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Attorneys for Plaintiff Stacy Dorcas

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

STACY DORCAS, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

ATERIAN, INC.
Defendant.

Case No. CIVSB2222117

CLASS ACTION

**DECLARATION OF LISA T. OMOTO IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND REQUEST FOR
FEES**

*[Filed concurrently with Notice of Motion for
Final Approval of Class Action Settlement and
Request for Fees; Memorandum of Points and
Authorities; Declarations of Katherine
Rovertoni and Luciano McCollam; and
[Proposed] Order]*

Date: March 7, 2024

Time: 8:30 am

Dept.: S26

Judge: Hon. David Cohn

Complaint Filed: December 9, 2022

1 I, Lisa T. Omoto, declare as follows:

2 1. I am a Partner at Faruqi & Faruqi, LLP (“Plaintiff’s counsel”), counsel of record
3 for Plaintiff Stacy Dorcas (“Plaintiff”) in the above-captioned action (“Action”). I am licensed to
4 practice in all state courts in the State of California, and I am a member in good standing of the
5 State Bar of California. I have personal knowledge of the matters set forth in this Declaration,
6 except as to those matters stated on information and belief, and if called upon to testify, I could
7 and would competently testify thereto.

8 2. I submit this declaration in support of the Motion for Final Approval of Class
9 Action Settlement and Request for Fees.

10 3. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement
11 (without exhibits) and Release (the “Settlement Agreement”), executed by both Plaintiff and
12 Defendant (the “Parties”) in May 2023.

13 **I. Arms-Length Extensive Negotiations with Defense Counsel**

14 4. The Settlement Agreement was the product of extensive arms-length negotiations
15 between counsel for the Parties, who are experienced consumer class action practitioners.

16 5. I am informed and believe that in reaching the Settlement Agreement, my
17 colleagues reviewed and assessed relevant law and facts to assess the merits of Plaintiff’s claims,
18 and determined based on their findings, the best way to serve the interests of the Settlement Class.
19 They also obtained relevant discovery and reviewed the following information to ensure a fair
20 resolution:

- 21 a. Defendant’s online sales revenue, units sold, and pricing data;
- 22 b. Class Member Information, including class size and methods of contact; and
- 23 c. Defendant’s sales channels.

24 6. The Parties also attended a full day mediation with respected mediator the Hon.
25 Louis M. Meisinger, Ret., of Signature Resolution on April 13, 2022, who contributed significantly
26 to the facilitation of a good faith resolution in this action. The Parties thereafter engaged in further
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1 settlement discussions, and were ultimately able to finalize the terms of the Settlement Agreement,
2 which are now reflected in the Settlement Agreement.

3 **II. Background and Experience of Class Counsel**

4 7. Faruqi & Faruqi, LLP (“Faruqi & Faruqi”) is a national law firm, with offices in
5 New York, Georgia, Pennsylvania, and California. The firm’s practice focuses primarily on
6 complex class action litigation covering consumer, antitrust, financial, corporate governance, and
7 securities matters. As outlined in its firm resume, Plaintiff’s counsel has experience litigating and
8 resolving national consumer class actions. This expertise was crucial to negotiating the Settlement
9 Agreement here.

10 8. Plaintiff’s counsel has successfully prosecuted numerous class action cases,
11 including cases involving alleged deceptive representations of geographic origin in connection
12 with various consumer products. *See, e.g., Hesse v. Godiva Chocolatier, Inc.*, 463 F.Supp.3d 453
13 (S.D.N.Y May 29, 2020); *Broomfield v. Craft Brew Alliance, Inc.*, No. 17-cv-01027-BLF, 2020
14 WL 1972505, at *1 (N.D. Cal. Feb. 5, 2020); *Shalikaar v. Asahi Beer U.S.A., Inc.*, No. LA CV17-
15 02713 JAK (JPRx), 2017 WL 9362139, at *1 (C.D. Cal. Oct. 16, 2017).

16 9. Thus, Plaintiff’s Counsel is competent and experienced in the representation of
17 consumers in class action litigation. Attached hereto as **Exhibit 2** is a true and correct copy of
18 Faruqi & Faruqi, LLP’s current firm resume.

19 **III. The Strength of Plaintiff’s Case and the Risk, Expense, Complexity, and Likely**
20 **Duration of Further Litigation.**

21 10. Plaintiff’s counsel is convinced that the Settlement is in the best interests of the
22 Class based on the negotiations and detailed knowledge of the issues presented. In negotiating the
23 Settlement, my colleagues carefully considered the injunctive relief and the monetary
24 compensation to Settlement Class Members; specifically, they balanced the Settlement against the
25 possible outcomes of a trial on the merits.

26 11. Moreover, a trial would likely not commence for a few years, especially since this
27 case is a complex class action. Thus, any monetary and injunctive relief that could have been
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1 obtained at trial, which is not guaranteed and likely would not be as substantial as what Plaintiff
2 has achieved with this Settlement, would probably be delayed for at least a few years. Further,
3 Defendant Aterian, Inc.'s SEC filings show concern over whether the company will be able to stay
4 in business for the foreseeable future, meaning that if this case is litigated through trial, there is a
5 risk that class members will be left with inadequate recovery. Attached hereto as **Exhibit 3** is a
6 true and correct copy of Defendant's most recent 10-Q.

7 12. Complex class actions can also be expensive and time-consuming to prosecute, as
8 a result of discovery, motion practice, and expert fees especially in light of the need for expert
9 testimony from multiple disciplines (consumer perception, damages, etc.). Indeed, the Parties'
10 expert costs alone would quickly accumulate as a result of expert depositions, rebuttal reports,
11 expert challenges, and testimony, and could quickly lead to a scenario in which settlement might
12 not be economically feasible for either party.

13 13. Plaintiff's Counsel has carefully considered the time value of the present
14 settlement, Defendant's financial condition and its ability to pay for any damages, the fact that
15 changes will be made to the Covered Products' labeling and advertising, and the monetary relief
16 that will be provided to members of the Class. This settlement also creates an enforceable legal
17 obligation with respect to those label and advertising changes.

18 14. Further, the response by the proposed Class Members has been overwhelmingly
19 positive, with only twenty three opt-outs and one objection which will be addressed in Plaintiff's
20 formal response to objections, to be filed subsequently with this Court. Attached hereto as **Exhibit**
21 **4** is a true and correct copy of the Objection of Marlene Janco.

22 **IV. Request for Attorneys' Fees and Costs**

23 **a. Class Counsel's Lodestar and Expenses**

24 15. As of January 19, 2024, the total hours billed by Faruqi & Faruqi for this case is
25 492.50 hours. The total lodestar based on the firm's current rates (discussed below) is \$303,613.50
26 as of the same date.

1 16. Attached hereto as **Exhibit 5** is a summary of my firm's time spent litigating this
2 matter and the lodestar calculation calculated by the firm's current hourly billing rates. In
3 accordance with the general practice of most law firms, each of the attorneys and support staff at
4 Faruqi & Faruqi are responsible for keeping track of their billable time. I have personally reviewed
5 all of Faruqi & Faruqi's time entries for this case, and have used billing judgment to ensure that
6 duplicative or unnecessary time has been excluded and that only time reasonably devoted to the
7 litigation has been included. The time and descriptions displayed in our billing records were
8 regularly and contemporaneously recorded by me and other timekeepers/employees of the firm
9 and have been maintained in the computerized records at Faruqi & Faruqi. If the Court so requests,
10 Class Counsel will provide the Court with detailed billing records from each timekeeper.

