

## Risk Factors Comparison 2024-04-16 to 2023-04-17 Form: 10-K

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We are subject to various risks that may materially harm our business, prospects, financial condition and results of operations. An investment in our common stock is speculative and involves a high degree of risk, and you should carefully consider the risks described below, together with the other information included in this Annual Report on Form 10-K, including the consolidated financial statements and related notes before making an investment decision regarding our common stock. Our business, financial condition, results of operations and the trading price of our common stock could be materially adversely affected by any of the following risks as well as the other risks highlighted elsewhere in this Annual Report on Form 10-K. Although this section discusses all of the material risks currently known to us, additional risks and uncertainties not presently known to us or that we currently deem immaterial also may materially affect our business, financial condition and results of operations. **If any of the events described in the following risk factors actually occurs, or if additional risks and uncertainties later materialize, that are not presently known to us or that we currently deem immaterial, then our business, prospects, results of operations and financial condition could be materially adversely affected. In that event, the trading price of our common stock could decline, and you may lose all or part of your investment in our shares. The risks discussed below include forward- looking statements, and our actual results may differ substantially from those discussed in these forward- looking statements.** Risk Factor Summary Risks Summary Below is a summary of the principal factors that make an investment in our common stock speculative or risky. This summary does not address all the risks that we face. Additional discussion of the risks summarized in this risk factor summary, and other risks that we face, can be found below following this summary, and should be carefully considered, together with other information in this Annual Report on Form 10-K, including the consolidated financial statements and related notes thereto, and our other filings with the SEC, before making an investment decision regarding our common stock. Risks Related to our Financial Condition and Capital Requirements • Despite the closure of most of our XpresCheck locations, the unpredictability regarding the continued spread of COVID-19 throughout the United States and worldwide may continue to adversely affect our business operations, employee availability, financial condition, liquidity and cash flow for an extended period of time. • We have identified certain ~~may be unable to remediate the material weaknesses in our~~ internal controls over financial reporting, which could impair our ability to produce accurate consolidated financial statements on a timely basis and result in material misstatements in our consolidated financial statements if not remediated. If we fail to maintain an effective system of internal control over financial reporting that we identified, we may not be able to accurately report or our otherwise to maintain effective internal control over financial results and current and potential stockholders may lose confidence in our financial reporting. • Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited. • Global economic and market conditions may adversely affect our business, financial condition, and operating results. • Increasing inflation could adversely affect our business, financial condition, results of operations or cash flows. • Our business requires substantial capital expenditures, and we may not have access to the capital required to maintain and grow our operations. • The bio surveillance monitoring activities conducted by XpresTest are funded partially by government contracts awards, which may not be available to us in the future, and such contracts awards are subject to guidelines regulating certain aspects of our operations. • Our ability to obtain funding for our bio surveillance monitoring activities from the CDC may be impacted by possible reductions in federal spending. Risks Related to our Business Operations • We may be unable to successfully secure new locations for, or transition our existing spa facilities or any disputes relating to improper handling, storage or disposal of the potentially hazardous materials, chemicals and patient samples in our XpresCheck diagnostic testing and vaccination business could be time consuming and costly. • Changes in laws and regulations to which our business is subject, or failure to comply with existing or future laws and regulations, could result in increased costs and the imposition of fines or penalties. • Changes in the way that the FDA regulates COVID-19 tests and other diagnostic tests could result in additional expenses in offering tests and would affect the profitability of our Treat and XpresCheck businesses. • We depend on third parties to provide services critical to our XpresCheck XpresTest bio surveillance business, and we depend on them would be adversely impacted by their failure to comply with applicable laws and regulations or, Additionally, any breaches of their-- the information technology systems of third parties could have a material adverse effect on our operations. • Our business operations may be materially impaired if we do not comply with privacy laws or information security policies, including laws protecting health information and personal data. • Hardware and software failures or delays in our information technology systems, including failures resulting from or our payment systems conversions or otherwise, could disrupt our operations and cause the loss of confidential information, customers and business opportunities or otherwise adversely impact our business. • We must comply with complex Delays in the processing of special permits, applications and licenses by state overlapping laws protecting the privacy and federal departments may result in contractual delays security of health information and personal data. • Our capital expenditures for Treat in the new TreatStudios and Naples Wax Center locations may not generate a positive return and we will incur significant additional costs. • We rely on international and domestic airplane travel, and the time that airline passengers spend in United States airports post- security. A decrease in the desire of customers to buy spa services and products, or decreased time spent in airports would negatively impact our operations. • We rely on a limited number of distributors and suppliers for certain of our products, and events outside our control may disrupt our supply chain, which could result in and-- an ultimately inability to perform our obligations under our concession agreements and cause

us to lose our concessions. • Our operating results may fluctuate significantly due to **certain factors, some of which are** beyond our control. **9** • Our expansion into new airports or off-airport locations may present increased risks due to our unfamiliarity with those areas. • We may not be able to execute our growth strategy to expand and integrate new concessions or future acquisitions into our business or remodel existing concessions, **our recently acquired entity or future acquisitions into our business or remodel existing concessions. Any new concessions, future acquisitions or remodeling of existing concessions may divert management resources, result in unanticipated costs, or dilute the ownership of our stockholders**. • If the estimates and assumptions we use to determine the size of our market are inaccurate, our future growth rate may be impacted. **If we cannot hire adequate staff** • We currently rely on a skilled, licensed labor force to provide services, and the supply of this labor force is finite. **10** • Unionization of our labor force or continued minimum wage increases could increase our cost of labor. • We compete for new **our** locations, **we will** in airports and may not be able to secure new locations **operate**. • **Our labor force could unionize, putting upward pressure on labor costs**. • We may not be able to predict accurately or fulfill customer preferences or demands. • Our leases may be terminated, either for convenience by the landlord or **as because of a result XpresSpa, Naples Wax or Treat** of a default. • Our ability to operate depends on the traffic patterns of the terminals in which we operate, **and the cessation**. • We are dependent on our **or local partners** **disruption of air traveler traffic in these terminals would negatively impact XpresSpa's, XpresTest's and Treat's addressable market**. • Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business. • If we are unable to protect our customers' credit card data and other personal information, we could be exposed to data loss, litigation and liability, and our reputation could be significantly harmed. • Negative social media regarding **XWELL, XpresSpa, XpresCheck, Treat and, XpresTest, Naples Wax Center, TreatStudios or Hyperpointe HyperPointe** could result in decreased revenues and impact our ability to recruit **workers-worker**. • We source, develop, and sell products that may result in product liability defense costs and product liability payments. • **We may fail or be unable to protect our patents, trademarks or other proprietary rights we use**. • We and our subsidiaries have been, are, and may become involved in litigation that could divert management's attention and harm our businesses. • Our **failure or inability to protect the trademarks or other proprietary rights we use or claims of infringement by us of rights of third parties, could adversely affect our competitive position or the value of our brands**. • **Our** future acquisitions or business opportunities, could involve unknown risks that could harm our business and adversely affect our financial condition and **the** results of operations. • **Laws regulating the corporate practice of medicine could restrict the manner in which we are permitted to conduct our XpresCheck and Treat businesses, and the failure to comply with such laws could subject us to penalties or require a restructuring of our business**. Risks Related to Capital Stock • **The market Stock prices can be volatile, and this volatility may depress the** price of our common stock **historically has been and likely will** continue to be highly volatile, and our common stock has historically traded in low volumes. • Future sales of our shares of common stock or the exercise of a substantial number of warrants or options could cause the market price of our common stock to drop significantly, even if our business is otherwise performing well. • We have no current plans to pay dividends on our common stock, and our investors may not receive funds without selling their stock. • Our failure to meet the continued listing requirements of **The Nasdaq Capital Market** could result in a delisting of our common stock. **10** • **If securities analysts do not publish research or reports about our business, or if they publish negative evaluations, the price of our Common Stock could decline**. • **Having availed ourselves of scaled disclosure available to smaller reporting companies, we cannot be certain if such reduced disclosure will make our common stock less attractive to investors**. Other Risk Factors • **Our confidential information may be disclosed by other parties**. • **We may fail to meet publicly announced financial guidance or other expectations about our business, which would cause our stock to decline in value**. Risks Related to our Financial Condition and Capital Requirements **The Requirements We have identified certain material weaknesses in unpredictability regarding the continued spread of COVID-19 throughout the United States and worldwide, may continue to adversely affect our internal controls over** business operations, employee availability, financial condition **reporting**, liquidity and cash flow for an extended period of time. The unpredictability of the COVID-19 pandemic continues to have an impact on the global economy, and may continue to manifest in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business was and may continue to be materially adversely impacted by the COVID-19 pandemic due to the restrictions on travel that have been implemented, and which **could impair** may be reimplemented, from time to time. Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services" in connection with the outbreak of COVID-19. This initially created a materially adverse impact on our cash flows from operations and caused a liquidity crisis, and continues to adversely affect our spa business even as we have gradually re-opened many of our spa locations. The continuing impact of COVID-19 on our spa business, and as a result financial results, liquidity and cash flows, depends on future developments, including new information that may emerge concerning future variants, the severity of those variants and action taken to contain or **our ability** prevent further spread within the U. S. and the related impact on consumer confidence and spending, all of which are highly uncertain and cannot be predicted. It is impossible to **produce accurate consolidated** predict the effect and ultimate impact of the future spread of COVID-19 as the situation continues to evolve. Even as travel and other activities return to normalized, pre-pandemic levels, the ongoing development and evolution of the COVID-19 pandemic continues, and we expect there will continue to be significant and material disruptions to our operations, which will have a material adverse effect on our business, financial condition and results of operations. In connection with the preparation of our annual financial statements **on** for the year ended December 31, 2020, we identified a **timely basis and result in** material weakness **misstatements** in our **consolidated financial statements if not remediated. If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results and current and potential stockholders may lose confidence in our financial reporting. We are subject to the reporting requirements of the Securities Exchange**

