PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock currently trades on both the OTCQX market and on the Canadian Securities Exchange under the MRMD ticker symbol. Any over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

Stockholders

As of February 28, 2023, we had approximately 733 stockholders of record.

Dividends

We have never declared or paid a dividend on its common stock, and we do not anticipate paying cash or other dividends in the foreseeable future.

Recent Sales of Unregistered Securities

During the three months ended December 31, 2022, we issued the following unregistered securities:

- 2,000,000 shares of restricted common stock as purchase consideration for an asset purchase with an aggregate fair value of approximately $712,000;
- 109,487 shares of restricted common stock issued as payment under a royalty agreement with an aggregate fair market value of approximately $59,000;
- 5,569 shares of restricted common stock to an employee with a grant date fair value of approximately $2,500; and
- 82,337 shares of restricted common stock issued in a cashless warrant exercise; such warrants had an exercise price of $0.504. We withheld 813,694 shares underlying such warrants to cover the aggregate exercise price of approximately $46,000.

The issuance of the shares of common stock described above were deemed to be exempt from registration under the Securities Act of 1933, as amended, in reliance upon Sections 4(a)(2) and/or 4(a)(5) of the Securities Act. A legend restricting the sale, transfer, or other disposition of these securities other than in compliance with the Securities Act was placed on the securities issued in the foregoing transactions.

Item 6. Reserved

[Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward Looking Statements

When used in this Annual Report on Form 10-K and in future filings by the Company with the U.S. Securities and Exchange Commission, words or phrases such as “anticipate,” “believe,” “could,” “would,” “should,” “estimate,” “expect,” “intend,” “may,” “plan,” “predict,” “project,” “will” or similar expressions are intended to identify “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Readers are cautioned not to place undue reliance on any such forward looking statements, each of which speak only as of the date made. Such statements are subject to certain risks and uncertainties that could cause actual results to differ materially from historical earnings and those presently anticipated or projected. The Company has no obligation to publicly release the result of any revisions which may be made to any forward-looking statements to reflect anticipated or unanticipated events or circumstances occurring after the date of such statements.

These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results to be materially different. These factors include, but are not limited to, changes that may occur to general economic and business conditions; changes in current pricing levels that the Company can charge for its services and products or which it pays to its suppliers and business partners; changes in political, social and economic conditions in the jurisdictions in which the Company operates; changes to regulations that pertain to its operations; changes in technology that render the Company's technology relatively inferior, obsolete or more expensive compared to others; changes in the business prospects of the Company's business partners and customers; increased competition, including from the Company's business partners; and enforcement of U.S. federal cannabis-related laws.

The following discussion should be read in conjunction with the financial statements and related notes which are included in this Annual Report on Form 10-K under Item 8.

The Company does not undertake to update its forward-looking statements or risk factors to reflect future events or circumstances, unless required by law.

Overview

We are a multi-state operator in the United States cannabis industry. We develop, operate, manage, and optimize state-of-the-art, regulatory-compliant facilities for the cultivation, production, and dispensing of medicinal and adult-use cannabis. We also license our proprietary brands of cannabis products, along with other top brands, in several domestic markets.

Our common stock trades on both the OCTQX and on the Canadian Securities Exchange under the ticker symbol MRMD.

On April 27, 2022 (the "Kind Acquisition Date"), we acquired Kind Therapeutics USA ("Kind"), our former client in Maryland that holds licenses for the cultivation, production, and dispensing of medical cannabis (the "Kind Acquisition"). The financial results of Kind are included in our consolidated financial statements for the periods subsequent to the Kind Acquisition Date.

On May 5, 2022, we completed the acquisition of 100% of the equity ownership of Green Growth Group Inc. ("Green Growth"), an entity that holds a craft cultivation and production cannabis license in the State of Illinois (the "Green Growth Acquisition").

On December 30, 2022, we completed an asset purchase under which we acquired the cannabis license and assumed the property lease associated with a cannabis dispensary in Beverly, Massachusetts by Greenhouse Naturals LLC that had never been operational.