11 17. Throughout the pendency of this case, Class Counsel took measures to avoid
12 duplicative work and to promote efficiency. The firm assigned tasks to appropriate personnel to
13 ensure that talents were properly used and to ensure that the information gained through Class
14 Counsel's investigations and negotiations were used in our litigation and settlement strategies.

15 18. In addition to the time spent on this matter, as outlined above, I estimate that after
16 the undersigned date, Class Counsel will incur an additional 25 hours of work in conjunction with
17 preparing supplemental briefing for the Motion for Final Approval of Class Action Settlement and
18 Request for Fees, preparing for and attending the final approval hearing, coordinating with the
19 settlement administrator, monitoring the settlement administration and distribution of funds,
20 responding to Settlement Class Members' questions, and other tasks.

21 19. Class Counsel's hourly rates on this case ranged from \$425 to \$800 for attorneys,
22 and \$375 to \$425 for support staff.

23 20. Based on my knowledge, experience, and research, the hourly rates charged by
24 Class Counsel are within the range of market rates charged for similar work performed by attorneys
25 of equivalent experience, skill, and expertise. I became familiar with these rates by: (1) discussing
26 fees with other class action attorneys; (2) reviewing prior attorneys' fees applications; (3) by
27 obtaining declarations regarding prevailing market rates filed by attorneys seeking similar fees;

1 and (4) by researching surveys, articles, and legal opinions regarding the proper rates of fees for
2 attorneys of similar skill and experience.

3 21. The hourly rates of the Faruqi & Faruqi partners, associates, and support staff,
4 including those listed in **Paragraph 19**, have been approved by various courts throughout the
5 country and in California. Some examples include the following:

- 6 a. *Browning v. Anheuser-Busch, LLC*, No. 4:20-CV-00889-SRB, ECF Nos. 78-79
7 (W.D. Mo. Dec. 19, 2022)(approving Faruqi & Faruqi rates ranging from \$300
8 an hour for paralegals to \$775 dollars an hour for partners);
- 9 b. *Malek v. Pressed Juicery, Inc.*, No. CIVDS2017665, 2021 WL 9638505, at *3
10 (Cal. Super. Ct. Oct. 8, 2021)(approving Faruqi & Faruqi rates ranging from \$450
11 to \$750 for attorneys, and \$275 to \$425 for support staff);
- 12 c. *Broomfield v. Craft Brew Alliance, Inc.*, No. 17-cv-01027-BLF, 2020 WL
13 1972505, at *11 (N.D. Cal. Feb. 5, 2020) (approving Faruqi & Faruqi 2020
14 partner rates of \$475 to \$825, and associates rates of \$400 to \$450);
- 15 d. *In re Lidoderm Antitrust Litig.*, No. 3:14-md-02521-WHO, slip op. at ¶ 6 (N.D.
16 Cal. Sept. 20, 2018), ECF No. 1055 (approving Faruqi & Faruqi 2018 partner
17 rates up to \$900, associate rates up to \$590, and \$400 for paralegal rates, as
18 established in ECF No. 1024-1 ¶ 5);
- 19 e. *Douglas v. Witney, et al.*, No. 3:16-cv-00921-WHO, slip op. at ¶12 (N.D. Cal.
20 Feb. 24, 2016), ECF No. 61 (approving Faruqi & Faruqi 2016 partner rates up to
21 \$775, associate rates up to \$400, and paralegal rates up to \$375, as established in
22 ECF No. 52-1 ¶ 74);
- 23 f. *In re: Arby's Rest. Group, Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, slip op.
24 at ¶ 15 (N.D. Ga. Mar. 22, 2017), ECF Nos. 190 to 191 (approving Faruqi &
25 Faruqi partner rates up to \$825, associate rates up to \$450, and paralegal rates up
26 to \$310, as established in ECF No. 183-3 at 47);
- 27 g. *In re: Scotts EZ Seed Litig.*, No. 7:12-cv-04727-VB-PED, slip op. at ¶ 14
28

(S.D.N.Y. Dec. 19, 2018), ECF No. 367 (approving Faruqi & Faruqi partner rates up to \$950, associate rates up to \$555, and paralegal rates up to \$375, as established in ECF No. 351-2); and

h. Astiana, et al. v. Kashi Co., No. 11-CV-1967-H (BGS), slip op. at 15-17 (S.D. Cal. Sept. 2, 2014), ECF No. 242 (approving Faruqi & Faruqi 2014 partner rates up to \$875, associate rates up to \$510, paralegal rates up to \$315 and time of Faruqi & Faruqi in granting plaintiffs' motion for final approval and for award of attorneys' fees, costs, and incentive awards, as established in ECF No. 229-4).

22. Comparable hourly rates have been deemed reasonable by various courts in California for reasonably comparable services, including in the following cases:

a. Herrera v. Wells Fargo Bank, N.A., No. 8:18-cv-00332-JVS-MRW, 2021 WL 9374975, at *13 (C.D. Cal. Nov. 16, 2021) (finding that \$900 to \$1000 for partners, \$550-\$875 for mid-level attorneys, staff attorneys, and senior level attorneys, \$350-\$550 for junior attorneys and associates, and \$150-\$450 for paralegals was justified.);

b. Martinez v. Helzberg's Diamond Shops, No. ED CV 20-1085 PSG (SHKx), 2021 WL 9181893, at *10 (C.D. Cal. Sept. 24, 2021)(approving rates of \$525 to \$725 for partners and \$350 for associates.);

c. Pike v. Cnty. of San Bernardino, No. EDCV 17-1680 JGB (KKx), 2020 WL 1049912, at *5 (C.D. Cal. Jan. 27, 2020) (approving rates ranging from \$300 to \$800 as justified);

d. In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig., No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving billing rates ranging from \$275 to \$1600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals found to be reasonable);

e. In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, and Products Liab. Litig., No. 10-ml-02151-NS (FMOx), slip op. at 15 n.13 (C.D.

Cal. June 17, 2013), ECF No. 3933 (finding that “[c]lass counsel’s experience, reputation, and skill, as well as the complexity of the case” justified their rates that ranged from \$150 to \$950);

f. *Negrete v. Allianz Life Ins. Co. of N. Am.*, No. CV-05-6838-CAS(MANx), 2015 WL 12592726, at *13 (C.D. Cal. Mar. 17, 2015) (finding Class Counsel’s hourly rates ranging from \$170 to \$905 as “reasonable for complex class action litigation in Los Angeles.”);

g. *Kearney v. Hyundai Motor Am.*, No. SACV 09-01298-JST (MLGx), 2013 WL 3287996, at *8-10 (C.D. Cal. June 28, 2013) (approving hourly rates of \$650 to \$800 for class counsel in a nationwide consumer class action on a contingent fee basis);

h. *Klee v. Nissan N. Am., Inc.*, No. CV 12-08238 AWT (PJWx), 2015 WL 4538426, at *13 (C.D. Cal. July 7, 2015), *aff’d* No. 15-56201 (9th Cir. Dec. 9, 2015) (finding that hourly rates ranging from \$370 to \$695 for senior attorneys are reasonable); and

i. *Chambers v. Whirlpool Corp.*, 214 F. Supp. 3d 877, 899 (C.D. Cal. 2016), *aff’d in part, vac’d in part on other grounds* by 980 F.3d 645 (9th Cir. 2020) (finding rates between \$485 to \$750 as reasonable in a consumer class action).

