

## Risk Factors Comparison 2023-12-22 to 2022-12-15 Form: 10-K

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

Investing in our securities involves risks. You should carefully consider the risks described below in addition to the other information set forth in this Annual Report on Form 10-K, including the Management's Discussion and Analysis of Financial Conditions and Results of Operations section and the consolidated financial statements and related notes. If any of the risks and uncertainties described in the cautionary factors described below actually occur or continue to occur, our business, financial condition and results of operations and the trading price of our common stock and our Series A Convertible Preferred Stock could be materially and adversely affected. Moreover, the risks below are not the only risks we face and additional risks not currently known to us or that we presently deem immaterial may emerge or become material at any time and may negatively impact our business, reputation, financial condition, results of operations or the trading price of our securities.

**RISKS RELATED TO OUR OVERALL BUSINESS** We have a history of losses from operations and there are no assurances we will report profitable operations in future periods or continue as a going concern. We reported losses from operations of \$ **24.2 million** and \$ **78.3 million**, 177,746 and \$ 19,615,990 for fiscal **year 2023 and fiscal year 2022** and fiscal 2021, respectively. Included in our loss from operation is a non-cash \$ **0** and \$ **56.6 million**, 670,970 and \$ 0 impairment of goodwill for fiscal **year 2023 and fiscal year 2022** and fiscal 2021, respectively as well as an impairment of \$ **13.2** and \$ **4.3 million**, 285,000 and \$ 0 on our trade names for fiscal **2023 and 2022** and 2021, respectively. Not included in our loss from operations for fiscal ~~2022~~ **2023** and fiscal 2021 is a \$ **0.70 million impairment non-cash charge pertaining to our ownership interest in Steady State, LLC as well as a** non-cash income of \$ **0.19 million** 8,473,999 and non-cash expense of \$ **8.47 million** 6,687,439 for fiscal **2023 and fiscal 2022** and fiscal 2021, respectively, reflecting a change in value of the contingent liability associated with the Earnout Shares (as hereinafter defined) primarily as a result of the change in the market price of our common stock. Until such time, if ever, that we are successful in generating gross profits which are sufficient to pay our operating expenses it is likely we will continue to report losses from operations in future periods. While the Company is taking strong action and believes that it can execute its strategy and path to profitability within its balance sheet, and in its ability to raise additional funds, there can be no assurances to that effect. The Company's working capital position may not be sufficient to support the Company's daily operations for the twelve months subsequent to the issuance of these annual financial statements. The Company's ability to continue as a going concern is dependent upon its ability to improve profitability and cash flow and the ability to acquire additional funding. These and other factors raise ~~potential concern~~ **substantial doubt** about the Company's ability to continue as a going concern within twelve months after the date that the annual financial statements are issued. These financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result in the Company not being able to continue as a going concern. **In the event our revenues do not increase, we will need to raise additional capital to fund our operations in furtherance of our business plan. Until we are profitable, we will need to raise additional capital during the current fiscal year in order to fund our operations in furtherance of our business plan. A potential financing may include shares of common stock, shares of preferred stock, warrants to purchase shares of common stock or preferred stock, debt securities, units consisting of the foregoing securities, equity investments from strategic development partners or some combination of each. Any additional equity financings may be financially dilutive to, and will be dilutive from an ownership perspective to, our stockholders, and such dilution may be significant based upon the size of such financing. Additionally, we cannot assure that such funding will be available on a timely basis, in needed quantities, or on terms favorable to us, if at all. Our ~~historical~~ current capitalization limits our ability to make strategic or accretive acquisitions or attract new investors. Our management has engaged in several strategic discussions for both soliciting strategic investment as well as mergers and acquisitions ("M & A"). Our outstanding shares of Series A Preferred Stock continues to substantially limit opportunities to negotiate strategic investment or M & A. Potential investors and merger candidates view both the dividend obligation as well as the \$ 50 million in Series A Preferred Stock liquidation preference a challenging burden, which impacts management's ability to negotiate potential opportunities at reasonable terms and conditions. Additionally, the change of control rights of the Series A Preferred, which provide for a \$ 55 million redemption right, effectively prevents any future third party from making a bona fide offering to acquire our company or our assets which could provide value to our shareholders. As we continue to act on our plan to rebuild revenues and seek accretive acquisition opportunities and working capital (although as of the date of this report we currently do not have any pending or potential acquisitions or financing alternatives), our outstanding shares of Series A Preferred Stock negatively affect our ability to seek, engage and conduct strategic transactions or raise capital that could have a significant positive impact for its shareholders. Our recent negative growth rates may continue not be sustainable or indicative of future growth and we may not be able to effectively manage our growth. We Historically we expanded our operations rapidly, however in the last year we have seen challenges maintaining now had 2 consecutive fiscal years of revenue declines as the industry and Company have faced numerous headwinds. Net sales decreased \$ 11.2 million or 32% to \$ 24.2 million in fiscal 2023 and \$ 9.0 million, or 20%, to \$ 35.4 million in 2022, as compared to \$ 44.5 million in 2021. This decrease was primarily driven by a decrease in total orders year over year in both our direct to consumer and wholesale divisions and we believe associate with (i) changes in social algorithms and IOS that affect effectiveness and cost of marketing and acquiring new customers, (ii) access to certain channels, (iii) ongoing competitive environment, (iv) statements from the FDA that negatively impacted retailer interest in the category, (v) significant inflationary pressures on**

consumers and businesses alike **and (vi) a significant reduction in marketing spend as we rationalize expenses. Despite this reduction in revenue, we have made consistent reduction of quarterly cash consumed by the business over this 2 year period.