Act of 1934, as amended, the Sarbanes- Oxley Act and the rules and regulations of The Nasdaq Capital Market (“ Nasdaq ”). The Sarbanes- Oxley Act requires, among other things, that we weakness has not been fully remediated as of December 31, 2022. Any continuing failure to maintain effective **disclosure controls and procedures and** internal control over financial reporting could have a material adverse effect on our results of operations and financial position. Our management is responsible for establishing **As required by Section 404 of the Sarbanes- Oxley Act, we must perform system and maintaining adequate process evaluation and testing of our** internal control over financial reporting **to allow management to** Internal control over financial reporting **report on** is a process designed to provide reasonable assurance regarding the reliability **effectiveness** of financial reporting and the preparation of financial statements in accordance with U. S. generally accepted accounting principles. In connection with our audit of the year ended December 31, 2020, we identified a material weakness in our internal controls over our financial close and reporting process. A material weakness is a deficiency, or **our** combination of deficiencies, in internal control over financial reporting **in our Form 10- K filing for each fiscal year. This requires us to incur substantial additional professional fees and internal costs to expand our accounting and finance functions and we expend significant management efforts. As of the fiscal year ended December 31, 2023, our management evaluated, with the participation of our chief executive officer and chief financial officer, the effectiveness of our disclosure controls and procedures, pursuant to Rule 13a- 15 (b) under the Exchange Act. A “ material weakness ” is a deficiency, or a combination of deficiencies, in internal control over financial reporting,** such that there is a reasonable possibility that a material misstatement of **our** annual or interim **consolidated** financial statements will not be prevented or detected and corrected on a timely basis. **Based upon** Our management has concluded that **evaluation** additional formal procedures need to be put in place in the financial close and reporting process to ensure that appropriate reviews occur on all financial reporting analysis in a timely manner. We also concluded that we did not maintain a sufficient complement of corporate employee personnel with appropriate levels of accounting and controls knowledge and experience commensurate with our financial reporting requirements to appropriately analyze , record and disclose accounting matters completely and accurately. As this deficiency created a reasonable possibility that a material misstatement would not have been prevented or **our** detected in a timely basis, management concluded that the **our disclosure control controls** deficiency represented **and procedures were not effective as of December 31, 2023, due to the following material weaknesses: 1) The Company did not properly design, implement, and consistently operate effective controls over the completeness and accuracy of its accounting for leases under ASC 842. 2) The Company did not properly design or maintain effective entity level monitoring controls over the financial close and reporting process. 3) The Company did not design or maintain effective controls over its service organizations and IT vendors. More specifically, the Company did not have controls in place to review the applicable complementary user entity controls described in the service organizations’ reports for their potential impact on the Company’ s financial reporting. 4) The Company did not design, implement, and consistently operate effective controls over the revenue process. The Company’ s controls surrounding the revenue reports and reconciliations were not designed and did not operate at a level of precision that would prevent or detect a material misstatement. 5) The Company did not design, implement, and consistently operate effective controls over its’ foreign subsidiaries. 11Subsequent to the filing of the Quarterly Report on Form 10- Q for the three and nine months ended September 30, 2023 (“ Q3 2023 ”), filed with the SEC on November 14, 2023 (the “ Third Quarter Quarterly Report ”), on April 12, 2024, the Audit Committee (the “ Audit Committee ”) of our Board of Directors and consultation with management and with its independent registered public accounting firm, determined that the Company incorrectly applied U. S. Generally Accepted Accounting Principles (“ GAAP ”) as related to the determination of the impairment of our Treat business segment for Q3 2023. The material weakness was primarily attributable to the misapplication of GAAP accounting guidance surrounding the treatment of segment impairment analysis for the quarter ended September 30, 2023. As part of its determination, the Audit Committee concluded that it was appropriate to correct the misapplication of GAAP described above for financial statements for Q3 2023 included in the Third Quarter Quarterly Report, by restating such unaudited financial information because the errors in the financial statements are material to the financial statements for Q3 2023 in this Annual Report on Form 10- K (the “ Restatement ”). The financial effect of this error from previously reported information for the quarter ended September 30, 2023, resulted in **and- an** accordingly increase in net loss of \$ 1, 613, primarily as a result of additional impairment expense on **our** Treat segment **right- of- use and fixed assets. (See note 19 of the consolidated financial statements for further discussion). Our** internal control over financial reporting was **will not prevent** effective as of December 31, 2020. We are currently still considering the full extent of, and implementing, procedures to implement in order to remediate the material weakness described above. Our preliminary remediation plan, complemented by our **or detect all errors** existing outsourced internal audit procedures, includes implementing a more robust review process, an **and all fraud. A control system** increase in the supervision and monitoring of the financial reporting processes and our accounting personnel, **no matter how well designed and implementing better operated, can provide only reasonable, not absolute, assurance that the control system’ s objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance** over calculations, analysis and conclusions associated with non- routine transactions at a more precise level. Moreover, we hired a corporate controller in March 2021 and are actively seeking a permanent chief financial officer, and such individuals are critical to the implementation of such procedures. However, notwithstanding this remediation plan, and the steps taken in fiscal year 2021 and 2022, management concluded that the **misstatements due to error or fraud will not occur or that all control issues** deficiency continued to represent a material weakness and **instances** accordingly our internal control over financial reporting was not effective as of December 31, 2022 **fraud will be detected** . We cannot assure you that any of our remedial measures will be effective in resolving **this our material weakness-weaknesses** . **If we are not able to comply with the requirements of Section 404 of the Sarbanes- Oxley Act in a timely manner, our- or management is if we are unable to maintain proper****

and conclude that we have effective internal control over financial reporting, or to certify the effectiveness of such controls, or remediate or our if additional material weaknesses in, we may not be able to produce timely and our or accurate financial statements internal controls are identified in the future, which may lead to material misstatements in our financial statements. This could result in a restatement of our consolidated financial statements, cause us to fail to meet our reporting obligations, reduce our ability to obtain financing or cause investors to lose confidence in our reported financial information. If that were to happen, the market price of our common stock could decline and we could be subject to sanctions or investigations by Nasdaq, the SEC, or other regulatory authorities scrutiny and a loss of public confidence, which could have a material adverse effect on our business and our stock price. In addition, if we do not maintain adequate, qualified financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could adversely affect our results of operations and financial condition. Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited. As of December 31, 2022-2023, our estimated aggregate total net operating loss carryforwards (“NOLs”) were \$ 150, 926 -9 million for U. S. federal purposes, expiring 20 years from the respective tax years to which they relate, and \$ 97, 968 75.0 million for U. S. federal purposes with an indefinite life due to new regulations in the Tax Cuts and Jobs Act of 2017. Our ability to utilize our NOLs may be limited under Section 382 of the Internal Revenue Code (“Section 382”). The limitations apply if an ownership change, 12as as defined by Section 382, occurs. Generally, an ownership change occurs when certain stockholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). Additionally, the Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, our ability to utilize all such NOL and credit carryforwards may be limited. Future changes in stock ownership may also trigger an ownership change and, consequently, a Section 382 limitation. Global economic and market conditions may adversely affect our business, financial condition, and operating results. Our business plan depends significantly on worldwide economic conditions and our success is dependent on consumer spending, which is sensitive to economic downturns; inflation and any associated rise in unemployment; declines in consumer confidence; adverse changes in exchange rates; increases in interest rates; the impact of high energy, fuel, food and healthcare costs; deflation, direct or indirect taxes, increases in consumer debt levels; fears of war or actual conflicts, such as the Russian invasion of Ukraine and the armed conflict between Israel and Palestine, civil unrest, terrorism or violence; and increased stock market volatility. As a result, economic downturns may have a material adverse impact on our business, financial condition, and results of operations. Moreover, uncertainty about global economic conditions poses a 12a risk as businesses and individuals may postpone spending in response to tighter credit, negative financial news and declines in income or asset values. This could have a negative effect on corporate and individual spending on health and wellness and travel. These factors, taken together or individually, could cause material harm to our business, financial condition, and results of operations. Increasing inflation could adversely affect our business, financial condition, results of operations or cash flows. Inflation and some of the measures taken by or that may be taken by the governments in countries where we operate in an attempt to curb inflation may have negative effects on the economies of those countries generally. If the United States or other countries where we operate experience substantial inflation in the future, our business may be adversely affected. In addition, we may not be able to adjust the prices we charge for our products and services to offset the impact of inflation on our expenses, leading to an increase in our operating expenses and a reduction in our margins. This could have a material adverse impact on our business, financial condition, results of operations or cash flows. Our business requires substantial capital expenditures, and we may not have access to the capital required to maintain and grow our operations. The development of our new branding concept in the travel health and wellness space, as well as maintaining and expanding our operations in our existing and new locations, are all capital intensive activities. Specifically, the construction, redesign, and maintenance of our locations in airport terminals where we operate, technology costs, and compliance with applicable laws and regulations require substantial capital expenditures. Moreover, the creation of a digital platform in the travel health and wellness space will take substantial capital resources. In connection with all of the foregoing, we will require significant capital to fund our operations and respond to potential strategic opportunities, such as investments, acquisitions and expansions. 13Since-- Since mid- 2020, we have been able to obtain additional capital through access to the equity markets, selling our common stock and warrants. While we have mitigated the cash crisis we faced in the first half of 2020, throughout our operating history prior to the successful launch of our XpresCheck business, we did not generate sufficient cash from operations to fund new store development. Accordingly, we will be dependent upon managing and effectively deploying our existing cash resources and may require additional funding to fully realize the design and implementation of our travel health and wellness concept. If and to the extent we determine it is necessary or desirable, we may not be able to obtain such additional financing, through equity capital when needed, on acceptable terms, or at all. In addition, the terms of our financings may be dilutive to, or otherwise adversely affect, holders of our common stock. Moreover, our ability to raise additional equity capital will be constrained because of our relatively low stock price, and we may need to undertake a reverse stock split soon in the near future to maintain our Nasdaq listing and flexibility in access to the equity capital markets. If we are unable to obtain additional funding on a timely basis, we may be required to curtail or terminate some or all of our business plans. Any such financing that we undertake will likely be dilutive to our current stockholders. We must continue to invest capital to maintain or to improve the success of our concessions and to meet refurbishment requirements in our concessions. Decisions to expand into new terminals could also affect our capital needs. Our actual capital expenditures in any year will vary depending on, among other things, the extent to which we are successful in renewing existing concessions and winning additional concession agreements. The bio surveillance monitoring activities conducted by XpresTest are funded partially by government contracts awards, which may not be available to us in the future, and such contracts awards are subject to guidelines regulating certain aspects of our operations. We have received and intend to continue to seek funding for the bio surveillance monitoring activities conducted by XpresTest