23. Moreover, according to a 2022 Real Rate Report prepared by ELM Solutions, standard partner rates among top Los Angeles firms for commercial cases ranged from \$889 to \$1,054.

24. Although Class Counsel believes its lodestar is fair and reasonable, Class Counsel’s requested attorneys’ fees are far less than its lodestar. Approval of Class Counsel’s requested \$171,520.07 fee award and \$28,479.93 in costs would represent a negative multiplier of .56 on the total lodestar of Class Counsel. For these reasons, the fees requested in this action are only a fraction of the firm’s market hourly rates.

1 25. I am informed and believe that from Plaintiff and Class Counsel's initial
2 investigations of the case, Class Counsel anticipated, and was ready to, spend hundreds of hours
3 litigating this case. This litigation carried the risk that Plaintiff might not prevail on her claims,
4 due to the complex nature of the factual and legal claims at issue. This risk bore the possibility that
5 Class Counsel would receive no compensation for its time, effort, and resources. Despite these
6 risks, Class Counsel continued to prosecute the case on behalf of Plaintiff and the Settlement Class.

7 26. As demonstrated in the Memorandum of Points of Authorities in Support of the
8 Motion for Final Approval of Class Action Settlement and Request for Fees, the risk of non-
9 payment inherent in contingency fee contracts represents a gamble that Class Counsel could be
10 left unpaid. Class Counsel represented Plaintiff and the class on a contingent fee basis and has
11 therefore undertaken a risk of non-payment. Class Counsel took this risk, thereby making the
12 decision to utilize the firm's time, money, and resources on this litigation as opposed to other
13 potential opportunities. This risk is amplified given the nature of a nationwide class action
14 regarding complex legal and factual issues, and the risks of losing the case on the merits or a
15 possible appeal. Although Class Counsel is not seeking an enhanced fee (indeed, it is seeking a
16 negative multiplier), we believe that the contingent nature of this case further shows the
17 reasonableness of the requested fee award.

18 27. If Class Counsel did not reach the Settlement Agreement with Defendant, this case
19 would have likely led to trial, thereby causing substantial increased costs to all parties that would
20 not have been reimbursed without Plaintiff prevailing.

21 28. Furthermore, Class Counsel expended \$28,479.93 in out-of-pocket costs and
22 expenses associated with the prosecution of this case. Attached as **Exhibit 6** is a summary listing
23 of the costs and expenses incurred by Faruqi & Faruqi. These expenses are not requested on top
24 of the \$200,000 that Class Counsel is requesting, but were included as part of the total request. For
25 this reason, Class Counsel would be effectively receiving less than \$200,000 for its attorneys' fees.
26 These expenses include fees for filing, courier and mailing services, Amazon direct notice services,
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1 mediation fees, and travel. These expenses do not include the costs and expenses Class Counsel
2 expects to incur after filing the instant motion.

3 **b. Case Law on Value of Injunctive Relief**

4 29. As discussed further in the Memorandum of Points and Authorities In Support of
5 Motion for Final Approval of Class Action Settlement and Request for Fees, courts in other false
6 advertising cases have recognized significant value derived from injunctive relief requiring a
7 defendant to change its challenged labeling and advertising practices, as is the case here. Below
8 are some examples:

- 9
- 10 a. *Malek v. Pressed Juicery, Inc.*, No. CIVDS2017665, 2021 WL 9638505,
11 at *3 (Cal. Super. Ct. Oct. 08, 2021)(approving settlement agreement in
12 mislabeling class action, requiring label and menu changes to reflect
13 accurate ingredient listing);
- 14 b. *Marty v. Anheuser-Busch Companies, LLC*, No. 13-CV-23656-JJO, 2015
15 WL 6391185, at *2 (S.D. Fla. Oct. 22, 2015) (holding that “injunctive
16 changes such as label modifications represent a benefit to the class and
17 should be considered when approving a class settlement[,]” and collecting
18 cases in accord);

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

21 Executed on January 22, 2024 at Los Angeles, California.

22 /s/ Lisa T. Omoto
23 Lisa T. Omoto

EXHIBIT 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

STACY DORCAS, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

ATERIAN, INC.

Defendant.

CASE NO. CIVSB2222117

SETTLEMENT AGREEMENT

1 This Settlement Agreement (the “Settlement”) is made and entered into by and between the
2 following parties: Plaintiff Stacy Dorcas (“Plaintiff” and/or “Class Representative”), individually
3 and on behalf of the Settlement Class, and Defendant Aterian, Inc. (“Defendant” or “Aterian”).

4 **I. DEFINITIONS**

5 As used in this Settlement and all related documents, the following terms have the following
6 meanings:

7 A. “Action” means the civil action entitled *Stacy Dorcas v. Aterian, Inc.*, which was
8 filed in the Superior Court for the State of California, County of San Bernardino, on December 9,
9 2022, Case No. CIVSB2222117.

10 B. “Authorized Claimant” means any Settlement Class Member who timely submits a
11 Valid Claim Form that is not determined to be a Fraudulent Claim.

12 C. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and
13 resolution of this Action, and Class Counsel’s expenses and costs incurred in connection with this
14 Action, which the Court authorizes to be paid to Class Counsel.

15 D. “Claimant” means a Settlement Class Member that submits a Claim Form.

16 E. “Claims Deadline” means the date set by the Court for the last date on which a Claim
17 Form may be submitted or postmarked. The Claims Deadline shall be no more than 180 days after
18 the Preliminary Approval Order.

19 F. “Claim Form” means the form Settlement Class Members must submit to participate
20 in the reimbursement provisions of the Settlement. The Claim Form is attached as Exhibit “A.”

21 G. “Class Counsel” means Faruqi & Faruqi, LLP.

22 H. “Class Notice” means, collectively, the notice provided to Settlement Class Members
23 regarding the Settlement as outlined in Section V, which will be submitted to the Court in connection
24 with the Parties’ motion for Preliminary Approval.

25 I. “Class Period” means December 9, 2018 up to and including the date Class Notice
26 is provided to the Settlement Class Members.

1 J. "Class Representative Service Award" means the amount that the Court authorizes
2 to be paid to Plaintiff in recognition of Plaintiff's efforts and risks in assisting with the prosecution
3 of the Action.

4 K. "Common Fund" or "Settlement Amount" means a non-reversionary common fund
5 of \$800,000 which shall be used to fund payments to Settlement Class Members, Class Notice and
6 administration costs, any Class Counsel Award and costs awarded by the Court, and any Class
7 Representative Service Award to Plaintiff awarded by the Court. Of the \$800,000 Common Fund,
8 \$500,000 shall be made available in the form of cash ("Cash Fund"), and \$300,000 shall be made
9 available in the form of Vouchers ("Voucher Fund") which Settlement Class Members can use
10 towards the purchase of any Mueller branded product.

