Risk Factors Comparison 2024-04-01 to 2023-03-31 Form: 10-K

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

We have commenced our remediation efforts as discussed in Part II, 9A. Controls and Procedures of this Annual Report on Form 10- K to address the material weaknesses in internal control over financial reporting and ineffective disclosure controls and procedures. If our remedial measures are insufficient, or if additional material weaknesses or significant deficiencies in our internal controls occur in the future, we could be required to restate our financial results, which could materially and adversely affect our business, results of operations and financial condition, restrict our ability to access the capital markets, require us to expend significant resources to correct the weakness or deficiencies, harm our reputation and otherwise cause a decline in investor confidence. In addition, we could be subject to, among other things, regulatory or enforcement actions by the Securities and Exchange Commission, (the " SEC " or the " Commission "). We rely on information technology systems that are susceptible to cybersecurity risks. In the event of a cybersecurity incident, we could experience operational interruptions, incur substantial additional costs, become subject to legal or regulatory proceedings or suffer damage to our reputation. We rely on information technologies and infrastructure to manage our businesses, including digital storage of marketing strategies and client information, films and digital programming and delivery of digital marketing services for our businesses. Data maintained in digital form is subject to the risk of intrusion, tampering and theft. The incidence of malicious technology- related events, such as cyberattacks, computer hacking, computer viruses, worms or other destructive or disruptive software, denial of service attacks or other malicious activities is on the rise worldwide. Power outages, equipment failure, natural disasters (including extreme weather), terrorist activities or human error may also affect our systems and result in disruption of our services or loss or improper disclosure of personal data, business information or other confidential information. Likewise, data privacy breaches, as well as improper use of social media, by employees and others may pose a risk that sensitive data, such as personally identifiable information, strategic plans and trade secrets, could be exposed to third parties or to the general public. We also utilize third parties, including third- party " cloud " computing services, to store, transfer or process data, and system failures or network disruptions or breaches in the systems of such third parties could adversely affect our reputation or business. Any such breaches or breakdowns could lead to business interruption, exposure of our or our clients' proprietary or confidential information, data corruption, damage to our reputation, exposure to legal and regulatory proceedings and other costs. Such events could have a material adverse impact on our financial condition, results of operations and cash flows. In addition, we could be adversely affected if any of our significant customers or suppliers experience any similar events that disrupt their business operations or damage their reputation. Efforts to develop, implement and maintain security measures are costly, may not be successful in preventing these events from occurring and require ongoing monitoring and updating as technologies change and efforts to overcome security measures become more sophisticated. Although we maintain monitoring practices and protections of our information technology to reduce these risks, there can be no assurance that our efforts will prevent the risk of a security breach of our databases or systems that could adversely affect our business. We will require additional financing, and we may not be able to raise funds on favorable terms or at all. We had negative working capital of $ **6. 7 million** ~~1, 423, 825~~ as of December 31, ~~2022~~ **2023** . With our current cash on hand, expected revenues, and based on our current average monthly expenses, we anticipate we will need additional funding in order to continue our operations at their current levels, and to pay the costs associated with being a public company, for the next 12 months. To the extent we acquire additional businesses, we will also require additional funding in the future to support our operations. The most likely source of future funds presently available to us will be through the sale of equity capital. Any sale of share capital will result in dilution to existing ~~stockholders~~ **shareholders** . Furthermore, we may incur debt in the future, and may not have sufficient funds to repay our future indebtedness or may default on our future debts, jeopardizing our business viability. **8** ~~The profitability of our investments is uncertain. During 2021, we acquired an ownership stake in Midnight Theatre, a contemporary variety theater and restaurant in Manhattan and in Crafthouse Cocktails, a brand of ready- to- drink, all- natural classic cocktails. During the year ended December 31, 2022, we incurred losses related to our investment in Midnight Theatre and Crafthouse Cocktails in the amount of $ 246, 789. We also started an NFT studio to produce and market NFTs. On October 2, 2022, the Company minted and offered for sale a collection of 7, 777 NFTs, titled Creature Chronicles: Exiled Aliens. The collection generated approximately 13, 175 Solana (" SOL ") equivalent to approximately $ 429, 000 on the date of the sale. Investments in these new ventures entail risks those businesses will fail to perform in accordance with expectations. In undertaking these investments, we will incur certain risks, including the expenditure of funds on, and the devotion of management' s time to, synergies that may not come to fruition. Additional risks inherent in these investments include risks that the ventures will not achieve anticipated success and that estimates of the costs of bringing these ventures to profitability may prove inaccurate. Expenses may also be greater than anticipated.