under contract with Gingko Bioworks Inc. However, funding by the CDC or other governmental agencies may be significantly reduced or eliminated in the future for several reasons. For example, some programs are subject to a yearly appropriations process overseen by the U. S. Congress. In addition, we may not receive full funding under current or future contracts because of the budgeting constraints of the CDC or the unsatisfactory performance of past contracts. Therefore, we cannot provide any assurance that we will receive any future funding under contracts from any government agencies, 13or, if received, we will realize the full value of the contract. Any such reductions failure to realize expected funds could delay the development of our business. Our operations conducted under such federal contracts are subject to certain federal regulations regarding how we conduct our business, and we will be obligated to abide by the agreement terms relating to those contracts. Failure to follow the regulations and agreement terms could jeopardize our ability to realize the value of our government contracts and our ability to obtain future government contracts, which could have a material adverse effect on our results of operations and financial condition. In addition, any failure to comply with applicable laws or regulations affecting such contracts could harm our business and divert our management' s attention. Our ability to obtain funding for our bio surveillance monitoring activities from the CDC may be impacted by possible reductions in federal spending. U. S. federal government agencies currently face potentially significant spending reductions. The U. S. federal budget remains in flux, however, which could, among other things, result in cuts to the CDC and otherwise affect federal spending on public health surveillance. Changing attitudes toward the risks associated with COVID- 19 may lead to a decrease in funding available for bio surveillance monitoring activities. The full impact on our business of any future cuts to the CDC or other programs is uncertain. In addition, we cannot predict any impact which the actions of President Biden' s administration and the U. S. Congress may have on the federal budget. We operate globally and changes in tax laws could adversely affect our results. We operate globally and changes in tax laws could adversely affect our results. We have international operations and generate substantial revenues and profits in foreign jurisdictions. The domestic and international tax environments continue to evolve because of tax changes in various jurisdictions in which we operate and changes in the tax laws in certain countries, including the United States, could impact our future operating results. A significant increase in the U. S. corporate tax rate could negatively impact our financial results.

**Risks Related to our Business Operations**We use potentially hazardous materials, chemicals, and patient samples in our XpresTest Treat business and in our XpresCheck diagnostic testing and bio biosurveillance --- surveillance business and any disputes relating to improper handling, storage or disposal of these materials could be time consuming and costly. Our professional practice partner' s diagnostic testing activities involve the controlled use of hazardous laboratory materials and chemicals, including small quantities of acid and alcohol, and patient samples. They are subject to U. S. laws and regulations related to the protection of the environment, the health and safety of employees and the handling, transportation and disposal of medical specimens, infectious and hazardous waste. They could be liable for accidental contamination or discharge or any resultant injury from hazardous materials, and conveyance, processing, and storage of and data on patient samples. If they fail to comply with applicable laws or regulations, they could be required to pay penalties or be held liable for any damages that result and this liability could exceed their financial resources. Further, future changes to environmental health and safety laws could cause them to incur additional expense-expenses or restrict operations. In the event of a lawsuit or investigation concerning such hazardous materials, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials or patient samples that may contain infectious materials. The cost of this liability could exceed our resources. While we expect to maintain broad form liability insurance coverage for these risks, and we expect our professional practice partner to maintain appropriate malpractice insurance, the level or breadth of our or their coverage may not be adequate to fully cover potential liability claims to which we might be exposed. 14U Our XpresCheck diagnostic testing and vaccination business could be harmed from the loss or suspension of a license or imposition of a fine or penalties under, or future changes in, or interpretations of, the law or regulations of the Clinical Laboratory Improvement Act of 1967, and the Clinical Laboratory Improvement Amendments of 1988 (" CLIA "), or those of Medicare, Medicaid or other national, state or local agencies in the U. S. and other countries where we operate laboratories. The performance of laboratory testing is subject to extensive U. S. regulation, and many of these statutes and regulations have not been interpreted by the courts. CLIA extends federal oversight to virtually all physician practices performing clinical laboratory testing and to clinical laboratories operating in the U. S. by requiring that they be certified by the federal government or, in the case of clinical laboratories, by a federally approved accreditation agency. The sanction for failure to comply with CLIA requirements may be suspension, revocation or limitation of a laboratory' s CLIA certificate, which is necessary to conduct business, as well as significant fines and / or criminal penalties. In addition, we expect to be subject 14to regulation under state law. State laws may require that laboratories and / or laboratory personnel meet certain licensing or other qualifications, specify certain quality controls or require maintenance of certain records. Applicable statutes and regulations could be interpreted or applied by a prosecutorial, regulatory or judicial authority in a manner that would adversely affect our business. Potential sanctions for violation of these statutes and regulations include significant fines and the suspension or loss of various licenses, certificates and authorizations, which could have a material adverse effect on our business. In addition, compliance with future legislation could impose additional requirements on us, which may be costly. U. S. Food and Drug Administration (" FDA ") regulation of diagnostic products could result in increased costs and the imposition of fines or penalties, and could have a material adverse effect upon our business. The FDA has regulatory responsibility for instruments, test kits, reagents and other devices used by clinical laboratories. The FDA enforces laws and regulations that govern the development, testing, manufacturing, performance, labeling, advertising, marketing, distribution, and surveillance of diagnostic products, and it regularly inspects and reviews the manufacturing processes and product performance of diagnostic products. FDA regulation of the diagnostic products we use could result in increased costs and administrative and legal actions for noncompliance, including warning letters, fines, penalties, product suspensions, product recalls, injunctions, and other civil and criminal sanctions, which

could have a material adverse effect on our business, financial condition, results of operation and cash flows. If we fail to comply with the complex federal, state, local and foreign laws and regulations that apply to all of our businesses, we could suffer severe consequences that could materially and adversely affect our operating results and financial condition. Our ~~XpresCheck~~ **XpresTest** operations are subject to extensive federal, state, local and foreign laws and regulations, all of which are subject to change. These laws and regulations currently include, among other things: • CLIA, which requires that laboratories obtain certification from the federal government, and state licensure laws; • FDA laws and regulations; • HIPAA, which imposes comprehensive federal standards with respect to the privacy and security of protected health information and requirements for the use of certain standardized electronic transactions, and amendments to HIPAA under the HITECH, which strengthen and expand HIPAA privacy and security compliance requirements, increase penalties for violators, extend enforcement authority to state attorneys general and impose requirements for breach notification; • state laws regulating genetic testing and protecting the privacy of genetic test results, as well as state laws protecting the privacy and security of health information and personal data and mandating reporting of breaches to affected individuals and state regulators; • the federal anti-kickback law, or the Anti-Kickback Statute, which prohibits knowingly and willfully offering, paying, soliciting, receiving, or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for, or recommending of an item or service that is reimbursable, in whole or in part, by a federal healthcare program; • other federal and state fraud and abuse laws, such as anti-kickback laws, prohibitions on self-referral, and false claims acts, which may extend to services reimbursable by any third-party payor, including private insurers; • the federal Physician Payments Sunshine Act, which requires medical device manufacturers to track and report to the federal government certain payments and other transfers of value made to physicians and teaching hospitals and ownership or investment interests held by physicians and their immediate family members; ~~15~~ • Section 216 of the federal Protecting Access to Medicare Act of 2014, which requires applicable laboratories to report private payor data in a timely and accurate manner beginning in 2017 and every three years thereafter (and in some cases annually); • state laws that impose reporting and other compliance-related requirements; **15** • state billing laws, including regulations on “pass through billing” which may limit our ability to submit claims for payment and / or mark up the cost of services in excess of the price paid for such services, and “direct-bill” laws which may limit our ability to purchase services from a laboratory and bill for the services ordered; and • similar foreign laws and regulations that apply to us in the countries in which we operate. These laws and regulations are complex and are subject to interpretation by the courts and by government agencies. Our failure to comply could lead to civil or criminal penalties, exclusion from participation in state and federal healthcare programs, or prohibitions or restrictions on our laboratory’s ability to provide or receive payment for our services. We believe that we are in material compliance with all statutory and regulatory requirements, but there is a risk that one or more government agencies could take a contrary position, or that a private party could file suit under the qui tam provisions of the federal False Claims Act or a similar state law. Such occurrences, regardless of their outcome, could damage our reputation and adversely affect important business relationships with third parties, including managed care organizations, and other private third-party payors. Changes in the way that the FDA regulates COVID-19 tests could result in the additional expense in ~~XpresCheck~~ **XpresTest** offering tests and would affect the profitability of our ~~XpresCheck~~ **XpresTest** business. Historically, the FDA has exercised enforcement discretion with respect to most laboratory-developed tests (“LDTs”) and has not required laboratories that furnish LDTs to comply with the agency’s requirements for medical devices (e.g., establishment registration, device listing, quality systems regulations, premarket clearance or premarket approval, and post-market controls). In recent years, however, the FDA publicly announced its intention to regulate certain LDTs and issued two draft guidance documents that set forth a proposed phased-in risk-based regulatory framework that would apply varying levels of FDA oversight to LDTs. However, these guidance documents were withdrawn at the end of the Obama administration and replaced by an informal discussion paper reflecting some of the feedback that FDA had received on LDT regulation. The FDA acknowledged that the discussion paper in January 2017 does not represent the formal position of the FDA and is not enforceable. Nevertheless, the FDA wanted to share its synthesis of the feedback that it had received in the hope that it might advance public discussion on future LDT oversight. Notwithstanding the discussion paper, the FDA continues to exercise enforcement discretion and may decide to regulate certain LDTs on a case-by-case basis at any time, which could result in additional expense in offering tests. Until the FDA finalizes its regulatory position regarding LDTs, or other legislation is passed reforming the federal government’s regulation of LDTs, it is unknown how the FDA may regulate tests we use in the future and what testing and data may be required to support any required clearance or approval. ~~16~~ We depend on third parties to provide services critical to our ~~Treat~~ business and our ~~XpresCheck~~ diagnostic testing and biosurveillance business, and we depend on them to comply with applicable laws and regulations. Additionally, any breaches of the information technology systems of third parties could have a material adverse effect on our operations. We depend on third parties to provide services critical to our ~~Treat~~ **XpresTest bio surveillance** business, and our ~~XpresCheck~~ diagnostic testing we depend on them to comply with applicable laws and regulations. Additionally, any breaches of the information technology systems of third parties could have a material adverse effect on our operations. We depend on third parties to provide services critical to our **XpresTest bio surveillance** business, including supplies, ground and air transport of clinical and diagnostic testing supplies and specimens, research products, and people, among other services. Third parties that provide services to us are subject to similar risks related to security of customer-related information and compliance with U.S., state, local, or international environmental, health and safety, and privacy and security laws and regulations as those faced by us. Any failure by third parties to comply with applicable laws, or any failure of third parties to provide services more generally, could have a material impact on us, whether because of the loss of the ability to receive services from the third parties, our legal liability for the actions or inactions of third parties, or otherwise. In addition, third parties to whom we outsource certain services or functions may process personal data, or other confidential information belonging to us. A breach or attack affecting these third parties could also harm our business, results of operations and reputation. Our business operations and reputation may be