During 2023, we are focused on continuing to execute our strategic growth plan, with priority on activities described below:

- Continuing to consolidate the cannabis businesses that we have developed and managed.
- Expanding revenues, assets, and our footprint in the states in which we operate.
- Expanding into other legal states through mergers and acquisitions and by filing new applications in states where new licensing opportunities become available.
- Increasing revenues by producing and distributing our award-winning brands to qualified strategic partners or by acquiring production and distribution licenses.
- In Massachusetts, we intend to open two additional dispensaries, including the dispensary in Beverly, Massachusetts discussed above, and, as recently announced, a dispensary in Quincy, Massachusetts. We also intend to significantly expand the capacity and capability of our manufacturing facility in New Bedford, MA.
- In Delaware, we developed an additional 40,000 square feet of cultivation and production capacity at our facility in Milford, which, upon completion, was leased to our client in this state.
- In Maryland, we opened a dispensary in Annapolis in October 2022, and we intend to expand our manufacturing facility by 40,000 square feet. Under current Maryland cannabis laws, we have the potential to add three additional medical dispensaries, for a total of four.

- In Illinois, in May 2022, we closed on the acquisition of a craft cannabis license, which will enable us to be vertically integrated and add cultivation, manufacturing, and distribution to our four existing retail cannabis operations in Illinois. Under Illinois cannabis laws, we have the potential to add five additional dispensaries, for a total of ten.

Critical Accounting Policies and Estimates

Management's discussion and analysis of financial condition and results of operations is based upon our condensed consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP"). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, and expenses, and related disclosure of contingent assets and liabilities. We base our estimates and judgments on historical experience, knowledge of current conditions and beliefs of what could occur in the future given available information. If actual results differ significantly from management's estimates and projections, there could be a material effect on our condensed consolidated financial statements. We consider the following accounting policies to be both those most important to the portrayal of our financial condition and those that require the most subjective judgment: accounts receivable; valuation of inventory; estimated useful lives and depreciation and amortization of property and equipment and intangible assets; accounting for acquisitions and business combinations; loss contingencies and reserves; stock-based compensation; and accounting for income taxes.

Accounts Receivable

We provide credit to our clients in the form of payment terms. We limit our credit risk by performing credit evaluations of our clients and maintaining a reserve, as applicable, for potential credit losses. Such evaluations are judgmental in nature and include a review of the client's outstanding balances with consideration toward such client's historical collection experience, as well as prevailing economic and market conditions and other factors. Accordingly, the actual amounts collected could differ from expected amounts and require that we record additional reserves.

Inventory

Our inventory is valued at the lower of cost or market, including consideration of factors such as shrinkage, the aging of and future demand for inventory, expected future selling price, what we expect to realize by selling the inventory and the contractual arrangements with customers. Reserves for excess and obsolete inventory are based upon quantities on hand, projected volumes from demand forecasts, and net realizable value. These estimates are judgmental in nature and are made at a point in time, using available information, expected business plans and expected market conditions. As a result, the actual amount received on sale could differ from the estimated value of inventory. Periodic reviews are performed on the inventory balance. The impact of any changes in inventory reserves is reflected in cost of goods sold.

Estimated Useful Lives and Depreciation and Amortization of Property, Equipment, and Intangible Assets

Depreciation and amortization of property, equipment, and intangible assets are dependent upon estimates of useful lives, which are determined through the exercise of judgment. The assessment of any impairment of these assets is dependent upon estimates of recoverable amounts that take into account factors such as economic and market conditions and the useful lives of assets.

Business Combinations and Asset Purchases

Classification of an acquisition as a business combination or an asset acquisition depends on whether the assets acquired constitute a business, which can be a complex judgment. Whether an acquisition is classified as a business combination or asset acquisition can have a significant impact on how we record the transaction.