11 L. "Complaint" means the class action complaint filed in the Action.

12 M. "Court" means the Superior Court for the State of California, County of San
13 Bernardino.

14 N. "Covered Products" means all Mueller-branded products, identified in Exhibit G,
15 sold during the Class Period.

16 O. "Effective Date" means:

17 1. The date twenty-five (25) days after service of notice of entry of the Final
18 Judgment if and only if each of the following five conditions (the "Conditions") are satisfied: (1) no
19 motion or complaint to intervene is filed in the Action before entry of the Final Judgment; (2) no
20 objections to the Settlement are asserted before entry of the Final Judgment; (3) no motion is filed
21 within that 25-day period that extends the deadline to appeal the Final Judgment; (4) Class Counsel
22 confirms within that 25-day period that it will not appeal any reduction by the Court of the Class
23 Counsel Award; and (5) Plaintiff confirms within that 25-day period that she will not appeal any
24 reduction by the Court in her Class Representative Service Award.

25 2. If any one of the Conditions is not satisfied, the date 65 days after notice of
26 entry of the Final Judgment, plus any extension of the time to appeal resulting from the filing of a
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1 motion that extends the deadline to appeal; assuming no appeal, writ or other request for appellate
2 review is filed within the foregoing time period.

3 3. If any appeal, writ, or other request for appellate review is filed, the date when
4 that appeal, writ, or request for appellate review is finally ruled upon, denied, or dismissed, and no
5 other appeal, writ or appellate review is possible.

6 P. "Email Notice" means notice sent by email from the Claims Administrator to
7 Settlement Class Members whose email addresses are known to the retailers of the Covered
8 Products, as outlined in Section V of this Settlement and attached hereto as Exhibit "B."

9 Q. "Fraudulent Claims" means any Claim Forms the Settlement Administrator
10 determines in good faith contain indicia of fraud, deceit, or other invalidity, including but not limited
11 to any attempts to bypass the terms and limitations set out in this Settlement Agreement regarding
12 Claim Forms, Authorized Claimants, Settlement Class Members, Individual Cash Settlement
13 Payments and Individual Voucher Settlement Payments.

14 R. "Final Approval Hearing" means the hearing at which the Court shall, among other
15 things: (a) determine whether to grant final approval to this Settlement; (b) consider any timely
16 objections to this Settlement and all responses thereto; and (c) rule on any application for attorneys'
17 fees, costs, and/or service awards.

18 S. "Final Judgment" means the final judgment, substantially in the form of Exhibit "C"
19 attached hereto, in which the Court grants final approval of this Settlement.

20 T. "Individual Cash Settlement Payment" means the amount payable from the Residual
21 Settlement Amount to each Authorized Claimant under the terms of this Settlement.

22 U. "Individual Voucher Settlement Payment" means the amount payable from the
23 Voucher Fund to each Authorized Claimant under the terms of this Settlement.

24 V. "Long Form Notice" means notice of the proposed Settlement to be provided to
25 Settlement Class Members under Section V of this Settlement. The Long Form Notice is attached
26 as Exhibit "D."

1 W. “Objection/Exclusion Deadline” means the date set by the Court for the submission
2 of objections or Requests for Exclusion (defined herein) from the Settlement Class and shall be no
3 more than 180 days after the Preliminary Approval Order.

4 X. “Parties” means Plaintiff individually, and on behalf of the putative Settlement Class,
5 and Defendant.

6 Y. “Person” means any individual, proprietorship, corporation, partnership, limited
7 partnership, limited liability company, association, trust, unincorporated association, or any other
8 type of entity or association of any kind including but not limited to any governmental body or
9 authority.

10 Z. “Preliminary Approval” means the date the Court preliminarily approves the terms
11 and conditions of this Settlement, including but not limited to, conditionally certifying the
12 Settlement Class, approving and authorizing Class Notice to the Settlement Class, appointing the
13 Settlement Administrator, and setting a Final Approval Hearing.

14 AA. “Preliminary Approval Order” means the order, substantially in the form of Exhibit
15 “E” attached to this Settlement, in which the Court grants Preliminary Approval.

16 BB. “Publication Notice” means notice of this Settlement to be provided to Settlement
17 Class Members under Section V of the Settlement substantially in the form attached as Exhibit “F.”

18 CC. “Released Parties” means Defendant and any entity in which Defendant has a
19 controlling interest, its existing and former subsidiaries, parents, affiliates, and officers, directors,
20 employees, legal representatives, predecessors in interest, affiliates, heirs, successors, or assigns.

21 DD. “Releasing Parties” means Plaintiff and Settlement Class Members, on behalf of
22 themselves and any of their heirs, representatives or assigns.

23 EE. “Request(s) for Exclusion” means a valid request for exclusion from a Settlement
24 Class Member.

25 FF. “Released Claims” means any and all past, present and future claims, demands,
26 actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or
27 unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen,
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1 developed or undeveloped, arising under any laws, including but not limited to common law,
2 regulations or laws, statutory law, or otherwise, whether such law is federal, foreign, or under the
3 authority of any state, municipality, administrative or regulatory body, or arises under any other
4 authority, including but not limited to any claims, demands, actions, or causes of action for unjust
5 enrichment, negligence, misrepresentation, fraud, breach of warranty express or implied, violation
6 of California Civil Code 1750 et seq., violation of California Business and Professions Code
7 Sections 17200 et seq. and 17500 et seq. or any related or similar consumer protection statutes,
8 restitution, disgorgement of profits, injunctive or declaratory relief, arising in any manner from
9 allegations, facts, circumstances or occurrences during the Class Period and set forth in the
10 Complaint. However, this definition expressly excludes claims for personal injury and claims to
11 enforce the Settlement.

12 GG. "Residual Settlement Amount" shall mean the amount of the Cash Fund, less the
13 costs of the Class Counsel Award, Settlement Administration Costs, and the Class Representative
14 Service Award.

15 HH. "Settlement Administrator" or "Claims Administrator" means A.B. Data, Ltd.

16 II. "Settlement Administration Costs" means all cost of providing and distributing the
17 Class Notice and all other costs of settlement administration, including not limited to amounts to be
18 paid the Settlement Administrator for performing its tasks.

19 JJ. "Settlement Class" means all Persons who purchased any of the Covered Products
20 in the United States, its territories, or at any United States military facility or exchange during the
21 Class Period. Excluded from the Settlement Class shall be the assigned Judge to the Action, counsel
22 to the Parties, Mediator Louis M. Meisinger, and their employees, legal representatives, heirs,
23 successors, assigns, or any members of their immediate family; any government entity; Defendant,
24 any entity in which Defendant has a controlling interest, any of Defendant's subsidiaries, parents,
25 affiliates, and officers, directors, employees, legal representatives, predecessors in interest, heirs,
26 successors, or assigns, or any members of their immediate family; and any Persons who timely opt-
27 out of the Settlement Class.
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1 KK. “Settlement Class Member” means any member of the Settlement Class.

2 LL. “Valid Claim Form” means a timely Claim Form submitted by a Settlement Class
3 Member that satisfies all the criteria to qualify for reimbursement established by the Parties’ counsel
4 and the Settlement Administrator.