materially impaired if we do not comply with privacy laws or information security policies. We collect, generate, process, or maintain sensitive information, such as patient data and other personal information. If we do not use or adequately safeguard that information in compliance with applicable requirements under federal, state, and international laws, or if it were disclosed to persons or entities that should not have access to it, our business could be materially impaired, our reputation could suffer, and we could be subject to fines, penalties, and litigation. In the event of a data security breach, we may be subject to notification obligations, litigation and governmental investigation or sanctions, and may suffer reputational damage, which could have an adverse impact on our business. ~~For example, in 2021, there were two HIPAA breaches that were reported to the U. S. Department Health and Human Services, concerning our JFK International Airport and Salt Lake City International Airport XpresCheck locations, after which the team reinforced HIPAA training and counseled the responsible individuals.~~ We are subject to laws and regulations regarding protecting the security and privacy of certain healthcare and personal information, including: (a) at the federal level, HIPAA and the regulations thereunder, which establish (i) a complex regulatory framework including requirements for safeguarding protected health information and (ii) comprehensive federal standards regarding the uses and disclosures of protected health information; and (b) state laws, including the California Consumer Privacy Act. Hardware and software failures or delays in our information technology systems, including failures resulting from our systems conversions or otherwise, could disrupt our operations and cause the loss of confidential information, customers and business opportunities or otherwise adversely impact our business. IT systems are used extensively in virtually all aspects of our business, including clinical testing, test reporting, billing, customer service, logistics and management of medical data. Our success depends, in part, on the continued and uninterrupted performance of our IT systems. A failure or delay in our IT systems could impede our ability to serve our customers and patients and protect their confidential personal data. Despite redundancy and backup measures and precautions that we have implemented, our IT systems may be vulnerable to damage, disruptions, and shutdown from a variety of sources, including telecommunications or network failures, system conversion or standardization initiatives, human acts, and natural disasters. These issues can also arise ~~because of as a result from~~ failures by third parties with whom we do business and for which we have limited control. Any disruption or failure of our IT systems could have a material impact on our ability to serve our customers and patients, including negatively affecting our reputation in the marketplace. We must comply with complex and overlapping laws protecting the privacy and security of health information and personal data. There are ~~several a number of~~ state, federal and international laws protecting the privacy and security of health information and personal data. Under the administrative simplification provisions of HIPAA, the U. S. Department of Health and Human Services has issued regulations which establish uniform standards governing the conduct of certain electronic healthcare ~~17transactions~~ ~~transactions~~ and protecting the privacy and security of PHI used or disclosed by healthcare providers and other covered entities. The privacy regulations regulate the use and disclosure of PHI by healthcare providers engaging in certain electronic transactions or “standard transactions.” They also set forth certain rights that an individual has with respect to his or her PHI maintained by a covered healthcare provider, including the right to access or amend certain records containing PHI or to request restrictions on the use or disclosure of PHI. The HIPAA security regulations establish administrative, physical, and technical standards for maintaining the integrity and availability of PHI in electronic form. These standards apply to covered healthcare providers and ~~also~~ to “business associates” or third parties providing services involving the use or disclosure of PHI. The HIPAA privacy and security regulations establish a uniform federal “floor” and do not supersede state laws that are more stringent or provide individuals with greater rights with respect to the privacy or security of, and access to, their records containing PHI. As a result, we may be required to comply with both HIPAA privacy regulations and varying state privacy and data security laws. Moreover, HITECH, among other things, established certain health information security breach notification requirements. In the event of a breach of unsecured PHI, a covered entity must notify ~~everyone each individual~~ whose PHI is breached, federal regulators and in some cases, must publicize the breach in local or national media. Breaches affecting 500 individuals or more are publicized by federal regulators who publicly identify the breaching entity, the circumstances of the breach and the number of individuals affected. These laws contain significant fines and other penalties for wrongful use or disclosure of PHI. Given the complexity of HIPAA and HITECH and their overlap with state privacy and security laws, and the fact that these laws are rapidly evolving and are subject to changing and potentially conflicting interpretation, our ability to comply with the HIPAA, ~~HITECH~~ ~~17HITECH~~ and state privacy requirements is uncertain and the costs of compliance are significant. Adding to the complexity is that our operations are currently evolving, and the requirements of these laws will apply differently depending on such things as whether or not we bill electronically for our services ~~or~~ provide services involving the use or disclosure of PHI and incur compliance obligations as a business associate. The costs of complying with any changes to HIPAA, HITECH and state privacy restrictions may have a negative impact on our operations. Noncompliance could subject us to criminal penalties, civil sanctions, and significant monetary penalties as well as reputational damage. We ~~are~~ ~~also are~~ required to collect and maintain personal information about our employees as well as receive and transfer certain payment information, to accept payments from our customers, including credit card information. Most states have adopted laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Many state laws impose significant data security requirements, such as encryption or mandatory contractual terms to ensure ongoing protection of personal information. Activities outside of the United States implicate local and national data protection standards, impose additional compliance requirements, and generate additional risks of enforcement for non-compliance. The collection and use of such information may be subject to contractual obligations as well. If the security and information systems that we or our outsourced third-party providers use to store or process such information are compromised or if we, or such third parties, otherwise fail to comply with these laws, regulations, and contractual obligations, we could face litigation and the imposition of penalties that could adversely affect our financial performance. We must comply with all applicable privacy and data security laws ~~in order~~ to operate our business and may be required to expend significant capital and other resources to