We allocate the purchase price of acquired assets and companies to identifiable assets acquired and liabilities assumed at their acquisition date fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred over the net amount of the acquisition date fair values of the assets acquired and the liabilities assumed and represents the expected future economic benefits from other assets acquired in the acquisition or business combination that are not individually identified and separately recognized. Significant judgments and assumptions are required in determining the fair value of assets acquired and liabilities assumed, particularly acquired intangible assets, which are principally based upon estimates of the future performance and cash flows expected from the acquired asset or business and applied discount rates. While we use our best estimates and assumptions as part of the purchase price allocation process to accurately value assets acquired and liabilities assumed at the acquisition date, our estimates and assumptions are inherently uncertain and subject to refinement. If different assumptions are used, it could materially impact the purchase price allocation and our financial position and results of operations. Any adjustments to assets acquired or liabilities assumed subsequent to the purchase price allocation period are included in operating results in the period in which the adjustments are determined. Intangible assets typically are comprised of trademarks and trade names, licenses and customer relationships, and non-compete agreements.

Loss Contingencies and Reserves

We are subject to ongoing business risks arising in the ordinary course of business that affect the estimation process of the carrying value of assets, the recording liabilities, and the possibility of various loss contingencies. An estimated loss contingency is accrued when it is probable that a liability has been incurred or an asset has been impaired and the amount of loss can be reasonably estimated. We regularly evaluate current information available to determine whether such amounts should be adjusted and record changes in estimates in the period they become known. We are subject to legal claims from time to time. We reserve for legal contingencies and legal fees when the amounts are probable and estimable.

Stock-Based Compensation

Our stock-based compensation cost is measured at the grant date based on the fair value of the award and is recognized over the requisite service period, which is generally the vesting period. We use the Black-Scholes valuation model for estimating the fair value of stock options as of the date of grant. Determining the fair value of stock option awards at the grant date requires judgment regarding certain valuation assumptions, including the volatility of our stock price, expected term of the stock option, risk-free interest rate and expected dividends. Changes in such assumptions and estimates could result in different fair values and could therefore impact our earnings. Such changes, however, would not impact our cash flows.

Income Taxes

We use the asset and liability method to account for income taxes. Under this method, deferred income tax assets and liabilities are recorded for the future tax consequences of differences between the tax basis and financial reporting basis of assets and liabilities, measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance to the extent our management concludes that it is more likely than not that the assets will not be realized. To assess the recoverability of any tax assets recorded on the balance sheet, we consider all available positive and negative evidence, including our past operating results, the existence of cumulative income in the most recent years, changes in the business in which we operate and our forecast of future taxable income. In determining future taxable income, we make assumptions, including the amount of state and federal pre-tax operating income, the reversal of temporary differences and the implementation of feasible and prudent tax strategies. These assumptions require significant judgment about the forecasts of future taxable income and are consistent with the plans and estimates we are using to manage our businesses.

Results of Operations

Years ended December 31, 2022 and 2021

Revenue

Our main sources of revenue are comprised of the following:

- Product sales (retail and wholesale) - direct sales of cannabis and cannabis-infused products primarily by our retail dispensaries and wholesale operations in Massachusetts, Illinois, and, as of the Kind Acquisition Date, Maryland. We recognize this revenue when products are delivered or at retail points-of-sale.

- Real estate rental income - rental income generated from the leasing of our state-of-the-art, regulatory compliant cannabis facilities to our cannabis-licensed clients. Rental income is generally a fixed amount per month that escalates over the respective lease terms. Prior to the third quarter of 2022, we charged additional rental fees based on a percentage of tenant revenues that exceeded specified amounts; these incremental rental fees were eliminated in connection with new contract negotiations with our client.

- Supply procurement - resale of cultivation and production resources, supplies and equipment that we have acquired from top national vendors at discounted prices to our clients and third parties within the cannabis industry. We recognize this revenue after the delivery and acceptance of goods by the purchaser.

- Management fees - fees for providing our cannabis-licensed clients with comprehensive oversight of their cannabis cultivation, production and dispensary operations. Prior to the third quarter of 2022, these fees were based on a percentage of such clients' revenue and were recognized after services have been performed; these fees were eliminated in connection with new contract negotiations with our client.