5 MM. “Voucher” means a document provided by the Claims Administrator in response to
6 a Valid Claim Form that can be redeemed at Defendant’s online webstore (muellerdirect.com). All
7 Vouchers have a cash value, are freely transferrable to others, may be combined, and have no
8 expiration date.

9 **II. LITIGATION BACKGROUND**

10 A. Plaintiff alleges that during the Class Period, Defendant falsely and deceptively
11 labeled and advertised the Covered Products with an image of the Austrian flag and the name
12 “Austria” (together, the “Austrian Representations”), which led reasonable consumers into believing
13 that the Covered Products were made in Austria when, unbeknownst to consumers, the Covered
14 Products were not made in Austria. Plaintiff further alleges that Plaintiff and Settlement Class
15 Members paid more for the Covered Products as a result of those alleged statements. Plaintiff has
16 asserted claims on behalf of herself and for others similarly situated in the United States based on
17 such allegations.

18 B. Defendant denies any liability or wrongdoing of any kind associated with the claims
19 alleged in the Action, and further contends that, for any purpose other than settlement, the claims
20 alleged in the Action are not appropriate for class treatment. More specifically, Defendant contends,
21 among other things, that its labeling, marketing, packaging, and advertising for the Covered
22 Products is not deceptive as a matter of law, and that such labels, marketing, advertising, and
23 packaging do not in any manner mislead or make misleading suggestions about the geographical
24 location of the Covered Products. Defendant further contends that such materials fully comply with
25 all federal and other regulations; that most consumers view the additional information about the
26 Covered Products available on other portions of the labeling, packaging, or on the internet and which
27 specifically describes the location in which the Covered Products are manufactured; that to the
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1 extent any consumers claim reliance on labelling, packaging, or advertising for the Covered
2 Products, such claims raise intensely individual issues not suitable for class treatment.

3 C. The Parties have, in advance of settlement on April 13, 2022, engaged in a full-day,
4 arms-length negotiation with the Hon. Louis M. Meisinger, Ret. of Signature Resolution, a highly
5 experienced mediator, and have further engaged in an informal exchange of documents and other
6 information pertaining to the Settlement Class Member's claims. The Parties have had a full and
7 fair opportunity to evaluate the strengths and weaknesses of their respective positions.

8 D. Based on the current state of the law, the expense, burden, and time necessary to
9 prosecute the Action through trial and possible appeals, the risks and uncertainty of further
10 prosecution of the Action considering the defenses at issue, the sharply contested legal and factual
11 issues involved, and the relative benefits to be conferred upon Plaintiff and Settlement Class
12 Members pursuant to this Settlement, Class Counsel has concluded that a settlement with Defendant
13 on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
14 Class in light of all known facts and circumstances.

15 E. Defendant recognizes the expense and length of continued proceedings necessary to
16 continue the Action through trial and through possible appeals. Defendant also recognizes that the
17 expense and time spent pursuing the Action has detracted and will further detract from resources
18 that may be used to run Defendant's business. Defendant denies any wrongdoing or liability arising
19 out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to
20 Plaintiff's claims.

21 F. Based on the foregoing, which the Parties expressly incorporate as material terms of
22 the Settlement, it is the desire of the Parties to fully, finally, and forever settle, compromise, and
23 discharge the Released Claims. Therefore, it is the intention of the Parties that this Settlement shall
24 constitute a full, final and complete settlement and release, which release includes in its effect all of
25 the Released Parties with respect to any and all claims which were alleged, or could have been
26 alleged, by Plaintiff on her own behalf or on behalf of the Settlement Class in the Action.

III. TERMS OF SETTLEMENT

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Certification of Class: For settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this Settlement, the Parties consent to and agree to the establishment and conditional certification of the Settlement Class.

B. Certification is Conditional: This certification is conditional on the Court's preliminary and final approval of this Settlement. In the event the Court does not approve all material terms of the Settlement, then the certification shall be void and the Settlement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy. And, in such an event, this Settlement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Settlement, and Defendant shall not be deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment.

C. Releases: Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement, the Releasing Parties shall fully release and discharge each and every one of the Released Parties from the Released Claims.

Plaintiff and each of the other Releasing Parties expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY

**AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.**

Notwithstanding the provisions of Section 1542 and any similar provisions, rights, and benefits conferred by any law, rule, regulation, or common-law doctrine in any federal, state, or foreign jurisdiction, Plaintiff and the Releasing Parties each understand and agree that the Released Claims and other claims released by Plaintiff as set forth herein are intended to include all claims, whether known or unknown, that Plaintiff or the Releasing Parties have or may have against Defendant and other Released Parties arising from the Complaint.

The Releasing Parties and Plaintiff each represent and warrant that each of them has not assigned, transferred or encumbered, or purported to assign, transfer or encumber, directly or indirectly, voluntarily, by operation of law, or otherwise any portion of any Released Claims or of the other claims released by Plaintiff.

D. Compensation to the Settlement Class: In consideration of a full, complete, and final settlement of the Action, entry of the Final Judgment, and the Releases in this Section III, and subject to the Court's approval, the Parties agree to the following relief:

1. Monetary Relief: Authorized Claimants can elect to receive a \$7.50 cash payment per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed in III.D.3). Alternatively, in lieu of a cash payment, Authorized Claimants can elect to receive a \$15.00 Voucher per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed in III.D.4).

Proof of purchase is not required for either the Individual Cash Settlement Payment or the Individual Voucher Settlement Payment. Authorized Claimants shall be solely responsible for any and all taxes arising from payment of the Individual Cash Settlement Payments.

2. Provision of Settlement Benefits: Defendant shall transmit to the Settlement Administrator the total Cash Fund and Voucher Fund for all settlement benefits (the "Settlement Amount") by no later than seven (7) days after Preliminary Approval. The Settlement Administrator shall pay all Individual Cash Settlement Payments and Individual Voucher Settlement Payments to

1 Authorized Claimants within forty-five (45) calendar days of the Effective Date. The Settlement
2 Administrator will distribute the Individual Cash Settlement Payments digitally to Authorized
3 Claimants, via the email(s) provided on the Claim Form. Authorized Claimants will be provided
4 with a number of digital payment options, such as PayPal, Venmo, or a digital debit card, to
5 immediately receive their Settlement Payment. The distribution communication will inform
6 Authorized Claimants of the deadline to redeem their payment digitally, and will also provide
7 instructions on how to request a paper check be mailed should they prefer that instead. A declaration
8 of payment will be filed by the Settlement Administrator with the Court and provided to the Parties
9 within ten (10) calendar days of mailing and digitally paying the settlement proceeds.

10 3. Pro Rata Adjustment of Individual Cash Settlement Payments: If the total
11 value of all approved Claims either exceeds or falls short of the Residual Settlement Amount
12 available for distribution to Authorized Claimants, then the amounts of the Individual Cash
13 Settlement Payments will be reduced or increased pro rata, respectively, to ensure the Residual
14 Settlement Amount is exhausted. Any such pro rata adjustment will be calculated prior to
15 distribution (*i.e.*, will be made in a single distribution).