** We believe that our revenue growth will depend upon, among other factors: • Increasing U. S. brand awareness; • Our ability to obtain adequate protections for our intellectual property; • Product innovation to expand our total addressable market; and • International expansion. ~~With ongoing COVID variants, we continue to assess the situation on a regular basis and adjust our business, priorities, and processes to enable us to continue to operate effectively. We are unable to predict the future impact of COVID-19 and any subsequent variant and when, or our headcount if, our sales to~~ **made significant changes to rationalize our expenses** B2B brick and mortar customers will return to prior levels. We have a limited history operating our business at its current scale. As a result of our growth, our employee headcount and the scope and complexity of our business have increased substantially, and we are continuing to implement policies and procedures that we believe are appropriate for a company of our size. We may continue to experience difficulties as we continue to implement changes to our business and related policies and procedures to **manage** keep pace with our **business recent growth** and, if our operations continue to **positive cash flow. This** grow at a rapid pace, in managing such growth and building the appropriate processes -- **process** and controls in the future. Continued growth may increase the strain on our resources, and we could experience operating difficulties, including without limitations, difficulties in sourcing, logistics, recruiting, maintaining internal controls, marketing, designing innovative products, and meeting consumer needs. If we do not adapt to meet these evolving challenges, the strength of our brand may erode, the quality of our products may suffer, we may not be able to deliver products on a timely basis to our customers, and our corporate culture may be harmed. In addition, we may make investments in our research and development and sales and marketing organizations, expand our operations and infrastructure both domestically and internationally, design and develop new products, and enhance our existing products with newly developed products and through acquisitions. If our sales do not increase at a sufficient rate to offset our operating expenses, our **profitability losses** may **decline increase** in future periods. Our business depends on maintaining and strengthening our brand and generating and maintaining ongoing demand for our products, and a significant reduction in such demand could harm our results of operations. We have developed a strong and trusted brand that we believe has contributed significantly to the success of our business, and we believe our continued success depends on our ability to maintain and grow the value and reputation of cbdMD. Maintaining, promoting and positioning our brand and reputation will depend on, among other factors, the success of our product offerings, quality assurance, marketing and merchandising efforts, the reliability and reputation of our supply chain, our ability to grow and capture share of the CBD category, and our ability to provide a consistent, high- quality consumer experience. We have made substantial investments in these areas in order to maintain and enhance our brand and these experiences, but such investments may not be successful. Any negative publicity, regardless of its accuracy, could materially adversely affect our business. For example, our business depends in part on our ability to maintain a strong community of engaged customers and social media and athlete influencers. We may not be able to maintain and enhance a loyal customer base if we receive customer complaints, negative publicity or otherwise fail to live up to consumers' expectations, which could materially adversely affect our business, operating results and growth prospects. The growing use of social and digital media by us, our consumers and third parties increases the speed and extent that information or misinformation and opinions can be shared. Negative publicity about us, our brand or our products on social or digital media could seriously damage our brand and reputation. For example, consumer perception could be influenced by negative media attention regarding any consumer complaints about our products, our management team, ownership structure, sourcing practices and supply chain partners, employment practices, ability to execute against our mission and values, and our products or brand, such as any advertising campaigns or media allegations that challenge the sustainability of our products and our supply chain, or that challenge our marketing efforts regarding the quality of our products, which could have an adverse effect on our business, brand and reputation. Similar factors or events could impact the success of any brands or products we introduce in the future. Our company image and brands are very important to our vision and growth strategies, particularly our focus on being a " good company " and operating consistent with our mission and values. We will need to continue to invest in actions that support our mission and values and adjust our offerings to appeal to a broader audience in the future in order to sustain our business and to achieve growth, and there can be no assurance that we will be able to do so. If we do not maintain the favorable perception of our company and our brand, our sales and results of operations could be negatively impacted. Our brand and company image is based on perceptions of subjective qualities, and any incident that erodes the loyalty of our consumers, customers, suppliers or manufacturers, including adverse publicity or a governmental investigation or litigation, could significantly reduce the value of our brand and significantly damage our business, which would have a material adverse effect on our business, financial condition, results of operations and cash flows. If we fail to attract new customers in a cost- effective manner, our business may be harmed. A large part of our success depends on our ability to attract new customers in a cost- effective manner. We have made, and may continue to make, significant investments in attracting new customers through **increased** advertising spends on social media, radio, podcasts, **and** targeted email communications, other media and events, sponsorships, and influencer sponsorships. Marketing campaigns can be expensive and may not