ensure ongoing compliance, to protect against security breaches and hackers or to alleviate problems caused by such breaches. Breaches of health information and / or personal data may be extremely expensive to remediate, may prompt federal or state investigation, fines, civil and / or criminal sanctions, and significant reputational damage. Our capital expenditures in the **Treat Studios and Naples Wax** locations may not generate a positive return and we will incur significant additional costs. Our capital expenditures may not generate a positive return. Significant capital expenditures will be required to construct new **Treat Studios and Naples Wax** centers or renovate our existing spa facilities to accommodate our proposed new business model. No assurance can be given that our future capital expenditures will generate a positive return or that we will have adequate ~~18~~ capital available to finance such construction or renovations. If we are unable to, or elect not to, pay for costs associated with such construction or renovations, our competitive position could be harmed. These developments, and others that are difficult or impossible to predict, could materially impact our business, financial results, cash flows, and financial position. We rely on international and domestic airplane travel, and the time that airline passengers spend in United States airports post- security. A decrease in the desire of customers to buy spa services and products, or decreased time spent in airports would negatively impact our operations. We depend upon a large number of airplane travelers with the propensity for health and wellness, and in particular spa treatments and products, spending significant time post- security clearance check points. The number of airline travelers has been extremely volatile since the onset of COVID- 19 in March 2020. If the time that these travelers spend post- security decreases, and / or if travelers' ability or willingness to pay for our products and services diminishes, this could have an adverse effect on our growth, business activities, cash flow, financial condition, and results of operations. Some reasons for these events could include: ● the impact of a public health epidemic or pandemic, including COVID- 19, which has interfered and may continue to interfere with our ability, or the ability of our employees, workers, contractors, suppliers and other business partners to perform our and their respective responsibilities and obligations relative to the conduct of our business. A public health epidemic or pandemic, including COVID- 19, poses the risk of disruptions from the temporary closure of third- party suppliers and manufacturers, restrictions on the shipment of our products, restrictions on our employees' and other service providers' ability to travel, the decreased willingness or ability of our customers to travel or to utilize our services and shutdowns that may be requested or mandated by governmental authorities. The extent to which COVID- 19 will continue to impact our results will depend on future developments related to the virus and its spread, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the coronavirus and the actions to contain the coronavirus or treat its impact, among others; ● terrorist activities (including cyber- attacks) impacting either domestic or international travel through airports where we operate, causing fear of flying, flight cancellations, or an economic downturn, fears of war or actual conflicts, such as the Russian invasion of Ukraine, **the armed conflict between Israel and Palestine**, civil unrest, terrorism or violence or any other events of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers; ● a decrease in business spending that impacts business travel, such as a recession; **18** ● a decrease in consumer spending that impacts leisure travel, such as a recession or a stock market downturn or a change in consumer lending regulations impacting available credit for leisure travel; ● an increase in airfare prices that impacts the willingness of air travelers to fly, such as an increase in oil prices or heightened taxation from federal or other aviation authorities; ● severe weather, ash clouds, airport closures, natural disasters, strikes or accidents (airplane or otherwise), causing travelers to decrease the amount that they fly and any of these events, or any other event of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers; ● as to our spa business, scientific studies that malign the use of spa services or the products used in spa services, such as the impact of certain chemicals and procedures on health and wellness; or ● streamlined security screening checkpoints, which could decrease the wait time at checkpoints and therefore the time air travelers budget for spending time at the airport. ● **Customer preferences for services in general at the airport could change as dwell times in US airports continues to go down and more airports are focusing available concession space on quicker service food and beverage concepts.** ~~19~~ **Further**, Further, any disruption to, or suspension of services provided by airlines and the travel industry because as a result of financial difficulties, labor disputes, construction work, increased security, changes to regulations governing airlines, mergers and acquisitions in the airline industry, higher fuel prices and challenging economic conditions causing airlines to reduce flight schedules or increase the price of airline tickets could negatively affect the number of airline passengers. Additionally, the threat of terrorism and governmental measures in response thereto, such as increased security measures, recent executive orders in the United States impacting entry into the United States and changing attitudes towards the environmental impacts of air travel may in each case reduce demand for air travel and, as a result, decrease airline passenger traffic at airports. Furthermore, the exit of an airline from a market or the bankruptcy of an airline could reduce the number of airline passengers in a terminal or airport where we operate and have a material adverse impact on our business, financial condition, and results of operations. The effect that these factors would have on our business depends on their magnitude and duration, and a reduction in airline passenger numbers will result in a decrease in our sales and may have a materially adverse impact on our business, financial condition, and results of operations. We rely on a limited number of distributors and suppliers for certain of our products, and events outside our control may disrupt our supply chain, which could result in an inability to perform our obligations under our concession agreements and ultimately cause us to lose our concessions. We rely on a small number of suppliers for our products. As a result, these suppliers may have increased bargaining power and we may be required to accept less favorable purchasing terms. In the event of a dispute with a supplier, the delivery of a significant amount of merchandise may be delayed or cancelled, or we may be forced to purchase merchandise from other suppliers on less favorable terms. Such events could cause turnover to fall or costs to increase, adversely affecting our business, financial condition, and results of operations. **We** In particular, we have publicized our sale of certain brands of products in our stores – our failure to sell these brands may adversely affect our business. Further, damage or disruption to our supply chain due to any of the following could impair our ability to sell our products: adverse weather conditions or natural disaster, government action, fire, terrorism,



cyber- attacks, the outbreak or escalation of armed hostilities (such as the Russian invasion of Ukraine **and the armed conflict between Israel and Palestine**), pandemics, industrial accidents or other occupational health and safety issues, strikes and other labor disputes, customs or ~~import~~ **19import** restrictions or other reasons beyond our control or the control of our suppliers and business partners. Failure to take adequate steps to mitigate the likelihood or potential impact of such events, or to effectively manage such events if they occur, could adversely affect our business, financial condition, and results of operations, as well as require additional resources to restore our supply chain. Our operating results may fluctuate significantly due to certain factors, some of which are beyond our control. Our operating results may fluctuate from period to period significantly because of numerous factors, including: ● the timing and size of new unit openings, particularly the launch of new terminals; ● passenger traffic and seasonality of air travel; ● changes in the price and availability of supplies; ● macroeconomic conditions, nationally locally and internationally; ● changes in consumer preferences and competitive conditions; ● expansion to new markets and new locations; ~~and~~ **20-- and** ● increases in infrastructure costs, including those costs associated with the build- out of new concession locations and renovating existing concession locations. Our operating results may fluctuate significantly **because as a result** of the factors discussed above. Accordingly, results for any period are not necessarily indicative of results to be expected for any other period or for any year. Our expansion into new airports or off- airport locations ~~, and to the online marketplace,~~ may present increased risks due to ~~its~~ unfamiliarity with those areas. Our growth strategy depends upon **developing** transitioning to our **off- airport locations which will include** travel health and wellness **mini locations and concept,** which will expanding **Naples Wax** into markets (including an **and TreatStudios** online presence) where have little or no meaningful operating experience. Those markets and locations may have demographic characteristics, consumer tastes and discretionary spending patterns that are different from those in the markets where our existing spa and testing operations are located. As a result, new airport terminal and / or off- airport operations may be less successful than existing concession locations in current airport terminals. We may find it more difficult in new markets to hire, motivate and keep qualified employees who can project its vision, passion, and culture. We may also be unfamiliar with local laws, regulations, and administrative procedures, including the procurement of spa services retail licenses, in new markets which could delay the build- out of new concession locations and prevent it from achieving its target revenues on a timely basis. Operations in new markets may also have lower average revenues or enplanements than in the markets where we currently ~~operates-~~ **operate**. Operations in new markets may also take longer to ramp up and reach expected sales and profit levels, and may never do so, thereby negatively affecting our results of operations. Our growth strategy is dependent in part on our ability to successfully identify and open new locations. ~~Implementing the part of our strategy relating to our travel health and wellness concept depends on our ability to successfully identify new locations.~~ We will also need to assess and mitigate the risk of any new locations, to open the location on favorable terms and to successfully integrate their operations with ours. We may not be able to successfully identify opportunities that meet these criteria, or, if we do, we may not be able to successfully negotiate and open new locations on a timely basis. If we are unable to identify and open new locations in accordance with its operating plan, our revenue growth rate and financial performance may fall short of our expectations. ~~Our~~ **20Our** profitability relating to our operations depends on the number of airline passengers in the terminals in which we have concessions. Changes by airport authorities or airlines that lower the number of airline passengers in any of these terminals could affect our business, financial condition, and results of operations. The number of airline passengers that visit the terminals in which we have concessions is dependent in part on decisions made by airlines and airport authorities relating to flight arrivals and departures. A decrease in the number of flights and a resulting decrease in airline passengers could result in fewer sales, which could lower our profitability and negatively impact our business, financial condition, and results of operations. Concession agreements generally provide for a minimum annual guaranteed payment (“MAG”) payable to the airport authority or landlord regardless of the amount of sales at the concession. Currently, ~~most the majority~~ of our concession agreements provide for a MAG that is either a fixed dollar amount or an amount that is variable based upon the number of travelers using the airport or other location, retail space used, estimated sales, past results, or other metrics. If there are fewer airline passengers than expected or if there is a decline in the sales per airline passenger at these facilities, we will nonetheless be required to pay the MAG or fixed rent and our business, financial condition and results of operations may be materially adversely affected. Furthermore, the exit of an airline from a market or the bankruptcy of an airline could reduce the number of airline passengers in a terminal or airport where we operate and have a material adverse impact on our business, financial condition, and results of operations. ~~21We~~ **We** may not be able to execute our growth strategy to expand and integrate new concessions, our recently acquired entity or future acquisitions into our business or remodel existing concessions. Any new concessions, future acquisitions or remodeling of existing concessions may divert management resources, result in unanticipated costs, or dilute the ownership of our stockholders. Part of our growth strategy is to expand and remodel our existing facilities and to seek new concessions through tenders, direct negotiations, or other acquisition opportunities. In this regard, our future growth will depend upon **several a number of** factors, such as our ability to identify any such opportunities, structure a competitive proposal and obtain required financing and consummate an offer. Our growth strategy will also depend on factors that may not be within our control, such as the timing of any concession or acquisition opportunity. We must also strategically identify which airport terminals and concession agreements to target based on numerous factors, such as airline passenger numbers, airport size, the type, location and quality of available concession space, level of anticipated competition within the terminal, potential future growth within the airport and terminal, rental structure, financial return, and regulatory requirements. We cannot provide assurance that this strategy will be successful. In addition, we may encounter difficulties integrating expanded or new concessions or any acquisitions. Such expanded or new concessions or acquisitions ~~may not~~ achieve anticipated turnover and earnings growth or synergies and cost savings. Delays in the commencement of new projects and the refurbishment of concessions can also affect our business. In addition, we will expend resources to remodel our concessions and may not be able to recoup these investments. A failure to grow successfully may materially adversely affect our business, financial condition, and results of operations. **New In**