~~ Risks Related to Our Entertainment Publicity and Marketing Business Our business could be adversely affected if we fail to retain the principal sellers, and other key employees of 42West, The Door, Viewpoint, Shore Fire, ~~Be~~ **The Digital Dept. and** ~~Social~~ **Special Projects** ~~and Socialyte~~ and the clients they serve. The success of our entertainment publicity and marketing business operated by 42West, The Door, Viewpoint, Shore Fire, ~~Be~~ **The Digital Dept. and** ~~Social~~ **Special Projects** ~~and Socialyte~~ , our marketing subsidiaries, substantially depends on our ability to retain the services of their former owners and certain key employees. If we lose the services of one or more of these individuals, our ability to successfully implement our business plan with respect to our entertainment publicity and marketing business and the value of our common stock could be materially adversely affected. Although we entered into employment agreements with each of the principal sellers, there can be no assurance that they will serve the terms of their respective employment agreements or choose to remain with us following the expiration of such terms. In addition, the employees of our marketing subsidiaries, and their skills and relationships with clients, are among our most valuable assets. An important aspect of the business' competitiveness is its ability to retain such key employees. If our marketing subsidiaries fail to hire and retain a sufficient number of these key employees, it may have a material adverse effect on our overall business and results of operations. Our marketing subsidiaries' talent rosters currently include some of the best known and most highly respected members of the entertainment, hospitality, and musical communities. These include major studios and networks, corporations, well- known consumer brands, celebrity chefs, leading restaurant and hotel brands, recording artists and social media influencers. These clients often form highly loyal relationships with certain public relations and marketing professionals rather than with a particular firm. The employment agreements with the principal sellers currently contain non- competition provisions that prohibit the principal sellers from continuing to provide services to such clients should they leave our ~~company~~ **Company** , however, clients are free to engage other public relations and marketing professionals and there can be no assurance that they will choose to remain with our ~~company~~ **Company** . The success of our marketing subsidiaries, therefore, ~~depend~~ **depends** on our ability to continue to successfully maintain such client relationships should the principal sellers or other key employees leave our ~~company~~ **Company** . If we are unable to retain the current marketing subsidiaries' current clients or attract new clients, then we could suffer a material adverse effect on our business and results of operations. We operate in a highly competitive industry. The entertainment publicity and marketing business is highly competitive. Through our marketing subsidiaries, we must compete with other agencies, and with other providers of marketing and publicity services, in order to maintain existing client relationships and to win new clients. Through Viewpoint, we compete against other creative branding agencies, as well as in- house creative teams at many of our clients. The client' s perception of the quality of an agency' s creative work and the agency' s reputation are critical factors in determining its competitive position. The success of our entertainment publicity and marketing business depends on its ability to consistently and effectively deliver marketing and public relations services to ~~its~~ **our** clients. Our marketing subsidiaries' success depends on its ability to effectively and consistently staff and execute client engagements to achieve the clients' unique personal or professional goals. Our marketing subsidiaries work to design customized communications or publicity campaigns tailored to the particular needs and objectives of particular projects. In some of their engagements, our marketing subsidiaries rely on other third parties to provide some of the services to its clients, and we cannot guarantee that these third parties will effectively deliver their services or that we will have adequate recourse against these third parties in the event they fail to effectively deliver their services. Other contingencies and events outside of our control may also impact our marketing subsidiaries' ability to provide its services. Our marketing subsidiaries' failure to effectively and timely staff, coordinate and execute its client engagements may adversely impact existing client relationships, the amount or timing of payments from clients, its reputation in the marketplace and ability to secure additional business and our resulting financial performance. In addition, our contractual arrangements with our clients may not provide us with sufficient protections against claims for lost profits or other claims for damages. If we are unable to adapt to changing client demands, social and cultural trends or emerging technologies, we may not remain competitive and our business, revenues and operating results could suffer. We operate in an industry characterized by rapidly changing client expectations, marketing technologies, and social mores and cultural trends that impact our target audiences. The entertainment industry continues to undergo significant developments as advances in technologies and new methods of message delivery and consumption emerge. These developments drive changes in our target audiences' behavior to which we must adapt in order to reach our target audiences. In addition, our success depends on our