- Licensing fees - revenue from the licensing of our branded products, including Betty's Eddies, Bubby's Baked, Vibations, and Kalm Fusion, to wholesalers and regulated dispensaries throughout the United States and Puerto Rico. We recognize this revenue when the products are sold to the end customer.

Our revenue for the years ended December 31, 2022 and 2021 was comprised of the following (in thousands, except percentages):

	Year ended December 31,		Increase (decrease) from prior year	
	2022	2021	$	%
Product revenue:				
Product sales - retail	$ 92,836	$ 82,127	$ 10,709	13.0 %
Product sales - wholesale	32,865	26,119	6,746	25.8 %
Total product revenue	125,701	108,246	17,455	16.1 %
Other revenue:				
Real estate rentals	3,526	6,548	(3,022)	(46.2)%
Supply procurement	3,353	2,108	1,245	59.1 %
Management fees	848	3,079	(2,231)	(72.5)%
Licensing fees	582	1,483	(901)	(60.8)%
Total other revenue	8,309	13,218	(4,909)	(37.1)%
Total revenue	$ 134,010	$ 121,464	$ 12,546	10.3 %

Our total revenue increased $12.5 million, or 10.3%, in the year ended December 31, 2022 ("2022") compared to the year ended December 31, 2021 ("2021"). Our total product revenue increased $17.5 million, or 16.1%, primarily attributable to higher retail sales in our Metropolis, IL dispensary, which we opened in the second quarter of 2021, and higher wholesale revenue due to the Kind Acquisition. This increase was partially offset by lower retail sales in Massachusetts due to increased competition.

The decrease in our other revenue was primarily attributable to rent and management fee reductions in connection with one of our cannabis-licensed clients, and the Kind Acquisition, after which we no longer recognized rental, management fees and related revenue. These decreases were partially offset by higher supply procurement revenue primarily attributable to revenue generated from our cannabis-licensed client in Delaware.

Cost of Revenue, Gross Profit and Gross Margin

Our cost of revenue represents the direct costs associated with the generation of our revenue, including licensing, packaging, supply procurement, manufacturing, supplies, depreciation, amortization of acquired intangible assets, and other product-related costs.

Our cost of revenue, gross profit and gross margin for 2022 and 2021 were as follows (in thousands, except percentages):

	Year ended December 31,		Increase (decrease) from prior year	
	2022	2021	$	%
Cost of revenue	$ 70,053	$ 55,201	$ 14,852	26.9 %
Gross profit	$ 63,957	$ 66,263	$ (2,306)	(3.5)%
Gross margin	47.7 %	54.6 %		

Our cost of revenue increased in 2022 compared to 2021, primarily attributable to higher manufacturing and employee-related costs and, to a lesser extent, higher supply procurement and facility-related expenses. These increases aggregated approximately $17 million, and were primarily due to our increased headcount in connection with our recent acquisitions and in-process expansions. We have negotiated with certain of our suppliers to reduce our costs for future purchases of ingredients, nutrients and packaging, all of which have increased significantly as a result of current economic conditions.

Operating Expenses

Our operating expenses are comprised of personnel, marketing and promotion, general and administrative, acquisition-related and other, and bad debt expenses. Our operating expenses for 2022 and 2021 were as follows (in thousands, except percentages):

	Year ended December 31,		Increase (decrease) from prior year	
	2022	2021	$	%
Personnel	$ 14,404	$ 8,352	$ 6,052	72.5 %
Marketing and promotion	3,736	1,625	2,111	129.9 %
General and administrative	20,735	27,561	(6,826)	(24.8)%
Acquisition-related and other	961	—	961	100.0 %
Bad debt	3,752	1,862	1,890	101.5%
Total operating expenses	$ 43,588	$ 39,400	$ 4,188	10.6 %

The increase in our personnel expenses in 2022 compared to 2021 was primarily due to the hiring of additional staff to support higher levels of projected revenue from existing operations, as well as increased headcount arising from the Kind Acquisition. Personnel costs increased to approximately 11% of revenue in 2022, compared to approximately 7% of revenue in 2021.