particular, new concessions and acquisitions, our recent acquisition of HyperPointe, and in some cases future expansions and remodeling of existing concessions, could pose numerous risks to our operations, including that we may: • have difficulty integrating operations or personnel; for example, HyperPointe has a number of contractual arrangements with pharmaceutical companies; however, we historically do not have experience in that business line.; • incur substantial unanticipated integration costs; • experience unexpected construction and development costs and project delays; • face difficulties associated with securing required governmental approvals, permits and licenses (including construction permits) in a timely manner and responding effectively to any changes in federal, state or local laws and regulations that adversely affect our costs or ability to open new concessions; 21 • have challenges identifying and engaging local business partners to meet ACDBE requirements in concession agreements; • not be able to obtain construction materials or labor at acceptable costs; • face engineering or environmental problems associated with our new and existing facilities; • experience significant diversion of management attention and financial resources from our existing operations in order to integrate expanded, new or acquired businesses, which could disrupt our ongoing business; • lose key employees, particularly with respect to acquired or new operations; • have difficulty retaining or developing acquired or new business customers; • impair our existing business relationships with suppliers or other third parties as a result of acquisitions; 22 • fail to realize the potential cost savings or other financial benefits and / or the strategic benefits of acquisitions, new concessions, or remodeling; and • incur liabilities from the acquired businesses and we may not be successful in seeking indemnification for such liabilities. In connection with acquisitions or other similar investments, we could incur debt or amortization expenses related to intangible assets, suffer asset impairments, assume liabilities, or issue stock that would dilute the percentage of ownership of our then-current stockholders. We may not be able to complete acquisitions or integrate the operations, products, technologies, or personnel gained through any such acquisition, which may have a materially adverse impact on our business, financial condition, and results of operations. If the estimates and assumptions we use to determine the size of our market are inaccurate, our future growth rate may be impacted. Market opportunity estimates and growth forecasts are subject to uncertainty and are based on assumptions and estimates that may not prove to be accurate. The estimates and forecasts in this Annual Report on Form 10-K relating to the size and expected reemergence of the travel retail market may prove to be inaccurate. Even if the market in which we compete meets our size estimates and rate of return to normalized travel activity, our business could fail to reemerge or grow at similar rates, if at all. The principal assumptions relating to our market opportunity include projected reemergence and growth in the travel retail market and our share of the market. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected. We currently rely on a skilled, licensed labor force to provide our services, and the supply of this labor force is finite. If we cannot hire adequate staff for our locations, we will not be able to operate. As of March 24 December 31, 2023, we had approximately 382-266 full-time and 101-71 part-time employees in its locations. Excluding some dedicated retail staff, most the majority of these employees are licensed to perform spa services, and hold such licenses as masseuses, nail technicians, and aestheticians. The demand for these licensed technicians has been increasing as more consumers gravitate to health and wellness treatments such as spa services. We compete not only with other airport-based spa companies but with spa companies outside of the airport for this skilled labor force. In addition, all staff hired by us must pass the background checks and security clearances necessary to work in airport locations. If we are unable to attract and retain qualified staff to work in our airport locations, its ability to operate will be impacted negatively. Our 22Our business is subject to various laws and regulations, and changes in such laws and regulations, or failure to comply with existing or future laws and regulations, could adversely affect us. We are subject to various laws and regulations in the United States, Netherlands, Turkey, and United Arab Emirates that affect the operation of our concessions. The impact of current laws and regulations, the effect of changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and, therefore, have an adverse impact on our results of operations. Failure to comply with the laws and regulatory requirements of governmental authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines, and civil and criminal liability. In addition, certain laws may require us to expend significant funds to make modifications to our concessions in order to comply with applicable standards. Compliance with such laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings. Our labor force could unionize, putting upward pressure on labor costs. Major players in labor organization organizations, and in particular “Unite Here!” which represents approximately 45,000 employees in the airport concessions and airline catering industries, could target our locations for its unionization efforts. In the event 23of of the successful unionization of all of our labor force, we would likely incur additional costs in the form of higher wages, more benefits such as vacation and sick leave, and potentially also higher health care insurance costs. We compete for new locations in airports and may not be able to secure new locations. We participate in the highly competitive and lucrative airport concessions industry, and as a result compete for retail leases with a variety of larger, better capitalized concessions companies as well as smaller, mid-tier and single unit operators. Frequently, an airport includes only one similar travel health and wellness concept per terminal within its retail offering and, in those instances, we compete primarily with these other concessionaires. We may not be able to predict accurately or fulfill customer preferences or demands. We derive a significant amount of our revenue from the sale of massage, cosmetic and luxury products which are subject to rapidly changing customer tastes. The availability of new products and changes in customer preferences has made it more difficult to predict sales demand for these types of products accurately. Our success depends in part on our ability to predict and respond to quickly changing consumer demands and preferences, and to translate market trends into appropriate merchandise offerings. Additionally, due to our limited sales space relative to other retailers, the proper selection of salable merchandise is an important factor in revenue generation. We cannot provide assurance that our merchandise selection will correspond to actual sales demand. If we are unable to predict or rapidly respond to sales demand or to changing styles or trends, or if we experience inventory shortfalls on popular

merchandise, our revenue may be lower, which could have a materially adverse impact on our business, financial condition, and results of operations. Our leases may be terminated, either for convenience by the landlord or **because as a result** of a XpresSpa, **Naples Wax** or Treat default. We have ~~store~~ **stores and kiosks in several airports and off airport** locations ~~and kiosks in a number of airports~~ in which the landlord, with prior written notice to us, can terminate our lease, including for convenience or as necessary for ~~airport purposes or~~ operations. If a landlord elects to terminate a lease ~~at an airport~~, we may have to shut down one or more ~~store~~ **affected** locations ~~at that airport~~. In addition, we have received rent concessions from landlords on a majority of our airport location leases relating to our temporary closures in response to the COVID-19 pandemic, allowing for the relief of minimum guaranteed payments in exchange for percentage of revenue rent or providing relief from rent through payment deferrals. Additionally, our leases have numerous provisions governing the operation of our stores. Violation of one or more of these provisions, even unintentionally, may result in the landlord finding that we are in default of the lease. Violation of lease provisions may result in fines and, in some cases, termination of a lease. ~~Our~~ **23Our** ability to operate depends on the traffic patterns of the terminals in which we operate, and the cessation or disruption of air traveler traffic in these terminals would negatively impact XpresSpa **'s, XpresTest** 's and Treat 's addressable market. We depend on a high volume of air travelers in its terminals. It is possible that a terminal in which we operate could become subject to a lower volume of air travelers, which would significantly impact traffic near and around our locations and therefore its total addressable market. Lower volume in a terminal could be caused by: • terminal construction that results in the temporary or permanent closure of a unit, or adversely impacts the volume or pattern of traffic flows within an airport; • an airline utilizing an airport in which we operate could abandon that airport or an individual terminal in favor of other airports or terminals, or because it is contracting operations; or • adverse weather conditions could cause damage to the terminal or airport in which we operate, resulting in the temporary or permanent closure of a unit. ~~24We~~ **We** are dependent on our local partners. Our local partners, including our ACDBE partners, maintain ownership interests in certain of our locations. Our participation in these operating entities differs from market to market. While the precise terms of each relationship vary, our local partners may have control over certain portions of the operations of these concessions. The stores are operated pursuant to the applicable joint venture agreement governing the relationship between us and our local partner. Generally, these agreements also provide that strategic decisions are to be made by a committee comprised of us and our local partner. These concessions involve risks that are different from the risks involved in operating a concession independently, and include the possibility that our local partners: • are in a position to take action contrary to our instructions, our requests, our policies, our objectives or applicable laws; • take actions that reduce our return on investment; • go bankrupt or are otherwise unable to meet their capital contribution obligations; • have economic or business interests or goals that are or become inconsistent with our business interests or goals; or • take actions that harm our reputation or restrict our ability to run our business. Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business. Pursuant to ACDBE participation requirements, we are often required to meet, or use good faith efforts to meet, certain minimum ACDBE participation requirements when bidding on or submitting proposals for new concession contracts. If we are unable to find and / or partner with an appropriate ACDBE, we may lose opportunities to open new locations. In addition, ~~several a number~~ of our existing leases contain minimum ACDBE participation requirements which require the ACDBE to own a significant portion of the business being operated under those leases. The level of ACDBE participation requirements may affect our profitability and / or its ability to meet financial forecasts. Further, if we fail to comply with the minimum ACDBE participation requirements, we may be held responsible for a breach of contract, which could result in the termination of a lease and impairment of our ability to bid on or obtain future concession contracts. To the extent that our leases are terminated, and we are required to shut down one or more store locations, there could be a material adverse impact to our business and results of operations. ~~Continued~~ **24Continued** minimum wage increases could negatively impact our cost of labor. An increase in the minimum wage could increase our cost of labor and have an adverse impact on our business, financial condition, and results of operations.

~~25Information~~ **Information** technology systems failure or disruption, or changes to information technology related to payment systems, could impact our day- to- day operations. Our information technology systems are used to record and process transactions at our point- of- sale interfaces and to manage our operations. These systems provide information regarding most aspects of our financial and operational performance, statistical data about our customers, our sales transactions, and our inventory management. Fire, natural disasters, power- loss, telecommunications failure, break- ins, terrorist attacks (including cyber- attacks), computer viruses, electronic intrusion attempts from both external and internal sources and similar events or disruptions may damage or impact our information technology systems at any time. These events could cause system interruption, delays or loss of critical data and could disrupt our acceptance and fulfillment of customer orders, as well as disrupt our operations and management. For example, although our point- of- sales systems are programmed to operate and process customer orders independently from the availability of our central data systems and even of the network, if a problem were to disable electronic payment systems in our stores, credit card payments would need to be processed manually, which could result in fewer transactions. Significant disruption to systems could have a material adverse impact on our business, financial condition, and results of operations. We also continually enhance or modify the technology used for our operations. We cannot be sure that any enhancements or other modifications we make to our operations will achieve the intended results or otherwise be of value to our customers. Future enhancements and modifications to our technology could consume considerable resources. We may be required to enhance our payment systems with new technology, which could require significant expenditures. If we are unable to maintain and enhance our technology to process transactions, we may experience a materially adverse impact on our business, financial condition, and results of operations. If we are unable to protect our customers' credit card data and other personal information, we could be exposed to data loss, litigation and liability, and our reputation could be significantly harmed. Privacy protection is increasingly demanding, and the use of electronic payment methods and collection of other personal information, including order history, travel history and other preferences, exposes us to increased risk of privacy and / or