ability to anticipate and respond to changing social mores and cultural trends that impact the entertainment industry and our target audiences. We must adapt our business to these trends, as well as shifting patterns of content consumption and changing behaviors and preferences of our target audiences, through the adoption and exploitation of new technologies. If we cannot successfully exploit emerging technologies or if the marketing strategies we choose misinterpret cultural or social trends and prove to be incorrect or ineffective, any of these could have a material adverse effect on our business, financial condition, operating results, liquidity and prospects. **9** A significant labor dispute in our clients' industries could have a material adverse effect on our business. An industry- wide strike or other job action by or affecting the Writers Guild, Screen Actors Guild or other major entertainment industry union could reduce the supply of original entertainment content, which would in turn reduce the demand for our talent and entertainment marketing services. An extensive work stoppage would affect feature film production as well as television and commercial production and could have a material adverse effect on our clients and the motion picture production industry in general. Contracts between entertainment industry unions and the Alliance of Motion Picture and Television Producers, which we refer to as AMPTP, expire from time to time. The failure to finalize and ratify a new agreement with the AMPTP or the failure to enter into new commercial contracts upon expiration of the current contracts could lead to a strike or other job action. Any such severe or prolonged work stoppage could have an adverse effect on the television and / or motion picture production industries and could severely impair our clients' prospects. Any resulting decrease in demand for our talent and entertainment marketing and other public relations services would have a material adverse effect on our cash flows and results of operations **. For example, the Writers Guild of America (" WGA ") went on strike between May 2 and September 27, 2023 and the Screen Actors Guild- American Federation of Television and Radio Artists (" SAG- AFTRA ") went on strike between July 14 and November 9, 2023. The combination of both WGA and SAG- AFTRA being on strike and the duration of each of the strikes adversely affected the revenues of 42West during the year ended December 31, 2023** . Clients may terminate or reduce their relationships with us on short notice. As is customary in the industry, our marketing subsidiaries' agreements with their respective clients generally provide for termination by either party on relatively short notice, usually 30 days. Consequently, these clients may choose to reduce or terminate their relationships with us, on a relatively short time frame and for any reason. If a significant number of the marketing subsidiaries' clients were to reduce the volume of business **,** they conduct with us or terminate their relationships with us completely, this could have a material adverse effect upon our business and results of operations. Viewpoint' s revenue is derived on a project- by- project basis. Clients may decide to use other creative branding and production companies for their projects which would have an adverse effect upon our business and results of operations. Revenues from our Entertainment Publicity and Marketing segment are susceptible to declines as a result of unfavorable economic conditions. Economic downturns often severely affect the marketing services industry. Some of our corporate clients may respond to weak economic performance by reducing their marketing budgets, which are generally discretionary in nature and easier to reduce in the short- term than other expenses related to operations. In addition, economic downturns could lead to reduced public demand for varying forms of entertainment for which we are engaged to provide public relations and media strategy and promotional services. Such reduced demand for our services could have a material adverse effect on our revenues and results of operations. If our clients experience financial distress, or seek to change or delay payment terms, it could negatively affect our own financial position and results. We have a large and diverse client base, and at any given time, one or more of our clients may experience financial difficulty, file for bankruptcy protection or go out of business. Unfavorable economic and financial conditions, ~~such as the events surrounding the COVID- 19 global outbreak,~~ could result in an increase in client financial difficulties that affect us. The direct impact on us **may** ~~included~~ - **include** reduced revenues, write-offs of accounts receivable and expenditures billable to clients, and **may** negatively ~~impacted~~ -- **impact** our operating cash flow. Risks Related to Acquisitions We are subject to risks associated with acquisitions and we may not realize the anticipated benefits of such acquisitions. We regularly undertake acquisitions that we believe will enhance our service offering to our clients. These transactions can involve significant challenges and risks, including that the transaction does not advance our business strategy or fails to produce a satisfactory return on our investment. Our customary business, legal and financial due diligence with the goal of identifying and evaluating the material risks involved may be unsuccessful in ascertaining or evaluating all such risks. Though we typically structure our acquisitions to provide for future contingent purchase payments that are based on the future performance of the acquired entity, our forecasts of the investment' s future performance also factor into the initial consideration. When actual financial results differ, our returns on the investment could be adversely affected. Identifying suitable acquisition candidates can be difficult, time- consuming and