The increase in our marketing and promotion expenses in 2022 compared to 2021 was primarily attributable to our focused efforts to upgrade our marketing initiatives in order to expand branding and distribution of our licensed products. Marketing and promotion costs increased to approximately 3% of revenue in 2022, compared to approximately 1% of revenue in 2021.

The decrease in our general and administrative expenses in 2022 compared to 2021 was primarily attributable to lower costs in connection with our equity programs and professional fees (i.e., accounting, legal and consulting fees). These decreases were partially offset by higher facilities-related and depreciation expenses.

Acquisition-related and other expenses include those expenses related to acquisitions and other significant transactions that we would otherwise not have incurred, and include professional and services fees, such as legal, audit, consulting, paying agent and other fees. We incurred $1.0 million of acquisition-related and other expenses in 2022, primarily related to the Kind Acquisition in April 2022 and the July 2022 listing of our common stock on the Canadian Securities Exchange. We did not record any acquisition-related and other expenses in 2021.

We recorded nominal bad debt expense in 2022. We recorded $1.9 million of bad debt expense in 2021 due to the higher reserve balances that were required in 2021 for aged trade receivable balances.

Overall, our operating expenses were relatively unchanged in 2022 compared to 2021; our higher personnel, marketing and promotion, and acquisition-related and other expenses were virtually offset by our lower general and administrative and bad debt expense.

Interest and Other Expense, Net

Interest expense primarily relates to interest on mortgages and notes payable. Interest income primarily relates to interest income in connection with our notes receivable. Other expense, net, includes gains (losses) on changes in the fair value of our investments and other investment-related income (expense).

Our net interest expense decreased $1.5 million in 2022 compared to 2021, the result of $0.8 million of higher interest income and $0.7 million of lower interest expense. The increase in interest income was primarily related to the additional notes receivable we recorded in 2021. The decrease in interest expense was primarily attributable to the payoff in 2021 of certain outstanding indebtedness.

Our net other expense was $0.1 million and $0.8 million in 2022 and 2021, respectively, and was primarily comprised of losses from the changes in the fair value of our investments. The current year amount is comprised of $1.0 million of non-cash income from the sale of an investment, virtually offset by a $1.1 million loss from the change in fair value of other investments. The prior year amount is comprised of a $1.1 million loss from the change in fair value of our investments and a nominal loss on the extinguishment of debt. These losses were partially offset by a gain of $0.3 million on an asset sale.

Income Tax Provision

We recorded income tax provisions of $5.9 million and $16.2 million in 2022 and 2021, respectively. The provision recorded for 2022 was due in part to the impact of Section 280E of the Internal Revenue Code, which prohibits the deduction of certain ordinary business expenses, and true-ups from changes that occurred between the 2021 provision and 2021 income tax return that was filed.

Liquidity and Capital Resources

We had cash and cash equivalents of $9.7 million and $29.7 million at December 31, 2022 and 2021, respectively. In addition to the discussions below of our cash flows from operating, investing, and financing activities, please also see our discussion of non-GAAP Adjusted EBITDA in the section "Non-GAAP Measurement" below, which discusses an additional financial measure not defined by GAAP, which our management also uses to measure our liquidity.

Cash Flows from Operating Activities

Our primary sources of cash from operating activities are from sales to customers in our dispensaries and to our wholesale customers. We expect cash flows from operating activities to be affected by increases and decreases in sales volumes and timing of collections, and by purchases of inventory and shipment of our products. Our primary uses of cash for operating activities are for personnel costs, purchases of packaging and other materials required for the production and sale of our products, and income taxes.

Our operating activities provided $7.3 million and $35.9 million of cash in 2022 and 2021, respectively. The change in cash from operating activities in 2022 compared to 2021 was primarily attributable to $14.6 million of cash used to pay income taxes in the current year period, compared to $0.6 million in the same prior year period, coupled with higher expenses arising from expanding our sales activities, facilities and geographic footprint, both in the states where we currently operate and into other states.

Cash Flows from Investing Activities

Our investing activities used $26.2 million and $16.6 million of cash in 2022 and 2021, respectively. The increase in cash usage in the current year period was primarily attributable to $12.8 million of aggregate cash consideration paid for the Kind Acquisition and Green Growth Acquisition in April 2022 and May 2022, respectively.