security breaches as well as other risks. Our sales are by credit or debit cards. Additionally, we collect and store personal information from individuals, including our customers and employees. In the future, we may experience security breaches in which credit and debit card information or other personal information is stolen. Although we use secure private networks to transmit confidential information, third parties may have the technology or know-how to breach the security of the customer information transmitted in connection with credit and debit card sales, and its security measures and those of technology vendors may not effectively prohibit others from obtaining improper access to this information. The techniques used to obtain unauthorized access, disable, or degrade service, or sabotage systems change frequently and are often difficult to detect for long periods of time, which may cause a breach to go undetected for an extensive period of time. Advances in computer and software capabilities, new tools, and other developments may increase the risk of such a breach. Further, the systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payments themselves, all of which can put electronic payment at risk, are determined and controlled by the payment card industry, not by us. In addition, contractors, or third parties with whom we do business or to whom we outsource business operations may attempt to circumvent its security measures in order to misappropriate such information and may purposefully or inadvertently cause a breach involving such information. If a person can is able to circumvent our security measures or those of third parties, he or she could destroy or steal valuable information or disrupt our operations. We may become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. Any such claim or proceeding could cause us to incur significant unplanned expenses, which could have an adverse effect on its business or results of operations. Further, adverse publicity resulting from these allegations could significantly harm its reputation and may have a material adverse effect on it. Although we carry 25 carry cyber liability insurance to protect against these risks, there can be no assurance that such insurance will provide adequate levels of coverage against all potential claims. 26 Negative --- Negative social media regarding XWELL, XpresSpa, Treat, XpresCheek XpresTest, Naples Wax Center, TreatStudios or Hyperpointe HyperPointe could result in decreased revenues and impact our ability to recruit workers. Our affinity among consumers is highly dependent on their positive feelings about our brands, our customer service and the range and quality of services and products that we offer. A negative customer experience that is posted to social media outlets and is distributed virally could tarnish each of the XpresSpa's, Treat's, XpresCheek XpresTest's, Naples Wax Center, TreatStudios or Hyperpointe HyperPointe's brand and our customers may opt to no longer engage with that particular brand, or any of our brands. We employ people in multiple different jurisdictions, and the employment laws of those jurisdictions are subject to change. In addition, our services are regulated through government-issued operating licenses. Noncompliance with applicable laws could result in employee lawsuits or legal action taken by government authorities. We must comply with a variety of employment and business practices laws across the United States, Netherlands, Turkey, and United Arab Emirates. We monitor the laws governing our activities, but in the event we do not become aware of a new regulation or fail to comply with a regulation, we could be subject to disciplinary action by governing bodies and potentially employee lawsuits. We source, develop, and sell products that may result in product liability defense costs and product liability payments. Our products contain ingredients that are deemed to be safe by the United States Federal Drug Administration and the Federal Food, Drug and Cosmetics Act. However, there is no guarantee that these ingredients will not cause adverse health effects to some consumers given the wide range of ingredients and allergies amongst the general population. We may face substantial product liability exposure for products we sell to the general public or that we use in our services. Product liability claims, regardless of their merits, could be costly and divert management's attention, and adversely affect our reputation and the demand for our products and services. XWELL to date has not been named as a defendant in any product liability action. We and our subsidiaries have been, are, and may again become involved in litigation that could divert management's attention and harm our businesses. Litigation is often is expensive and diverts management's attention and resources, which could adversely affect our businesses. We may be exposed to claims against us even if no wrongdoing has occurred. Responding to such claims, regardless of their merit, can be time-consuming, costly to defend, disruptive to our management's attention and to our resources, damaging to our reputation and brand, and may cause us to incur significant expenses. Even if we have the right to be indemnified against such costs, the indemnifying party may be unable to uphold its contractual obligations. New legislation, regulations or court rulings related to enforcing patents could harm our business and operating results. Intellectual property is the subject of intense scrutiny by the courts, legislatures, and executive branches of governments around the world. Various patent offices, governments or intergovernmental bodies may implement new legislation, regulations or rulings that impact the patent enforcement process, or the rights of patent holders and such changes could negatively affect licensing efforts and / or litigations. For example, limitations on the ability to bring patent enforcement claims, limitations on potential liability for patent infringement, lower evidentiary standards for invalidating patents, increases in the cost to resolve patent disputes and other similar developments could negatively affect our ability to assert our patent or other intellectual property rights. It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any of the proposals will become enacted as laws. Compliance with any new or existing laws or regulations could be difficult and expensive, affect the way manner in which we conduct our business and negatively impact our business, prospects, financial condition, and results of operations. 27 Our 26 Our failure or inability to protect the trademarks or other proprietary rights we use or claims of infringement by us of rights of third parties, could adversely affect our competitive position or the value of our brands. We believe that our trademarks and other proprietary rights are important to our success and our competitive position. However, any actions that we take to protect the intellectual property we use may not prevent unauthorized use or imitation by others, which could have an adverse impact on our image, brand, or competitive position. If we commence litigation to protect our interests or enforce our rights, we could incur significant legal fees. We also cannot provide assurance that third parties will not claim infringement by us of their proprietary rights. Any such claim, whether or not it has merit, could be time consuming and distracting for our management, result in

costly litigation, cause changes to existing retail concepts or delays in introducing retail concepts, or require us to enter into royalty or licensing agreements. As a result, any such claim could have a material adverse impact on our business, financial condition, and results of operations. Any future acquisitions or business opportunities could involve unknown risks that could harm our business and adversely affect our financial condition and the results of operations. We have in the past, and may in the future, acquire businesses or make investments, directly or indirectly through our subsidiaries, that involve unknown risks, some of which will be particular to the industry in which the investment or acquisition targets operate, including risks in industries with which we are not familiar or experienced. Although we intend to conduct appropriate business, financial and legal due diligence in connection with the evaluation of future investment or acquisition opportunities, our due diligence investigations may not identify every matter that could have a material adverse effect on us. We may be unable to adequately address the financial, legal, and operational risks raised by such investments or acquisitions, especially if we are unfamiliar with the relevant industry. The realization of any unknown risks could expose us to unanticipated costs and liabilities and prevent or limit us from realizing the projected benefits of the investments or acquisitions, which could adversely affect our financial condition, liquidity, results of operations, and trading price.

**Risks associated with international operations** Laws regulating the corporate practice of medicine could result in additional costs which we are permitted to conduct our XpresCheck and Treat businesses, and the failure to **many of the risks we face in our U. S. operations, international operations present a unique set of risks and challenges, including local laws and customs, various and potentially complex international tax regulations and compliance requirements, U. S. laws applicable to foreign operations, and political and socio-economic conditions. Our ability to operate effectively and grow in international markets could be impacted by these risks resulting in legal liabilities, additional costs, and the distraction of management's attention. Compliance** with such laws could subject us to penalties or require a restructuring of our business. In operating our XpresCheck and Treat businesses, we have medical service agreements ("MSAs") with state licensed physicians and nurse practitioners, under which we administer COVID-19 testing options, in three -- **the Foreign Corrupt Practices Act and protection of intellectual property rights surrounding items** practicing medicine, employing physicians to practice medicine, exercising control over medical decisions by physicians or engaging in certain arrangements, such as fee-splitting **trade names and trademarks in foreign jurisdictions can pose significant challenges. In addition**, with physicians (such activities **our operations in international markets are conducted primarily in** generally referred to as the **local currency** "corporate practice of medicine"). In some states these **those prohibitions countries. Given that our Consolidated Financial Statements are denominated** expressly stated in a statute or regulation **U. S. dollars**, while in **amounts of assets, liabilities, net sales, and other revenues** states the prohibition is a matter of judicial or regulatory interpretation. Other states in which we may operate in the future may also generally prohibit the corporate practice of medicine. While we endeavor to comply with state corporate practice of medicine laws and **expenses denominated** regulations as we interpret them in **local currencies must be translated into U** the operation of our XpresCheck and Treat businesses, the laws and regulations in these areas are complex, changing, and often subject to varying interpretations. **S** The interpretation and enforcement of these laws vary significantly from state to state. Penalties **dollars using exchange rates** for violations of the **current period. As a** corporate practice of medicine vary by state and may result in physicians being subject to disciplinary action, **foreign currency** as well as to forfeiture of revenue from payors for services rendered. For business entities such as us, violations may also bring both civil and, in more extreme cases, criminal liability for engaging in medical practice without a license. Some of the relevant laws, regulations and agency interpretations in states with corporate practice of medicine restrictions have been subject to limited judicial and regulatory interpretation, and state laws and regulations are subject to change **exchange rates**. Regulatory authorities and **fluctuations** other parties in some states may assert that our MSAs mean that, through our XpresCheck and Treat businesses, we are engaged in the prohibited corporate practice of medicine. If this were to occur, we could be subject to civil and/or criminal penalties, our MSAs with physicians could be found legally invalid and unenforceable (in whole or in part) or we could be required to restructure our arrangements with physicians, in each case in one or more of the jurisdictions in which we operate. Any of these **those outcomes rates** may have a material adverse **adversely impact** effect on our business, results of operations, financial **performance** condition, cash flows in our XpresCheck and Treat businesses and our reputation overall. **Risks** Related to our Capital Stock Stock prices can be volatile, and this volatility may depress the price of our common stock. The stock market has experienced significant price and volume fluctuations, which have affected the market price of many companies in ways that may have been unrelated to those companies' operating performance. Furthermore, we believe that our stock price may reflect certain future growth and profitability expectations. If we fail to meet these expectations, then our stock price may significantly decline, which could have an adverse impact on investor confidence. We believe that various factors may cause the market price of our common stock to fluctuate, perhaps substantially, including, among others, the following:

- additions to or departures of our key personnel, or our overall ability to retain key personnel;
- announcements of innovations by us or our competitors;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, capital commitments, or new technologies;
- new regulatory pronouncements and changes in regulatory guidelines;
- developments or disputes concerning **intellectual** **intellectual** property rights generally;
- lawsuits, claims, and investigations that may be filed against us, and other events that may adversely affect our reputation;
- changes in financial estimates or recommendations by securities analysts;
- general and industry-specific economic conditions;
- our ability to develop and introduce new products and services;
- our ability to raise additional capital to fund our operations and business plan and the effects that such financing **may** have on the value of the equity instruments held by our stockholders;
- our ability to hire a skilled labor force and the costs associated;
- our ability to secure new retail locations, maintain existing ones, and ensure continued customer traffic at those locations;
- the loss of one or more of our significant suppliers;
- unexpected trends in the health and wellness and travel

industries and potential technology and service obsolescence; and ● market acceptance, quality, pricing, availability, and useful life of our products and / or services, as well as the mix of our products and services sold. ~~29~~We ~~We~~ have no current plans to pay dividends on our common stock, and our investors may not receive funds without selling their stock. We have not declared or paid any cash dividends on our common stock, nor do we expect to pay any cash dividends on our common stock for the foreseeable future. Investors seeking cash dividends should not invest in our common stock for that purpose. We currently intend to retain any additional future earnings to finance our operations and growth and, therefore, we have no plans to pay cash dividends on our common stock **currently at this time**. Any future determination to pay cash dividends on our common stock will be at the discretion of our Board of Directors and will be dependent on our earnings, financial condition, operating results, capital requirements, any contractual restrictions, and other factors that our Board of Directors deems relevant. Accordingly, our investors may have to sell some or all ~~of~~ their common stock in order to generate cash from their investment. You may not receive a gain on your investment when you sell our common stock and may lose the entire amount of your investment. Our failure to meet the continued listing requirements of ~~The Nasdaq Capital Market (“Nasdaq”)~~ could result in a delisting of our common stock. The continued listing standards of Nasdaq provide, among other things, that a company may be delisted if the bid price of its stock drops below \$ 1.00 for a period of 30 consecutive business days or if stockholders’ equity is less than \$ 2,500,000. ~~On~~ **28**While we are currently in compliance, we have in the past been, and may in the future be, unable to comply with certain of the listing standards that we are required to meet to maintain the listing of our common stock on Nasdaq. For example, on October 28, 2022, we received a deficiency letter from Nasdaq which indicated that we were not in compliance with the minimum bid price requirement. ~~Although in previous instances of minimum bid price noncompliance we were~~ **We received an additional 180-day extension period to comply with on April 27, 2023, pursuant to written notification from Nasdaq. We may be able unable** to regain compliance by the applicable deadline, ~~we may be unable to regain compliance prior to the April 26, 2023 deadline, or~~ in the future if our stock price again falls below the minimum bid price. Additionally, if we fail to comply with any other continued listing standards of Nasdaq, our common stock would also be subject to delisting. If that were to occur, our common stock would be subject to rules that impose additional sales practice requirements on broker-dealers who sell our securities. The additional burdens imposed upon broker-dealers by these requirements could discourage broker-dealers from effecting transactions in our common stock. This would significantly and negatively affect the ability of investors to trade our securities and would significantly and negatively affect the value and liquidity of our common stock. These factors could contribute to lower prices and larger spreads in the bid and ask prices for our common stock. **The Delisting delisting** of our common stock also would likely have a negative effect on the price of our common stock and would impair your ability to sell or purchase our common stock when you wish to do so. Further, if we were to be delisted from Nasdaq, our common stock would cease to be recognized as covered securities and we would be subject to regulation in each state in which we offer our securities. ~~If~~ **On September 28, 2023, we seek effected the Reverse Stock Split to implement regain compliance with Nasdaq’s listing rules and on October 12, 2023, we received written notice from Nasdaq indicating that we had regained compliance with the minimum bid price requirement under Nasdaq Listing Rule 5550 (a) (2), and the matter is now closed. The primary intent for the Reverse Stock Split was that the anticipated increase in the price of our common stock immediately following and resulting from a reverse stock split due to the reduction in order the number of issued and outstanding shares of common stock that would help us meet the minimum bid price requirement. It cannot be assured that the Reverse Stock Split will result in any sustained proportionate increase in the market price of our common stock, which is dependent upon many factors, including our business and financial performance, general market conditions, and prospects for future success, which are unrelated to the number of shares of our common stock outstanding. It is not uncommon for the market price of a company’s common stock to decline in the period following a reverse stock split. Thus, while we have regained compliance with the continued listing requirements for Nasdaq, it cannot be assured that we will continue to do so. If in the future we seek to implement a reverse stock split** to remain listed on Nasdaq, the announcement and / or implementation of a reverse stock split could significantly negatively affect the price of our common stock. Delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our common stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities. Our common stock has historically traded in low volumes. We cannot predict whether an active trading market for our common stock will ever develop. Even if an active trading market develops, the market price of our common stock may be significantly volatile. Historically, our common stock has experienced a lack of consistent trading liquidity. In the absence of an active trading market you may have difficulty buying and selling our common stock at all or at the price you consider reasonable; and market visibility for shares of our common stock may be limited, which may have a depressive effect on the market price for shares of our common stock and on our ability to raise capital or make acquisitions by issuing our common stock. ~~30~~Anti- **Anti**-takeover provisions of Delaware law, provisions in our charter and bylaws, and our stockholder rights plan could prevent or frustrate attempts by stockholders to change our Board of Directors or current management and could delay, discourage, or make more difficult a third-party acquisition of control of us. We are a Delaware corporation and, as such, certain provisions of Delaware law could prevent or frustrate attempts by stockholders to change the Board of Directors or current management, or could delay, discourage, or make more difficult a third-party acquisition of control of us, even if the change in control would be beneficial to stockholders or the stockholders regard it as such. We are subject to the provisions of Section 203 of the Delaware General Corporation Law (“DGCL”), which prohibits certain “business combination” transactions (as defined in Section 203) with an “interested stockholder” (defined in Section 203 as a 15% or greater stockholder) for a period of three years after a stockholder ~~becomes~~ **29**becomes an “interested stockholder,” unless the attaining of “interested stockholder” status or the transaction is pre-approved by our Board of Directors, the

transaction results in the attainment of at least an 85 % ownership level by an acquirer or the transaction is later approved by our Board of Directors and by our stockholders by at least a 66 2 / 3 percent vote of our stockholders other than the “ interested stockholder, ” each as specifically provided in Section 203. Our certificate of incorporation and our bylaws, each as currently in effect, also contain certain provisions that may delay, discourage, or make more difficult a third- party acquisition of control of us. Such provisions include a provision that any vacancies on our Board of Directors may only be filled by a majority of the directors then serving, although not a quorum, and not by the stockholders and the ability of our Board of Directors to issue preferred stock, without stockholder approval, that could dilute the stock ownership of a potential unsolicited acquirer and hinder an acquisition of control of us that is not approved by our Board of Directors, including through the use of preferred stock in connection with a stockholder rights plan. We have also adopted a stockholder rights plan in the form of a Section 382 Rights Plan, designed to help protect and preserve our substantial tax attributes primarily associated with our NOLs under Section 382 of the Internal Revenue Code and research tax credits under Sections 382 and 383 of the Internal Revenue Code and related United States Treasury regulations, which was approved by our stockholders in December 2016 and expires in March 2022. Although this is not its purpose, the Section 382 Rights Plan could have the effect of making it uneconomical for a third party to acquire us on a hostile basis. These provisions of the DGCL, our certificate of incorporation and bylaws, and our Section 382 Rights Plan may delay, discourage, or make more difficult certain types of transactions in which our stockholders might otherwise receive a premium for their shares over the current market price, and might limit the ability of our stockholders to approve transactions that they think may be in their best interest. **If securities analysts do not publish research or reports about our business, or if they publish negative evaluations, the price of our Common Stock could decline. The trading market for our common stock relies in part on the availability of research and reports that third- party industry or financial analysts publish about us. There are many large, publicly traded companies active in the life sciences and biopharmaceutical industries, which may mean it will be less likely that we receive widespread analyst coverage. Furthermore, if one or more of the analysts who do cover our company (if any) downgrades our stock, our stock price would likely decline. If one or more of these analysts cease coverage of our company, we could lose visibility in the market, which in turn could cause our stock price to decline. Additionally, if securities analysts publish negative evaluations of competitors in the life sciences and biopharmaceutical industries, the comparative effect could cause our stock price to decline.** Having availed ourselves of scaled disclosure available to smaller reporting companies, we cannot be certain if such reduced disclosure will make our common stock less attractive to investors. Under Section 12b- 2 of the Exchange Act, a “ smaller reporting company ” is a company that is not an investment company, an asset- backed issuer, or a majority- owned subsidiary of a parent company that is not a smaller reporting company, and **(i) has a public float of less than \$ 250 million and as measured on the last business day of our second fiscal quarter, or (ii) has annual revenues of less than \$ 100 million during the most recently completed fiscal year and whose value of common stock held by non- affiliates is less than \$ 700 million as measured on the last business day of the second fiscal quarter.** Similar to emerging growth companies, smaller reporting companies are permitted to provide simplified executive compensation disclosure in their filings; they are exempt from the provisions of Section 404 (b) of the Sarbanes- Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal controls over financial reporting; and they have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosure in our SEC filings **because as a result** of our having availed ourselves of scaled disclosure may make it harder for investors to analyze our results of operations and financial prospects. **31-30**