result in the cost- effective acquisition of customers. Further, as our brand becomes more widely known, future marketing campaigns may not attract new customers at the same rate as past campaigns and the cost of acquiring new customers may increase over time. Additionally, regulation, algorithms, or participants in the digital marketing ecosystem may change rules for our industry or access to available demographics which may result in significant changes in the ability to target key demographic pools, impacting our ability to target our customers effectively. If we are unable to attract new customers, or fail to do so in a cost- effective manner, our business may be harmed. Our growth depends, in part, on expanding into additional consumer markets, and we may not be successful in doing so. We believe that our future growth depends not only on continuing to provide our current customers with new products, but also continuing to enlarge our customer base. The growth of our business will depend, in part, on our ability to continue to expand in the United States, as well as into international markets. We are investing significant resources in these

areas, and although we hope that our products will gain popularity, we may face challenges that are different from those we currently encounter, including competitive, merchandising, distribution, hiring, and other difficulties. We may also encounter difficulties in attracting customers due to a lack of consumer familiarity with or acceptance of our brand, or a resistance to paying for premium products, particularly in international markets. In addition, although we are investing in sales and marketing activities to further penetrate newer regions, including expansion of our dedicated sales force, we may not be successful. If we are not successful, our business and results of operations may be harmed. Our plans for international expansion may not be successful. Continued expansion into markets outside the United States is one of our key long- term strategies for the future growth of our business. This expansion requires significant investment of capital and human resources, new business processes and marketing platforms, legal compliance, and the attention of many managers and other employees who would otherwise be focused on other aspects of our business. There are significant costs and risks inherent in selling our products in international markets, including: (a) failure to effectively establish our core brand identity; (b) increased employment costs; (c) increased shipping and distribution costs, which could increase our expenses and reduce our margins; (d) potentially lower margins in some regions; (e) longer collection cycles in some regions; (f) increased competition from local providers of similar products; (g) compliance with foreign laws and regulations, including taxes and duties, laws governing the marketing and use of e-commerce websites and enhanced data privacy laws and security, rules, and regulations; (h) establishing and maintaining effective internal controls at foreign locations and the associated increased costs; (i) increased counterfeiting and the uncertainty of protection for intellectual property rights in some countries and practical difficulties of enforcing rights abroad; (j) compliance with anti- bribery, anti- corruption, and anti- money laundering laws, such as the FCPA, the Bribery Act, and OFAC regulations, by us, our employees, and our business partners; (k) currency exchange rate fluctuations and related effects on our results of operations; (l) economic weakness, including inflation, or political instability in foreign economies and markets; (m) compliance with tax, employment, immigration, and labor laws for employees living or traveling abroad; (n) workforce uncertainty in countries where labor unrest is more common than in the United States; (o) business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters, including earthquakes, typhoons, floods, fires, and public health issues, including the outbreak of a pandemic or contagious disease, such as COVID- 19, or xenophobia resulting therefrom; (p) the imposition of tariffs on products that we import into international markets that could make such products more expensive compared to those of our competitors; (q) that our ability to expand internationally could be impacted by the intellectual property rights of third parties that conflict with or are superior to ours; (r) difficulty developing retail relationships; and (s) other costs and risks of doing business internationally. These and other factors could harm our international operations and, consequently, harm our business, results of operations, and financial condition. Further, we may incur significant operating expenses as a result of our planned international expansion, and it may not be successful. We have limited experience with regulatory environments and market practices internationally, and we may not be able to penetrate or successfully operate in new markets. We may also encounter difficulty expanding into international markets because of limited brand recognition, leading to delayed or limited acceptance of our products by customers in these markets, and increased marketing and customer acquisition costs to establish our brand. Accordingly, if we are unable to successfully expand internationally or manage the complexity of our global operations, we may not achieve the expected benefits of this expansion and our financial condition and results of operations could be harmed. Fluctuations in the cost and availability of raw materials, equipment, labor, and transportation could cause manufacturing delays or increase our costs. The price and availability of key components used to manufacture our products has been increasing and may continue to fluctuate significantly. In addition, the cost of labor within our company or at our third- party manufacturers could increase significantly due to regulation or inflationary pressures. Additionally, the cost of logistics and transportation fluctuates in large part due to the price of oil, and availability can be limited due to political and economic issues. Any fluctuations in the cost and availability of any of our raw materials, packaging, or other sourcing or transportation costs could harm our gross margins and our ability to meet customer demand. If we are unable to successfully mitigate a significant portion of these product cost increases or fluctuations, our results of operations could be harmed. We rely on third- parties for raw materials and to manufacture and compound our products. We have no control over these third parties and if these relationships are disrupted our results of operations in future periods will be adversely impacted. We currently hold short -term supply ~~contracts~~ **contracts and manufacturing agreements** with