Cash Flows from Financing Activities

Our financing activities used $1.0 million of cash in 2022 and provided $7.5 million of cash in 2021.

In 2022, we paid $2.0 million of cash to redeem the outstanding minority interests in one of our majority-owned real estate subsidiaries, made $1.5 million of aggregate principal payments on our outstanding mortgages and notes payable, and made distribution payments and finance lease principal payments aggregating $0.5 million. These amounts were partially offset by $3.0 million of proceeds from a new mortgage on one of our facilities in Illinois.

In 2021, we received $23.0 million from the issuance of preferred stock and $2.7 million from a new mortgage on our Metropolis facility in Illinois. These amounts were partially offset by $16.4 million of principal payments on our outstanding mortgages and notes payable, $1.2 million for repayment of related party loans, and $0.4 million paid for distributions.

On August 4, 2022, we entered into a Second Amendment to the Purchase Agreement with Hadron pursuant to which, among other things, (a) Hadron's obligation to provide any further funding to the Company and the Company's obligation to issue any further securities to Hadron was terminated, (b) Hadron's right to appoint a designee to the Company's board of directors was eliminated, and (c) certain covenants restricting the Company's incurrence of new indebtedness were eliminated.

Based on our current expectations, we believe our current cash and future funding opportunities will be sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least the next twelve months. The rate at which we consume cash is dependent on the cash needs of our future operations, including our contractual obligations at December 31, 2022, and our ability to raise additional cash through financing activities. Our contractual obligations at December 31, 2022 were primarily comprised of our outstanding mortgages and promissory notes, as well as our operating leases. Our mortgage and promissory note obligations totaled approximately $30 million at December 31, 2022.

On January 24, 2023, we announced that we had closed a $35 million credit facility with a three-year maturity and an ability to extend to a five-year maturity under certain conditions (the "Credit Facility"). We borrowed $30 million at close and can draw down up to an additional $5 million for the six-month period following closing. We expect to use these funds to complete the build-out of a new cultivation and processing facility in Illinois and a new processing kitchen in Missouri, expand existing cultivation and processing facilities in Massachusetts and Maryland, fund other capital expenditures, and for business acquisitions. In addition, on January 24, 2023, we repaid in full the promissory notes issued in connection with the Kind Acquisition (the "Kind Notes"), using $5.4 million of the proceeds from the Credit Facility.

Non-GAAP Measurement

In addition to the financial information reflected in this report, which is prepared in accordance with GAAP, we are providing a non-GAAP financial measurement of profitability – *Adjusted EBITDA* – as a supplement to the preceding discussion of our financial results.

Our management defines Adjusted EBITDA as net income (loss), determined in accordance with GAAP, excluding the following:

- interest income and interest expense;
- income tax provision;
- depreciation and amortization of property and equipment
- Amortization of acquired intangible assets;
- impairments or write-downs of acquired intangible assets and goodwill;
- stock-based compensation;
- acquisition-related and other;
- legal settlements;
- other income (expense), net; and
- discontinued operations.

Management believes that Adjusted EBITDA is a useful measure to assess our performance and liquidity, as it provides meaningful operating results by excluding the effects of expenses that are not reflective of our operating business performance. In addition, our management uses Adjusted EBITDA to understand and compare operating results across accounting periods, and for financial and operational decision-making. The presentation of Adjusted EBITDA is not intended to be considered in isolation or as a substitute for the financial information prepared in accordance with GAAP.

Management believes that investors and analysts benefit from considering Adjusted EBITDA in assessing our financial results and our ongoing business, as it allows for meaningful comparisons and analysis of trends in the business. Adjusted EBITDA is used by many investors and analysts themselves, along with other metrics, to compare financial results across accounting periods and to those of peer companies.

As there are no standardized methods of calculating non-GAAP measurements, our calculations may differ from those used by analysts, investors, and other companies, even those within the cannabis industry, and therefore may not be directly comparable to similarly titled measures used by others.