costly, and we may not be able to identify suitable candidates or complete acquisitions in a timely manner, on a cost- effective basis or at all. **10** Even if we complete an acquisition, we may not realize the anticipated benefits of such transaction. Our recent acquisitions have required, and any similar future transactions may also require, significant efforts and expenditures, including with respect to integrating the acquired business with our historical business. We may encounter unexpected difficulties, or incur unexpected costs, in connection with acquisition activities and integration efforts, including, without limitation: · diversion of management attention from managing our historical core business; · potential disruption of our historical core business or of the acquired business; · the strain on, and need to continue to expand, our existing operational, technical, financial and administrative infrastructure; · inability to achieve synergies as planned; · challenges in controlling additional costs and expenses in connection with and as a result of the acquisition; · dilution to existing shareholders from the issuance of equity securities; · becoming subject to adverse tax consequences or substantial depreciation; · difficulties in assimilating employees and corporate cultures or in integrating systems and controls; · difficulties in anticipating and responding to actions that may be taken by competitors; · difficulties in realizing the anticipated benefits of the transaction; · inability to generate sufficient revenue from acquisitions to offset the associated acquisition costs; · potential loss of key employees, key clients or other partners of the acquired business as a result of the change of ownership; and · the assumption of and exposure to unknown or contingent liabilities of the acquired businesses. If any of our acquisitions do not perform as anticipated for any of the reasons noted above or otherwise, there could be a negative impact on our results of operations and financial condition. Losses incurred by us subsequent to completion of an acquisition may not be indemnifiable by the seller or may exceed the seller' s indemnification obligations. As discussed above, there may be liabilities assumed in any acquisition that we did not discover or that we underestimated in the course of performing our due diligence. Although a seller generally will have indemnification obligations to us under an acquisition agreement, these obligations are usually subject to financial limitations, such as general deductibles and maximum recovery amounts, as well as time limitations. We cannot assure you that our right to indemnification from any seller will be enforceable, collectible or sufficient in amount, scope or duration to fully offset the amount of any losses that we incur with respect to a particular acquisition. Any such liabilities, individually or in the aggregate, could have a material adverse effect on our business, financial condition and operating results. Risks Related to our Common Stock and Preferred Stock We have recently issued, and may in the future issue, a significant amount of equity securities and, as a result, your ownership interest in our ~~company~~ **Company** has been, and may in the future be, substantially diluted and your investment in our common stock could suffer a material decline in value. From January 1, ~~2021~~ **2022** to December 31, ~~2022~~ **2023** , the number of shares of our common stock issued and outstanding has increased from ~~6~~ **8** , ~~690~~ **020** , ~~579~~ **381** to ~~12~~ **18** , ~~340~~ **219** , ~~664~~ **531** shares. During this period, we issued approximately (i) ~~2~~ **5** . ~~7~~ **1** million aggregate shares of our common stock as consideration or earnout consideration for ~~42West, The Door, Shore Fire, Viewpoint, Be Social, B / HI and Socialyte~~ acquisitions; (ii) ~~1.~~ 2 ~~million to certain holders of convertible notes and warrants that exercised their right to convert all or a portion of their convertible notes or warrants; (iii) 1~~ . ~~7~~ **8** million to Lincoln Park Capital Fund LLC related to our purchase agreement with them **; (iii) 1. 4 million shares through** ~~and~~ - **an offering pursuant to a Registration Statement on Form S- 3;** (iv) ~~43, 000~~ **0. 6 million to certain holders of convertible notes that exercised their right to convert all or a portion of their convertible notes; and (v) 0. 2 million** as stock compensation to certain employees. As of December 31, ~~2022~~ **2023** , we had outstanding convertible notes payable that as of the date of this report are still outstanding in the aggregate principal amount of $ 5. 1 million, which are convertible using a 90- day trading average stock price. As a result of these past issuances and potential future issuances, your ownership interest in the Company has been, and may in the future be, substantially diluted. The market price for our common stock has been volatile, and these issuances could cause the price of our common stock to continue to fluctuate substantially. Once restricted stock issued in either private placements or to the sellers of the companies we acquired becomes freely tradable, these shareholders may decide to sell their shares of common stock and, if our stock is thinly traded, this could have a material adverse effect on its market price. We may need to raise additional capital and may seek to do so by conducting one or more private placements of equity securities, securities convertible into equity securities or debt securities, or through a combination of one or more of such financing alternatives. Such issuances of additional securities would further dilute the equity interests of our existing shareholders, perhaps substantially, and may further exacerbate any or all of the above risks. **11** The Series C Convertible Preferred Stock has super voting rights that may adversely affect our shareholders. The Series C Convertible Preferred Stock is held by Dolphin Entertainment LLC, an entity owned by Mr. O' Dowd. ~~Except as required by law, holders of Series C Convertible Preferred Stock will only have voting rights once the independent directors of the Board determine that an optional conversion threshold (as defined in the Series C Certificate of Designation) has occurred. On November 12, 2020, such determination by the Board was made, and the holder of Series C Convertible Preferred Stock (indirectly Mr. O' Dowd) is entitled to super voting rights of three votes for each share of common stock into which such holder' s shares of Series C Convertible Preferred Stock could then be converted.