unaffiliated third- party vendors for our critical raw materials. In addition, our products are manufactured, compounded, and packaged by unaffiliated third parties and the use of these third- parties changes from time to time due to customer demand and the composition of our product mix and product portfolio. We do not have any long- term **committed** contracts with any of these third parties, and we expect to compete with other companies for raw materials, production and imported packaging material capacity. If we experience significant increased demand or need to replace an existing raw material supplier or third- party manufacturer, there can be no assurances that replacements for these third- party vendors will be available when required on terms that are acceptable to us, or at all, or that any manufacturer or compounder would allocate sufficient capacity to us in order to meet our requirements. In addition, even if we are able to expand existing or find new sources, we may encounter delays in production and added costs as a result of the time it takes to engage third parties. Any delays, interruption or increased costs in raw materials and / or the manufacturing or compounding of our products could have an adverse effect on our ability to meet retail customer and consumer demand for our products and result in lower revenues and net income both in the short and long- term. Failures in our third- party verification and testing protocols may have an adverse impact on our brands which could suppress sales. The quality of our products is essential to our business strategy. We require our raw material suppliers and farms to participate in our supplier verification program and to certify that their source material was grown using strict standards of cultivation. We also employ third- party testing procedures and all incoming cannabinoid ingredients are first tested by an independent, third- party laboratory before they reach our production facilities and then re- tested in- house throughout the production process before sending the ingredients off for final verification by an independent accredited third- party laboratories. We are reliant on these

third parties to adhere to our supplier verification program and properly perform the third-party testing procedures. Any intentional or unintentional failure of any of these parties to perform the functions for which we have engaged them would adversely impact the quality of our products and could result in delays in meeting consumer demand or a decline in our sales. We could be harmed by data loss or other security breaches. Some of our systems have experienced past security incidents, including a recent incident that compromised some customers' personal and payment information. We conducted a forensic examination, made all notices to customers, governments, banks and card associations as required under local, state and federal laws, merchant agreements and card association rules. We also offered free credit monitoring and reporting to all affected customers and are maintaining a call center to handle any customer issues. We have implemented all remedial measures advised by the forensic examiner engaged by us, and, although we do not believe that any of these incidents have had a material adverse effect on our operating results, there can be no assurance the remedial measures will be effective or of a similar result in the future which could materially and adversely impact our business and operations in future periods. We face risks related to system interruption and lack of redundancy. From time to time we experience occasional system interruptions and delays that make our websites and product sales unavailable or slow to respond and prevent us from efficiently fulfilling orders which could adversely impact our net sales and the attractiveness of our products. If we are unable to add software and hardware as needed, effectively upgrade our systems and network infrastructure, and take other steps to improve the efficiency of our systems, these failures could cause system interruptions or delays and adversely affect our operating results in future periods. In addition, our computer and communications systems and operations could be damaged or interrupted by fire, flood, power loss, telecommunications failure, earthquakes, acts of war or terrorism, acts of God, computer viruses, physical or electronic break-ins, and similar events or disruptions. Any of these events could cause system interruption, delays, and loss of critical data, and could prevent us from accepting and fulfilling customer orders which could make our product offerings less attractive and subject us to liability. Our systems are not fully redundant, and our disaster recovery planning may not be sufficient. In addition, we may have inadequate insurance coverage to compensate for any related losses. Any of these events could damage our reputation and be expensive to remedy. Our future success depends on the continuing efforts of our management and key employees, and on our ability to attract and retain highly skilled personnel and senior management. We depend on the talents and continued efforts of our senior management and key employees. The loss of members of our management or key employees may disrupt our business and harm our results of operations. Furthermore, our ability to manage further expansion will require us to continue to attract, motivate, and retain additional qualified personnel. Competition for this type of personnel is intense, and we may not be successful in attracting, integrating, and retaining the personnel required to grow and operate our business effectively. There can be no assurance that our current management team, or any new members of our management team, will be able to successfully execute our business and operating strategies. If our goodwill, other intangible assets, or fixed assets become impaired, we may be required to record a charge to our earnings. During fiscal year 2023 and 2022, we incurred \$ 0 and \$ 56 , 670 - 67 million , 970 - respectively of Goodwill goodwill impairment and \$ 13. 22 and \$ 4 . 29 million , 285 - respectively , 000 of Intangible - intangible impairment as noted in Note 5 of our financial statements. We may be required to record future impairments of goodwill, other intangible assets, or fixed assets to the extent the fair value of these assets falls below their book value. Our estimates of fair value are based on assumptions regarding future cash flows, gross margins, expenses, discount rates applied to these cash flows, and current market estimates of value. Estimates used for future sales growth rates, gross profit performance, and other assumptions used to estimate fair value could cause us to record material non- cash impairment charges, which could harm our results of operations and financial condition.