Reconciliation of Net Income to Adjusted EBITDA (a Non-GAAP Measurement)

The table below reconciles Net income to Adjusted EBITDA for the years ended December 31, 2022 and 2021 (in thousands):

	Year ended December 31,	
	2022	**2021**
GAAP Net income (loss)	$ 13,614	$ 7,624
Interest expense, net	734	2,247
Income tax (benefit) provision	5,894	16,192
Depreciation	3,432	2,098
Amortization of acquired intangible assets	1,282	690
EBITDA	24,956	28,851
Stock-based compensation	6,338	13,440
Settlement of litigation	—	(266)
Acquisition-related and other	961	—
Other expense, net	127	800
Adjusted EBITDA	$ 32,382	$ 42,825

Off-Balance Sheet Arrangements

The Company has no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on its financial condition, changes in financial condition, revenues, or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

Inflation

In the opinion of management, inflation has impacted the Company through increased costs of ingredients, nutrients and packaging. The Company recently negotiated with certain of our suppliers to reduce our costs for future purchases of ingredients, nutrients and packaging, all of which have increased significantly as a result of current economic conditions.

Seasonality

In the opinion of management, the Company's financial condition and results of its operations are not materially impacted by seasonal sales.

Recent Accounting Pronouncements

The Company has reviewed all other recently issued, but not yet effective, accounting pronouncements, and does not believe the future adoption of any such pronouncements will have a material impact on its financial condition or the results of its operations.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

The Company is a "smaller reporting company" as defined by Regulation S-K and, as such, is not required to provide the information contained in this item pursuant to Regulation S-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our CEO and CFO, evaluated the effectiveness of our disclosure controls and procedures (defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act of 1934, as amended (the "Exchange Act")) as of December 31, 2022 (the “Evaluation Date”). Based upon that evaluation, our CEO and CFO concluded that, as of the Evaluation Date, our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act (i) are recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (ii) are accumulated and communicated to our management, including our CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Management’s Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting and for the assessment of the effectiveness of internal control over financial reporting. As defined by the SEC in Rule 13a-15(f) and 15d-15(f) under the Exchange Act, internal control over financial reporting is a process designed by, or under the supervision of, our CEO and CFO, and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Our internal control system is designed to provide reasonable assurances to our management and the board of directors regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations which may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our CEO and CFO assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, our CEO and CFO used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) in *Internal Control—Integrated Framework*. Based on that assessment and using the COSO criteria, our CEO and CFO have concluded that, as of December 31, 2022, our internal control over financial reporting was not effective due to the lack of a formalized and complete set of policy and procedure documentation evidencing our Company’s system of internal controls over financial reporting (“Lack of Formal Documentation”). Such Lack of Formal Documentation is not uncommon our a company of our size due to personnel and financial limitations.

Our management intends to work to remediate the Lack of Formal Documentation, which is expected to include the hiring of an independent consulting or accounting firm to review and document its internal control system to ensure compliance with COSO. However, our financial position could make it difficult for it to implement this remediation.

Changes in Internal Control over Financial Reporting

Over the past several years, we implemented significant measures to remediate past instances of ineffectiveness of our internal control over financial reporting, The remediation measures consisted of the engagement of accounting consultants as needed to provide expertise on specific areas of the accounting guidance, the hiring of individuals with appropriate experience in internal controls over financial reporting, and the modification to our accounting processes and enhancement to our financial control. Further, we expanded our board of directors to include a majority of independent disinterested directors; established an audit, compensation, and corporate governance committee of the board of directors; and adopted a formal policy with respect to related party transactions.

Other than as described above, there was no change to our internal control over financial reporting (as defined in Rules 13a-15(f) or 15d-15(f) under the Exchange Act) identified in connection with the evaluation required by Rules 13a-15(d) or

15d-15(d) that occurred during the fiscal year ended December 31, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Attestation Report of the Registered Public Accounting Firm

Pursuant to rules of the SEC that permit us to provide only our management's report in this annual report on Form 10-K, an attestation report of our independent registered public accounting firm regarding internal control over financial reporting is not included in this Annual Report on Form 10-K.