16 4. Pro Rata Adjustment of Individual Voucher Settlement Payments: If the total
17 value of all approved Claims either exceeds or falls short of the Voucher Fund available for
18 distribution to Authorized Claimants, then the amounts of the Individual Voucher Settlement
19 Payments will be reduced or increased, pro rata, respectively, to ensure the Voucher Fund is
20 exhausted. Any such pro rata adjustment will be calculated prior to distribution (*i.e.*, will be made
21 in a single distribution).

22 5. Injunctive Relief: For a period of no less than five (5) years after the Effective
23 Date, and subject to all necessary regulatory approvals by appropriate governing agencies,
24 Defendant shall not use the word "Austria" or the Austrian flag on any of the Mueller-branded
25 products, its packaging, labeling, and/or its online marketing, including but not limited to its
26 Mueller-branded products listings on third-party retail sites such as Amazon.com and websites
27 maintained by Aterian (including muellerdirect.com). Defendant shall be permitted four (4) weeks
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1 from entry of the Final Judgment to modify the online marketing described in the proceeding
2 sentence (“Online Marketing Deadline”). For removal of any doubt, however, references by third-
3 party retail sites to “Mueller Austria”, “Mueller Austria Store” or third-party references to prior
4 Mueller-branded products will not be construed as a violation of the injunctive relief. Additionally,
5 Defendant shall be permitted to sell through existing inventory of the Products that contain the word
6 “Austria” and/or the Austrian flag. The Parties acknowledge that Defendant cannot easily control
7 the disposition of Products, and, for this reason, the Online Marketing Deadline is the date
8 Defendant will agree to remove the word Austria and/or the Austrian flag from online marketing
9 internally. Defendant cannot control when all of its existing inventory will be exhausted. These
10 changes are agreed by the Parties to be sufficient to prevent any confusion by a reasonable consumer
11 of the geographical origin of the Products. Any cost incurred by Defendant in achieving the
12 injunctive relief discussed herein shall be borne separate and apart from the Settlement Amount
13 (\$800,000).

14 E. Service Award for Class Representative: Class Counsel agrees that it will apply to
15 the Court for a service award for the Class Representative in an amount not to exceed \$1,500, for
16 her participation as the Class Representative, for taking on the risks of litigation, for her general
17 release, and for settlement of her individual claims as a Settlement Class Member in this Action.
18 The Settlement Administrator shall pay the Class Representative Service Award to Plaintiff within
19 fifteen (15) calendar days of the Effective Date. The Settlement Administrator shall issue an IRS
20 Form 1099-MISC to Plaintiff solely for the amount awarded by the Court for her Class
21 Representative Service Award. Plaintiff shall be solely and legally responsible to pay and all
22 applicable taxes on her Class Representative Service Award, and shall hold harmless Defendant and
23 Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the
24 Class Representative Service Award. Defendant has the right to contest the Class Representative
25 Service Award. Plaintiff shall preserve the right to appeal any reduction in the amount of her Class
26 Representative Service Award, but any such reduction shall not affect the validity of this Settlement.

27 F. Attorneys’ Fees and Costs:
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1 1. Class Counsel agrees that it will apply to the Court, no later than 30 days
2 prior to the Objection/Exclusion Deadline for an award of attorneys' fees plus costs and expenses
3 not to exceed 25% of the Common Fund (\$800,000). Defendant has the right to contest Class
4 Counsel's request of fees and costs. Class Counsel shall preserve the right to appeal any reduction
5 in the amount of the Class Counsel Award, but any such reduction shall not affect the validity of
6 this Settlement.

7 2. If approved by the Court, the Settlement Administrator shall pay Class
8 Counsel the Class Counsel Award within fifteen (15) calendar days of the Court's entry of the Final
9 Judgment. If the Final Judgment is reversed on appeal, Class Counsel will return the Class Counsel
10 Award to Defendant. Class Counsel shall, as a condition of this Settlement, execute and return to
11 Defendant the Acknowledgment and Guarantee in the form attached as Exhibit "G".

12 3. The Class Counsel Award shall be for and in complete satisfaction of all
13 attorneys' fees and costs incurred to date by Plaintiff and/or Class Counsel on behalf of Plaintiff and
14 the Settlement Class, and of all such future fees and costs including, but not limited to, fees and
15 costs incurred in documenting this Settlement, securing Court approval of this Settlement,
16 monitoring this Settlement, reviewing and participating in the claims administration process,
17 obtaining the Final Judgment, and addressing any appeals. The Settlement Administrator will issue
18 Class Counsel an IRS Form 1099 for the Class Counsel Award. Class Counsel understand and agree
19 that they shall be solely responsible for any and all taxes and/or penalties arising from payment of
20 the Class Counsel Award provided herein.

21 G. Defendant's Monetary Obligations Shall Be Limited to The Settlement Amount:
22 Other than the payment of the Settlement Amount, Defendants and the Released Parties shall have
23 no further monetary obligation to Plaintiff, the Settlement Class Members, or Class Counsel under
24 this Settlement. All Settlement Administration Costs, any Class Counsel Award and any and all
25 costs associated with the allocation and distribution of the Residual Settlement Amount and Voucher
26 Fund will be paid solely out of the Settlement Amount, and no Defendant shall have any obligation
27 to pay or bear any amounts, expenses, costs, damages, assessment or fees to or for the benefit of any
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1 Plaintiff, Settlement Class Member, or Class Counsel. Except as set forth in Section III.F above,
2 the Parties shall bear all their own costs and attorneys' fees in connection with the Settlement and
3 the Action.

4 **IV. ADMINISTRATION OF SETTLEMENT**

5 A. The Settlement Administrator's duties to administer the Settlement include: (1)
6 preparing and publishing Class Notice; (2) establishing and maintaining a settlement website for
7 notification and Claim Form distribution; (3) establishing a telephone number and responding to
8 inquiries and requests for Claim Forms and assistance from Settlement Class Members; (4) receiving
9 and independently reviewing the Claim Forms submitted by Settlement Class Members for the
10 purpose of verifying any amounts due to Authorized Claimants; (5) receiving and serving upon
11 Class Counsel and Defendant's counsel any written objections or Requests for Exclusion; (6)
12 reporting, in summary or narrative form, to Class Counsel, Defendant's Counsel, and the Court,
13 regarding the completion of its tasks identified within this Settlement; and (7) carrying out other
14 related tasks in accordance with the terms of this Settlement, including printing and sending the
15 Individual Cash Settlement Payments or Individual Voucher Settlement Payments to Authorized
16 Claimants.

17 B. Defendant shall pay, using the Settlement Amount, the Settlement Administrator's
18 reasonable costs and fees associated with administering this Settlement, and all costs associated with
19 publication and distribution of Class Notice to Settlement Class Members.

20 C. All disputes relating to the Settlement Administrator's ability and need to perform
21 its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
22 the terms and conditions of this Settlement, until all payments and obligations contemplated by the
23 Settlement have been fully carried out.

24 **V. NOTICE TO THE SETTLEMENT CLASS**

25 A. Class Notice: Subject to Court approval, the Parties agree that after entry of the
26 Preliminary Approval Order, Defendant shall provide the Settlement Class with notice of the
27 Settlement by the following methods, which shall be paid for from the Settlement Amount:
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1 1. Settlement Website: No later than twenty (20) calendar days following entry
2 of the Preliminary Approval Order, the Settlement Administrator shall create and publish a website
3 dedicated to this Settlement, displaying, *inter alia*, the downloadable Claim Forms (Exhibit “A”)
4 and Long Form Notice (Exhibit “D”).