**RISKS RELATED TO THE REGULATORY ENVIRONMENT FOR CBD**

**Lack of clarity and Changes - changes** to Federal or state laws pertaining to industrial hemp could slow the use of industrial hemp which would materially impact our revenues in future periods. Continued development of the industrial hemp industry will be dependent upon new legislative authorization of industrial hemp at the state level, expansion of current state approvals for hemp products, and further amendment or supplementation of legislation at the federal level, including re- authorization and expansion of the hemp language in the upcoming 2023 - 2024 Farm Act. Any number of events or occurrences could slow or halt progress all together in this space. While progress within the industrial hemp industry is currently encouraging, growth is not assured. While there appears to be ample public support for favorable legislative action, numerous factors may impact or negatively affect the legislative process (es) within the various states where we have business interests. Any one of these factors could slow or halt use of industrial hemp, which could negatively impact the business up to possibly causing us to discontinue operations as a whole. In addition, changes in Federal or state laws could require us to alter the way we conduct our business in order to remain compliant with applicable state laws in ways we are presently unable to foresee. These possible changes, if necessary, could be costly and may adversely impact our results of operations in future periods. Costs associated with compliance with numerous laws and regulations could impact our financial results. In addition, we could become subject to increased litigation risks associated with the CBD industry. The manufacture, labeling and distribution by us of the hemp- based cannabinoid products is regulated by various federal, state and local agencies. These governmental authorities may commence regulatory or legal proceedings, which could restrict the permissible scope of our product claims or the ability to sell products in the future. We are subject to regulation by the federal government and other state and local agencies as a result of our hemp- based cannabinoid products. The shifting compliance environment and the need to build and maintain robust systems to comply with different compliance in multiple jurisdictions increases the possibility that we may violate one or more of the requirements. If our operations are found to be in violation of any of such laws or any other governmental regulations that apply to our company, we may be subject to penalties, including, without limitation, civil and criminal penalties, damages, fines, the curtailment or restructuring of our operations, any of which could adversely affect the ability to operate our business and our financial results. Failure to comply with the various federal, state and local requirements may result in, among other things, injunctions, product withdrawals, recalls, product seizures, fines and criminal prosecutions. We are seeing increasing state- level labeling requirements that may increase our costs with respect to monitoring and adhering

to unique label requirements in addition to potential product and packaging obsolescence costs. Our advertising is subject to regulation by the U. S. Federal Trade Commission, or FTC, under the Federal Trade Commission Act, and is subject to various state regulations enforced by state agencies and state attorneys general. Additionally, some states also permit advertising and labeling laws to be enforced by private attorneys general who may seek relief for consumers, seek class- action certifications, seek class- wide damages and product recalls of products sold by us. Any actions against our company by governmental authorities or private litigants could be time consuming, costly to defend and could have a material adverse effect on our business, financial condition, and results of operations. Uncertainty caused by potential changes to legal regulations could impact the use of CBD products. There is substantial uncertainty and different interpretations among federal, state and local regulatory agencies, legislators, academics and businesses as to the scope of operation of Farm Bill- compliant hemp programs relative to the emerging regulation of cannabinoids. These different opinions include, but are not limited to, the regulation of cannabinoids by the U. S. Drug Enforcement Administration and / or the FDA and the extent to which manufacturers of products containing Farm Bill- compliant cultivators and processors may engage in interstate commerce. The uncertainties cannot be resolved without further federal, and perhaps even state- level, legislation, regulation or a definitive judicial interpretation of existing legislation and rules. If these uncertainties continue, they may have an adverse effect upon the introduction of our products in different markets.