Item 9B. Other Information

On February 28, 2023, the Board appointed Jon R. Levine as the Company's Chief Executive Officer and Edward Gildea as Chairman of the Board.

Effective February 28, 2023, the Company entered into an amended and restated employment agreement with each of Jon R. Levine, President and Chief Executive Officer (the "Levine Agreement") and Timothy Shaw, Chief Operating Officer (the "Shaw Agreement") and a new employment agreement with Susan M. Villare, Chief Financial Officer (the "Villare Agreement") (the Levine Agreement, the Shaw Agreement and the Villare Agreement, collectively the "Employment Agreements").

Pursuant to the Levine Agreement, Mr. Levine will receive a base salary of $375,000, effective March 1, 2023, with a target bonus opportunity equal to 60% of his then-applicable annual base salary and a maximum bonus opportunity equal to 120% of his then-applicable annual base salary.

Pursuant to the Villare Agreement, Ms. Villare will receive a base salary of $300,000, effective March 1, 2023, with a target bonus opportunity equal to 60% of her then-applicable annual base salary and a maximum bonus opportunity equal to 120% of her then-applicable annual base salary.

Pursuant to the Shaw Agreement, Mr. Shaw will receive a base salary of $325,000, effective March 1, 2023, with a target bonus opportunity equal to 60% of his then-applicable annual base salary and a maximum bonus opportunity equal to 120% of his then-applicable annual base salary.

Each of Mr. Levine, Ms. Villare, and Mr. Shaw (each, an "Executive") is entitled to severance payments and benefits upon certain terminations of employment under the terms of their respective Employment Agreement. Upon termination of an Executive's employment by the Company without Cause or by an Executive for Good Reason (each as defined in the Employment Agreements), each Executive is entitled to severance payments equal to: (i) 12 months of his/her base salary, payable over 12 months following termination; (ii) the aggregate sum of the Company's share of medical, dental, and vision insurance premiums for such Executive and his/her dependents for a 12 month period, payable over 12 months following termination; (iii) in the event such termination occurs less than six months following the commencement of the fiscal year, such Executive shall be entitled to receive a prorated target bonus, prorated based on the number of days actually employed in such fiscal year (the "Pro Rata Bonus"), payable on the severance commencement date; and (iv) in the event such termination occurs six months or later following the commencement of the fiscal year, an amount equal to the target bonus (the "Target Bonus"), payable on the severance commencement date. In addition, upon such termination, the Executive's equity awards that are subject to vesting based solely upon such Executive's continued service with the Company and would have vested during the 12 month period following the date of termination of employment will vest.

Notwithstanding the foregoing, to the extent a termination by the Company without Cause or by an Executive for Good Reason during a Change in Control Protection Period (as defined in the Employment Agreements), each Executive is entitled to receive a cash lump sum payment equal to: (a) the sum of 24 months of the Executive's base salary; (b) two times the Executive's target bonus for the calendar year in which the date of termination occurs; (c) the aggregate sum of the Company's share of medical, dental, and vision insurance premiums for the Executive and his/her dependents for a 24 month period; (d) if in the event such termination occurs less than six months following the commencement of the fiscal year, such Executive shall be entitled to receive the Pro Rata Bonus, payable on the severance commencement date; and (e) in the event such termination occurs six months or later following the commencement of the fiscal year, an amount equal to the Target Bonus, payable on the severance commencement date. In addition, upon such termination, any of the Executive's unvested equity awards outstanding immediately prior to the date of termination will automatically become fully vested and exercisable as of the date of termination.

In the event an Executive's employment with the Company is terminated as a result of his/her death or Disability (as defined in the Employment Agreements), then in addition to Accrued Benefits (as defined in the Employment Agreements), the Company will pay such Executive or his/her estate or representative the Pro Rata Bonus.

The foregoing description of each Employment Agreement is qualified in its entirety by reference to the respective Employment Agreement, which are filed as Exhibits 10.18, 10.19, and 10.20 hereto and are incorporated herein by reference.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.