021 as amended by a first supplemental indenture dated April 30, 2021 (as amended or supplemented, the “ Indenture ”) with U. S. Bank National Association, as trustee. Certain provisions in the Indenture could make it more difficult or more expensive for a third party to acquire us. For example, if a takeover would constitute a fundamental change, holders of the Convertible Notes will have the right to require us to repurchase their Convertible Notes in cash. In addition, if a takeover constitutes a make- whole fundamental change, we may be required to increase the conversion rate for holders who convert their Convertible Notes in connection with such takeover. In either case, and in other cases, our obligations under the Convertible Notes and the Indenture could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management. In addition, Section 203 of the Delaware General Corporation Law prohibits us, except under specified circumstances, from engaging in any mergers, significant sales of stock or assets or business combinations with any stockholder or group of stockholders who owns at least 15 % of our common stock. **21** Our **amended and restated** bylaws ~~, as amended,~~ provide that the Court of Chancery of the State of Delaware will be the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees. Our **amended and restated** bylaws ~~, as~~

~~amended,~~ provide that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware is the exclusive forum for any derivative action or proceeding brought on our behalf, any action asserting a breach of a fiduciary duty owed by any of our directors, officers, or other employees to us, any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our certificate of incorporation or our bylaws, any action to interpret, apply, enforce, or determine the validity of our certificate of incorporation or bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine. The 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. We do not intend to pay dividends on our common stock, so any returns will be limited to the value of our stock. We have never declared or paid any cash dividend on our common stock. We currently anticipate that we will retain future earnings, if any, for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. Any return to stockholders will therefore be limited to the appreciation of the trading price of our common stock. If securities or industry analysts do not publish research reports about us, or if they issue adverse opinions about our business, our stock price and trading volume could decline. The research and reports that industry or securities analysts publish about us or our business will influence the market for our common stock. If one or more analysts who cover us issues an adverse opinion about us, our stock price would likely decline. If one or more of these analysts ceases research coverage of us or fails to regularly publish reports on us, we could lose visibility in the financial markets which, in turn, could cause our stock price or trading volume to decline. Further, if we fail to meet the market expectations of analysts who follow our stock, our stock price likely would decline. ~~20~~ Risks Related to Our Outstanding Convertible Notes We may not have sufficient cash flow from our business to make payments on our significant debt when due, and we may incur additional indebtedness in the future. In March 2021, we issued the Convertible Notes in a private offering to qualified institutional buyers pursuant to Rule 144 under the Securities Act. We may be required to use a substantial portion of our cash flows from operations to pay interest and principal on our indebtedness. Our ability to make scheduled payments of the principal **and** ~~of,~~ to pay interest on or to refinance our indebtedness, including the Convertible Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations. **22** In addition, we may incur substantial additional debt in the future, subject to the restrictions contained in our future debt agreements, some of which may be secured debt. We are not restricted under the terms of the Indenture governing the Convertible Notes, from incurring additional debt, securing existing or future debt, recapitalizing our debt, repurchasing our stock, pledging our assets, making investments, paying dividends, guaranteeing debt or taking a number of other actions that are not limited by the terms of the Indenture governing the Convertible Notes that could have the effect of diminishing our ability to make payments on the Convertible Notes when due. The conditional conversion feature of our Convertible Notes, if triggered, may adversely affect our financial condition and operating results. In the event the conditional conversion feature of the Convertible Notes is triggered, holders of the Convertible Notes will be entitled to convert the notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Convertible Notes when these conversion triggers are satisfied, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long- term liability, which would result in a material reduction of our net working capital. The capped call transactions may affect the value of our Convertible Notes and our common stock. In connection with the pricing of the Convertible Notes, we entered into capped call transactions with the option counterparties. The capped call transactions cover, subject to customary anti- dilution adjustments, the aggregate number of shares of our common stock that initially underlie the Convertible Notes. The capped call transactions are expected generally to reduce the potential dilution to our common stock as a result of conversion of the Convertible Notes and / or offset any cash payments we are required to make in excess of the principal amount of the converted Convertible Notes, as the case may be, with such reduction and / or offset subject to a cap. In connection with establishing their initial hedges of the capped call transactions, the option counterparties or their respective affiliates may have purchased shares of common stock and / or entered into various derivative transactions with respect to our common stock concurrently with or shortly after the pricing of the Convertible Notes, including with certain investors in the Convertible Notes. In addition, the option counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and / or purchasing or selling our common stock or other securities of ours in secondary market transactions following the pricing of the Convertible Notes and prior to the maturity of the Convertible Notes. They are likely to do so on each exercise date for the capped call transactions, which are expected to occur during each 40 **-** trading day period beginning on the 41st scheduled trading day prior to the maturity date of the Convertible Notes, or following any termination of any portion of the capped call transactions in connection with any repurchase, redemption or early conversion of the Convertible Notes. This activity could also cause or prevent an increase or decrease in the price of our common stock or the Convertible Notes. The potential effect, if any, of these transactions on the price of our common stock or the Convertible Notes will depend in part on market conditions and cannot be ascertained at this time. Any of these activities could adversely affect the value of our common stock. We are subject to counterparty risk with respect to the capped call transactions. The counterparties to the capped call transactions are financial institutions, and we

will be subject to the risk that one or more of the option counterparties may default, fail to perform or exercise their termination rights under the capped call transactions. Our exposure to the credit risk of the option counterparties will not be secured by any collateral. If a counterparty to the capped call transactions becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at the time under such transaction. Our exposure will depend on many factors but, generally, our exposure will increase if the market price or the volatility of our common stock increases. In addition, upon a default, failure to perform or a termination of the capped call transactions by a counterparty, we may suffer more dilution than we currently anticipate with respect to our common stock. ~~21~~ **23** Item 1B. Unresolved Staff Comments