**RISKS RELATED TO OWNERSHIP OF OUR SECURITIES** ~~The impact of changes in the fair value of our non- cash contingent liabilities associated with the Earnout Shares has, and may continue to, materially impact our results of operations in future periods. As described in Note 6 to the notes to our consolidated financial statements appearing later in this report, at September 30, 2022, we have a contractual obligation to issue up to an additional 3, 928, 797 shares of our common stock (the “ Earnout Shares ”) as additional consideration for our acquisition of Cure Based Development LLC in December 2018. Under U. S. generally accepted accounting principles (“ GAAP ”) we are required to record a non- cash contingent liability associated with the Earnout Shares and at September 30, 2022, the total of this contingent liability was \$ 276, 000. Under GAAP we are obligated to reassess the obligations associated with the Earnout Shares on a quarterly basis and, in the event our estimate of the fair value of the contingent consideration changes, we will record increases or decreases in the fair value as an adjustment to earnings. In particular, changes in the market price of our common stock, which is one of the inputs used in determining the amount of the non- cash contingent liability, will result in increases or decreases in this liability and positively or negatively impact our net loss or profit for the period. The application of the accounting treatment for the fair valuing of the Earnout Shares, in addition to the issuance of earnout shares for the first, second, third and fourth marking periods, at September 30, 2022 resulted in a decrease in the amount of this non- cash contingent liability of \$ 8, 473, 999 for fiscal 2022 as compared to an increase of \$ 6, 6, 87, 439 for fiscal 2021. While we do not believe investors should place undue reliance on the impact of these non- cash changes when evaluating our results of operations in future periods, as they have no impact on the operations of the business, we expect that the fair valuing of the Earnout Shares will continue to have a material impact on our results of operations and our shareholders’ equity in future periods, which may materially impact the market price of our securities. We are currently in the Fourth Marking Period which runs from July 2022 through November 2023. Based on the net revenue multipliers, the Company would need to generate over \$ 162 million in net revenue for all the remaining Earnout Shares to vest during this final marking period. We are subject to the continued listing standards of the NYSE American and our failure to satisfy these criteria may result in de- listing of our securities. Both our common stock and our Series A Convertible Preferred Stock are listed on the NYSE American. In order to maintain these listings, we must maintain certain share prices, financial and share distribution targets, including maintaining a minimum amount of shareholders’ equity and a minimum number of public shareholders. In addition to these objective standards, the NYSE American may delist the securities of any issuer (i) if, in its opinion, the issuer’ s financial condition and / or operating results appear unsatisfactory; (ii) if it appears that the extent of public distribution or the aggregate market value of the security has become so reduced as to make continued listing on the NYSE American inadvisable; (iii) if the issuer sells or disposes of principal operating assets or ceases to be an operating company; (iv) if an issuer fails to comply with the NYSE American’ s listing requirements; (v) if an issuer’ s securities sell at what the NYSE American considers a “ low selling price ” and the issuer fails to correct this via a reverse split of shares after notification by the NYSE American; or (vi) if any other event occurs or any condition exists which makes continued listing on the NYSE American, in its opinion, inadvisable. If the NYSE American delists either our common stock and / or our Series A Convertible Preferred Stock, investors may face material adverse consequences, including, but not limited to, a lack of trading market for our securities, reduced liquidity, decreased analyst coverage of our securities, and an inability for us to obtain any additional financing to fund our operations that we may need. The issuances of the Earnout Shares will significantly dilute our existing shareholders. The possible issuance of the remaining Earnout Shares will increase our issued and outstanding shares of common stock by approximately 6. 5 %. In addition, assuming the possible issuance of all of the additional remaining 3, 928, 797 Earnout Shares but giving effect to no other change to the number of shares of our common stock issued and outstanding, the members of Cure Based Development from the merger, which includes our former Co- CEO and current board member, Mr. R. Scott Coffman and together with other members of our board of directors and management, would own approximately 32 % of our then outstanding shares of common stock. The issuance of all or a portion of the Earnout Shares will dilute the ownership interests of our common shareholders and may adversely impact the market price of our common stock. The Series A Convertible Preferred Stock ranks junior to all of our indebtedness and other liabilities and is effectively junior to all indebtedness and other liabilities of our subsidiaries. In the event of our bankruptcy, liquidation, dissolution or winding- up of our affairs, our assets will be available to pay obligations on the Series A Convertible Preferred Stock only after all of our indebtedness and other liabilities have been paid. The rights of holders of the Series A Convertible Preferred Stock to participate in the distribution of our assets will rank junior to the prior claims of our current and future creditors and any future series or class of preferred stock we may issue (subject to Series A Convertible Preferred Stockholder approval) that ranks senior to the Series A Convertible Preferred Stock. In addition, the Series A Convertible Preferred Stock~~

effectively ranks