5 2. Direct Email Notice: Twenty (20) calendar days following entry of the
6 Preliminary Approval Order, the Settlement Administrator shall do the following:

7 3. With respect to any Covered Products purchased by Settlement Class
8 Members on the muellerdirect.com website (“Direct Purchasers”), the Settlement Administrator
9 shall:

- 10 (i) **Begin sending or causing to be disseminated a copy of the**
11 **Email Notice (Exhibit “B”) to every Direct Purchaser**
12 **whose email address can reasonably be identified in the**
13 **records of Defendant.**
- 14 (ii) For all other Direct Purchasers for whom or which a mailing
15 address, but no email address or other electronic means of
16 contact, can be reasonably identified, the Settlement
17 Administrator shall send or cause to be sent a copy of the
18 Email Notice in the form of a postcard by U.S. mail.
- 19 (iii) The Settlement Administrator will forward Email Notices
20 that are returned by the U.S. Postal Service or electronically
21 with a forwarding address to the Direct Purchaser. For
22 Email Notices returned as undeliverable, the Settlement
23 Administrator shall make reasonable effort to determine a
24 proper email address, other electronic contact information, or
25 mailing address, and resend the Email Notice. All costs
26 related to this process shall be included in the Settlement
27 Administration Costs.
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1 4. With respect to any Covered Products purchased by Settlement Class
2 Members on Amazon.com (“Amazon”) (“Amazon Purchasers”), the Parties agree that the Parties
3 shall take reasonable steps to ensure Amazon timely complies with the following: :

- 4 (i) Provide the Email Notice (Exhibit “B”) to Amazon
5 Purchasers on its respective customer list. No later than 45
6 day prior the Objection/Exclusion Deadline, Amazon shall
7 certify it has provided Email Notice by filing with the Court
8 a declaration substantially in a form to be approved by the
9 Court as part of the Preliminary Approval Order. Counsel
10 for the Parties and the Settlement Administrator shall
11 provide oversight and guidance to Amazon as necessary.
12 (ii) The Parties shall take reasonable steps to ensure timely
13 compliance by Amazon to allow a reasonable amount of time
14 for Amazon Purchasers to submit a Claim Form before the
15 Claims Deadline.

16 5. Publication Notice: No later than twenty (20) calendar days after entry of the
17 Preliminary Approval Order, the Settlement Administrator will cause to be published the
18 Publication Notice, in the form attached hereto as Exhibit “F” in the San Bernardino Sun for four
19 successive weeks.

20 6. Toll-Free Telephone Support: No later than twenty (20) calendar days after
21 entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free
22 support system to provide Settlement Class Members with (a) general information about the Action;
23 (b) frequently asked questions and answers; and (c) the ability to request a Long Form Notice or
24 Claim Form.

25 B. Declaration of Compliance: Within fourteen (14) calendar days of the Claims
26 Deadline, the Settlement Administrator shall provide the Parties with a declaration attesting to
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1 completion of the notice process set forth in this section. The Settlement Administrator shall provide
2 weekly reports detailing claims received and administered.

3 **VI. CLAIMS PROCESS/CLAIMS ADMINISTRATION**

4 A. Claim Form: Settlement Class Members may obtain a Claim Form from the
5 Settlement Administrator by calling the toll-free number or by visiting the website identified in the
6 Long Form Notice and Publication Notice. Each Claim Form will include instructions and the date
7 the form must be returned in order for the claim to be considered eligible under the settlement.

8 B. Submission of Claim Form: All Claim Forms shall be signed under penalty of perjury
9 and filed electronically or sent directly to the Settlement Administrator at the address indicated on
10 the Claim Form. The Settlement Administrator shall review the Claim Forms and make any
11 calculations of payments to be distributed to the Settlement Class Members.

12 C. Validity of Submitted Claims: No Claim Form will be deemed valid if it is not signed
13 by the Settlement Class Member under penalty of perjury, is not postmarked or submitted
14 electronically on or before the Claims Deadline or does not contain the requested information. Any
15 Settlement Class Members who fail to submit Valid Claim Forms and fail to submit a timely and
16 valid Request for Exclusion, shall be bound by all terms of the Settlement and any judgment entered
17 in this Action, including releasing all Released Claims but will be barred from receiving any
18 monetary relief under this Settlement.

19 D. Report of Individual Settlement Payments: Upon completion of its calculation of
20 payments, and within thirty (30) calendar days following the Claims Deadline, the Settlement
21 Administrator shall provide Class Counsel and Defendant's counsel with a report listing the amount
22 of all Individual Cash Settlement Payments and Individual Voucher Settlement Payments to be made
23 to each Authorized Claimant.

24 E. Fraudulent Claims: The Settlement Administrator shall use good faith and
25 appropriate procedures to prevent, detect, and reject the payment of Fraudulent Claims and ensure
26 payment of only legitimate claims. The Settlement Administrator shall notify the claimant via mail
27 or email of the rejection. If any Claimant whose Claim Form has been rejected, in whole or in part,
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1 desires to contest such rejection, the Claimant must, within twenty-one (21) calendar days from
2 receipt of the rejection, mail or email the Settlement Administrator a notice and statement of reasons
3 indicating the grounds for contesting the rejection along with any supporting documentation,
4 requesting further review by the Settlement Administrator of denial of the rejected Claim Form. If
5 any claimant whose Claim Form has been rejected fails to respond to the Settlement Administrator
6 within twenty-one (21) calendar days from receipt of the rejection, the rejection shall be deemed
7 final and valid. The Settlement Administrator, in consultation with Defendant's Counsel and Class
8 Counsel, shall notify the Claimant of its decision within ten (10) business days from receipt of the
9 Claimant's reply contesting the rejection.

10 F. Effect of Failure to Submit A Valid Claim Form: All Settlement Class Members
11 who do not file valid Requests for Exclusion shall be bound by all of the releases and other terms of
12 this Settlement, whether or not they submit a Valid Claim Form or actually receive payment or cash
13 their checks for their Individual Cash Settlement Payment or redeem their Individual Voucher
14 Settlement Payments, and shall not be permitted to seek any further payment or any personal relief
15 of any kind including on account of the Released Claims.

16 G. Uncashed Individual Cash Settlement Payment: Authorized Claimants will have one
17 hundred eighty (180) calendar days from the date of issuance of the check to cash their settlement
18 check. Any check not cashed after 180 calendar days shall be dealt with in accordance and
19 compliance with California Code of Civil Procedure § 384. The Settlement Administrator shall
20 inform the Parties regarding the status of any uncashed checks at the conclusion of the 180-calendar
21 day check cashing period, including the amounts at issue and the identity of any affected Authorized
22 Claimant.