~~ As of December 31, ~~2022~~ **2023** ~~and 2021~~, ~~the~~ Series C Preferred Stock **is** ~~could be converted~~ - **convertible** into 4, 738, 940 shares of our common stock ~~and the holder was entitled to 14, 216, 819 votes, which is approximately 55 % of our voting securities~~. **A** ~~The holder of Series C Convertible Preferred Stock is entitled to vote together as a single class on all matters upon which common stockholders are entitled to vote. Your voting rights will be diluted as a result of these super voting rights. On November 12, 2020, we entered into a~~ stock restriction agreement **entered into** with Mr. O' Dowd ~~that~~ **in 2020** prohibits the conversion of Series C Convertible Preferred Stock into common stock unless the majority of the independent directors of the ~~board~~ **Board** ~~of directors~~ vote to remove the restriction. The stock restriction agreement will be immediately terminated upon a change of control as defined in the agreement **. On September 27, 2022, the Company' s shareholders approved an amendment to the terms of the Series C Convertible Preferred Stock included in our Articles of Incorporation to increase the number of votes per share of common stock the Series C is convertible into from three votes per share to five votes per share. As of December 31, 2023, the Series C Preferred Stock is entitled to 23, 694, 699 votes which is approximately 57 % of our voting securities. The holder of Series C Convertible Preferred Stock is entitled to vote together as a single class on all matters upon which common shareholders are entitled to vote. Your voting rights will be diluted as a result of these super voting rights** . If we are unable to maintain compliance with Nasdaq listing requirements, our stock could be delisted, and the trading price, volume and marketability of our stock could be adversely affected. Our common stock is listed on the Nasdaq Capital Market. We cannot assure you, that we will be able to maintain compliance with Nasdaq' s current listing standards, or that Nasdaq will not implement additional listing standards with which we will be unable to comply. ~~During 2022, we received deficiency notices from Nasdaq informing us that because we had not filed our Form 10- K for the year ended December 31, 2021 and our Form 10- Q for the quarter ended March 31, 2022, we were no longer compliant with Nasdaq Listing Rule 5250 (c) (1), which requires listed companies to timely file all required periodic financial reports with the Securities and Exchange Committee. On July 19, 2022, after filing both the Form 10- K for the year ended December 31, 2021 and the Form 10- Q for the quarter ended March 31, 2022, Nasdaq notified us that we were in compliance with the Nasdaq listing requirements.~~ Failure to maintain compliance with Nasdaq listing requirements could result in the delisting of our shares from Nasdaq, which could have a material adverse effect on the trading price, volume and marketability of our common stock. Furthermore, a delisting could adversely affect our ability to issue additional securities and obtain additional financing in the future or result in a loss of confidence by investors or employees. The sale or issuance of our common stock to Lincoln Park may cause dilution and the sale of the shares of common stock acquired by Lincoln Park, or the perception that such sales may occur, could cause the price of our common stock to fall. On August 10, 2022, the Company entered into a ~~new~~ purchase agreement (the " LP 2022 Purchase Agreement ") with Lincoln Park, pursuant to which Lincoln Park committed to purchase up to $ 25 million of our common stock. Concurrently with the execution of the LP 2022 Purchase Agreement, we issued 57, 313 shares of common stock to Lincoln Park as a commitment fee. The purchase shares sold pursuant to the Purchase Agreement may be sold by us to Lincoln Park at our discretion from time to time over a 36- month period. The purchase price for shares that we may sell to Lincoln Park under the Purchase Agreement will fluctuate based on the price of our common stock. Depending on market liquidity at the time, sales of such shares may cause the trading price of our common stock to fall. We have the right to control the timing and amount of any sales of our shares to Lincoln Park in our sole discretion, subject to certain limits on the number of shares that can be sold on a given date. Sales of shares of our common stock, if any, to Lincoln Park will depend upon market conditions and other factors to be determined by us. Therefore, Lincoln Park may ultimately purchase all, some or none of the shares of our common stock that may be sold pursuant to the Purchase Agreement and, after it has acquired shares, Lincoln Park may sell all, some or none of those shares. Sales to Lincoln Park by us could result in substantial dilution to the interests of other holders of our common stock. Additionally, the sale of a substantial number of shares of our common stock to Lincoln Park, or the anticipation of such sales, could make it more difficult for us to sell equity or equity- related securities in the future at a time and at a price that we might otherwise wish to effect sales, which could have a materially adverse effect on our business and operations. **12** ITEM 1B. UNRESOLVED STAFF COMMENTS