junior to all existing and future indebtedness and other liabilities of our existing subsidiaries and any future subsidiaries. Our existing subsidiaries are, and any future subsidiaries would be, separate legal entities and have no legal obligation to pay any amounts to us in respect of dividends due on the Series A Convertible Preferred Stock. If we are forced to liquidate our assets to pay our creditors, we may not have sufficient assets to pay amounts due on any or all of the Series A Convertible Preferred Stock then outstanding. We **are currently may not be able unable** to pay dividends on the Series A Convertible Preferred Stock. ~~Our ability to pay cash~~ **During August 2023, the Company's board of directors suspended dividends- dividend payment** on the Series A Convertible Preferred Stock. **We do not anticipate paying any accrued or future dividends on our Series A Convertible Preferred Stock in the future. In order for us to be eligible to pay the dividend, state law** requires us to (i) either be able to pay our debts as they become due in the usual course of business, or (ii) have total assets that are greater than the sum of our total liabilities plus the amount that would be needed if we were to be dissolved at the time of the distribution to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution. ~~Further, notwithstanding these factors, we may not have sufficient cash to pay dividends on the Series A Convertible Preferred Stock. Our ability to pay dividends may be impaired if any of the risks described in this report were to occur. Also, payment~~ **Payment** of our dividends depends upon our financial condition and other factors as our board of directors may deem relevant from time to time. We cannot assure you that our businesses will generate sufficient cash flow from operations in an amount sufficient to enable us to make distributions on our common stock and preferred stock, including the Series A Convertible Preferred Stock, or to fund our other liquidity needs. Holders of the Series A Convertible Preferred Stock may be unable to use the dividends- received deduction and may not be eligible for the preferential tax rates applicable to "qualified dividend income." Distributions paid to corporate U. S. holders of the Series A Convertible Preferred Stock may be eligible for the dividends- received deduction, and distributions paid to non- corporate U. S. holders of the Series A Convertible Preferred Stock may be subject to tax at the preferential tax rates applicable to "qualified dividend income," if we have current or accumulated earnings and profits, as determined for U. S. federal income tax purposes. We do not currently have any accumulated earnings and profits. Additionally, we may not have sufficient current earnings and profits during future fiscal years for the distributions on the Series A Convertible Preferred Stock to qualify as dividends for U. S. federal income tax purposes. If the distributions fail to qualify as dividends, U. S. holders would be unable to use the dividends- received deduction and may not be eligible for the preferential tax rates applicable to "qualified dividend income." If any distributions on the Series A Convertible Preferred Stock with respect to any fiscal year are not eligible for the dividends- received deduction or preferential tax rates applicable to "qualified dividend income" because of insufficient current or accumulated earnings and profits, it is possible that the market value of the Series A Convertible Preferred Stock might decline. The Series A Convertible Preferred Stock represents perpetual equity interests in us, and investors should not expect us to redeem or convert the Series A Convertible Preferred Stock on the date the Series A Convertible Preferred Stock becomes redeemable or convertible by us or on any particular date afterwards. The Series A Convertible Preferred Stock represents perpetual equity interests in our company, and it has no maturity or mandatory redemption except upon a Change of Control, and is not redeemable at the option of investors under any other circumstances. A "Change of Control" will generally be deemed to occur when, after the original issuance of the Series A Convertible Preferred Stock, the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13 (d) (3) of the Exchange Act, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions which were pre- approved by our board of directors of our stock entitling that person to exercise more than 50 % of the total voting power of all of our stock entitled to vote generally in the election of the our directors, subject to certain exclusions. As a result, the Series A Convertible Preferred Stock will not give rise to a claim for payment of any amount at a particular date. As a result, holders of the Series A Convertible Preferred Stock may be required to bear the financial risks of an investment in the Series A Convertible Preferred Stock for an indefinite period of time unless the holder chooses to voluntarily convert the shares of Series A Convertible Preferred Stock into shares of our common stock. Change of Control redemption obligations of the Series A Convertible Preferred Stock may make it more difficult for a party to acquire us or discourage a party from acquiring us. The Change of Control redemption feature of the Series A Convertible Preferred Stock may have the effect of discouraging a third party from making an acquisition proposal for our company or of delaying, deferring or preventing certain of change of control transactions under circumstances that otherwise could provide the holders of our common stock and Series A Convertible Preferred Stock with the opportunity to realize a premium over the then- current market price of such stock or that shareholders may otherwise believe is in their best interests. A holder of Series A Convertible Preferred Stock has extremely limited voting rights. The voting rights for a holder of Series A Convertible Preferred Stock are limited. Our shares of common stock are the only class of our securities that carry full voting rights. Holders of the shares of Series A Convertible Preferred Stock do not have any voting rights other than as set forth below in the next two sentences or unless dividends on the Series A Convertible Preferred Stock are in arrears for each of 12 or more consecutive monthly periods, in which case the holders of the Series A Convertible Preferred Stock will be entitled to vote as a separate class for the election of two additional directors to serve on the board of directors until all dividends that are owed have been paid. Holders of shares of Series A Convertible Preferred Stock, voting as a class, are also entitled to vote if we should seek to issue or create any class or series of capital stock ranking senior to the Series A Convertible Preferred Stock with respect to dividends or distributions, in which event the consent of holders of at least two thirds of the then outstanding Series A Convertible Preferred Stock is required. The consent of the holders of ~~a majority~~ **two thirds** of the Series A Convertible Preferred Stock, voting as a class, is required if we were to seek to adopt any amendment to our articles of incorporation or bylaws that would materially affect existing terms of the Series A Convertible Preferred Stock, or increase the number of authorized shares of that series, other than in connection with the anti- dilution provisions, or if we seek to create a series or class which ranks pari passu with the Series A Convertible Preferred Stock. Other than these limited circumstances and except to the extent required by law, holders of Series A

Convertible Preferred Stock do not have any voting rights. We may redeem the Series A Convertible Preferred Stock at our option, we will be required to redeem the Series A Convertible Preferred Stock upon a Change of Control and we may convert shares of Series A Convertible Preferred Stock upon a Market Trigger into shares of our common stock. In the event of any of these occurrences, you may not receive dividends that you anticipate. On or after October 16, 2023 we may, at our option, redeem the Series A Convertible Preferred Stock, in whole or in part, at any time or from time to time. In addition, upon the occurrence of a board approved Change of Control, we are required to redeem any or all of the shares of Series A Convertible Preferred Stock at a redemption price of \$ 11. 00 per share, plus any accrued but unpaid dividends to, but excluding, the redemption date. Furthermore, upon a Market Trigger (as that term is defined in the designations, rights and preferences of the Series A Convertible Preferred Stock), we may convert all or any portion of those shares of Series A Convertible Preferred Stock into shares of our common stock. We may have an incentive to redeem or convert the Series A Convertible Preferred Stock voluntarily if market conditions allow us to issue other preferred stock or debt securities at a rate that is lower than the dividend rate on the Series A Convertible Preferred Stock. If we redeem or convert the Series A Convertible Preferred Stock, then from and after the redemption date or conversion date, as applicable, dividends will cease to accrue on shares of Series A Convertible Preferred Stock, the shares of Series A Convertible Preferred Stock shall no longer be deemed outstanding and all rights as a holder of those shares will terminate, including the rights to receive dividend payments. The liquidation preference of the shares of our Series A Convertible Preferred Stock would reduce the amount available to our common shareholders in the event of our liquidation or winding up. Holders of our Series A Convertible Preferred Stock have a liquidation preference of \$ 10. 00 per share in the event of our liquidation or winding up. This means that those holders are entitled to receive the liquidation preference before any payment or other distribution of assets to our common shareholders, and the amount of any such payment or other distribution will be reduced by that amount. The issuance of shares upon exercise of our outstanding options, restricted stock awards and warrants, or the conversion of the Series A Convertible Preferred Stock may cause immediate and substantial dilution to our existing shareholders. ~~We~~ **In addition to our obligation to issue the Earnout Shares if the goals are met, we** presently have options, unvested restricted stock awards and warrants that if exercised would result in the issuance of an additional ~~493, 222~~ **175, 417** shares of our common stock, and our Series A Convertible Preferred Stock is presently convertible into an additional ~~8185, 223~~ **335, 000** shares of common stock. The issuance of shares upon exercise of warrants and options and / or the conversion of shares of our Series A Convertible Preferred Stock will result in dilution to the interests of other shareholders. Company' s former Co- CEO' s ongoing legal challenges with the SEC could impact customers and investors perception of the Company. In May of 2022, our former Co- CEO was indicted ~~civilly~~ **civilly** by the SEC for activities prior to 2019. While the Company was not named as a defendant and we strongly believe no improprieties occurred by the Company, his ongoing legal proceedings and any association could impact customers and investors perception of the Company. ~~Our executive officers, directors and their affiliates may exert control over us and may exercise influence over matters subject to shareholder approval. Our executive officers and directors, together with their respective affiliates, beneficially own approximately 31 % of our outstanding common stock as of December 1, 2022. Accordingly, these shareholders, if they act together, may exercise substantial influence over matters requiring shareholder approval, including the election of directors and approval of corporate transactions, such as a merger. This concentration of ownership could have the effect of delaying or preventing a change in control or otherwise discourage a potential acquirer from attempting to obtain control over us, which in turn could have a material adverse effect on the market value of our common stock.~~