23 **VII. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM** 24 **SETTLEMENT**

25 A. Objections: Only Settlement Class Members who do not file timely Requests For
26 Exclusion may on their own behalf and not on behalf of any class, object to the Settlement
27 ("Objection Statement"). Those who wish to object to the Settlement may do so in writing submitted
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1 to the Settlement Administrator by the Objection/Exclusion Deadline. In addition, those who wish
2 to object to the Settlement may appear (or appear through counsel) at the Final Approval Hearing.
3 Settlement Class Members do not need to attend the Final Approval Hearing in order to object, but
4 shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate
5 counsel). Objection Statements can be submitted to the Settlement Administrator by: (1) mailing the
6 written Objection Statement. Objection Statements that do not include all required information
7 and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date
8 of the postmark on the mailing envelope shall be the exclusive means used to determine whether a
9 Settlement Class Member's Objection Statement has been timely submitted. In the event that the
10 postmark is illegible, the Objection Statement shall be deemed untimely unless it is received by the
11 Settlement Administrator after five (5) calendar days of the Objection/Exclusion Deadline. Written
12 Objection Statements must contain a caption or title that identifies it as "Objection to Class
13 Settlement in *Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117" and shall also contain:

- 14 i) Information sufficient to identify and contact the objecting Settlement Class
15 Members, including name, address, telephone number, and, if available,
16 email address, and if represented by counsel, the foregoing information for
17 his/her counsel;
- 18 ii) Whether the Settlement Class Member, or his or her counsel, intends to
19 appear at the Final Approval Hearing;
- 20 iii) A clear and concise statement of the Settlement Class Member's objection,
21 including all bases and legal grounds for the objection and copies of paper,
22 briefs, or other documents upon which the objection is based;
- 23 iv) Documents sufficient to establish the person's standing as a Settlement
24 Class Member, *i.e.*, verification under penalty of perjury as to the person's
25 purchase of Covered Products during the Class Period, or a proof of
26 purchase; and
- 27 v) The Settlement Class Member's signature.

1 1. Response to Objections: Class Counsel and/or Defendant may, at least
2 fourteen (14) business days (or such other number of days as the Court shall specify) before the
3 Final Approval Hearing, file any responses to any written Objection Statements submitted to the
4 Court by Settlement Class Members in accordance with this Settlement.

5 B. Procedure for Requesting Exclusion: Settlement Class Members who wish to opt out
6 of this Settlement must submit a written statement by the Objection/Exclusion Deadline (“Requests
7 for Exclusion”). Requests for Exclusion that do not include all required information and/or that are
8 not submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark
9 on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class
10 Member’s Request for Exclusion has been timely submitted. In the event that the postmark is
11 illegible, the Request for Exclusion shall be deemed untimely unless it is received by the Settlement
12 Administrator after five (5) calendar days of the Objection/Exclusion Deadline. Any Settlement
13 Class Member who properly opts out of the Settlement Class using this procedure will not be entitled
14 to any relief, will not be bound by the Settlement, and will not have any right to object or appeal.
15 Settlement Class Members who fail to submit a valid and timely request for exclusion on or before
16 the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final
17 judgment entered in this Action if the Settlement is approved by the Court, regardless of whether
18 they ineffectively or untimely requested exclusion from the Settlement. Requests for Exclusions
19 must include:

- 20 i. The Settlement Class Member’s name;
21 ii. The Settlement Class Member’s address;
22 iii. A statement that indicates that the Settlement Class Member wishes to be
23 excluded from *Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117; and
24 iv. The Settlement Class Member’s signature;
25 v. The request for exclusion must be mailed to the Settlement Administrator
26 at the address below, postmarked no later than the date set by the Court
27 for the submission of objections or Requests for Exclusion from the class
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and shall be no more than 180 days after the Preliminary Approval Order:

1. *Dorcas v. Aterian, Inc.* Settlement Administrator [address] [City],
[ST] [ZIP]

C. Objection Statements and/or Requests for Exclusion: The Settlement Administrator shall, on a daily basis: (1) keep records of the date it receives Requests for Exclusion and written Objection Statements; and (2) serve copies of same on Class Counsel and Defendant's counsel no later than seven (7) calendar days after the Objection/Exclusion Deadline. The Settlement Administrator shall inform Class Counsel and Defendant's counsel of any such documents received that were ineffectively or untimely submitted.

D. No Solicitation of Settlement Objections or Exclusions: The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement, or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the Final Judgment.

VIII. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL

The Parties shall promptly submit this Settlement to the Court in support of the Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement, Plaintiff shall apply to the Court for the entry of a Preliminary Approval Order substantially in the following form, as more particularly set forth on Exhibit "E":

A. Scheduling a Final Approval Hearing, no earlier than thirty (30) days after Class Counsel files its motion for final approval, on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members;

B. Approving as to form and content the Publication Notice and the Long Form Notice;

C. Approving as to form and content the proposed Claim Form and instructions;

D. Directing publication of the Publication Notice, and the method and frequency of Class Notice;

1 E. Preliminarily approving the Settlement;

2 F. Preliminarily and conditionally certifying the Settlement Class for settlement
3 purposes;

4 G. Preliminarily approving the Settlement Administrator and the administration of the
5 settlement in accordance with the procedures set forth in this Settlement;

6 H. Staying all proceedings in the Action, and enjoining the prosecution of any other
7 individual or class claims; and

8 I. Providing that, in the event the Settlement set forth in this Settlement is not approved
9 by the Court, or in the event that this Settlement becomes null and void pursuant to its terms, this
10 Settlement and all orders entered in connection therewith, including but not limited to any order
11 conditionally certifying the Settlement Class, shall become null and void and shall be of no further
12 force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in
13 any other case or controversy; and that in such an event, this Settlement and all negotiations and
14 proceedings related thereto shall be deemed to be without prejudice to the rights of the Parties to,
15 who shall be restored to the respective positions as of the date of this Settlement. In the event the
16 Court does not enter the Preliminary Approval Order described herein, or decides to do so only with
17 material modifications, then this entire Settlement shall become null and void, unless the Parties
18 hereto agree in writing to proceed with this Settlement as modified.

19 The Parties shall stipulate and seek whatever preliminary court approval may be required to
20 stay all proceedings in the Action, and continue all otherwise applicable deadlines in the Action,
21 including but not limited to any deadline for responding to the complaint in the Action or conducting
22 discovery, pending the proceedings to obtain preliminary and final approval of the Settlement.

23 **IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

24 Class Counsel will submit a proposed Final Judgment at the Final Approval Hearing in the
25 form set forth as Exhibit "C," which shall:

26 A. Confirm the certification of the Settlement Class as defined above;

1 B. Decree that neither the Final Approval nor this Settlement constitutes an admission
2 of liability, fault or wrongdoing;

3 C. Release the Released Parties from the Released Claims of the Releasing Parties;

4 D. Approve the Settlement, finding that it is entered into good faith, is reasonable, fair
5 and adequate, and is in the best interest of the Settlement Class Members;

6 E. Approve the Class Counsel Award and the Class Representative's Service Award;
7 and

8 F. Make such orders as are necessary and appropriate to effectuate the terms and
9 conditions of this Settlement.

10 **X. FINAL APPROVAL HEARING**

11 The Court shall conduct a Final Approval Hearing so that the Court may review any
12 objections to the Settlement, consider the fairness, reasonableness, and adequacy of the Settlement
13 and consider the motion for Final Approval, for the Class Counsel Award, and for the Class
14 Representative Service Award. The date of the Final Approval Hearing shall be posted in advance
15 of the hearing on the website maintained by the Settlement Administrator. If the date of the Final
16 Approval Hearing is subsequently modified by the Court, no further notice is required to be
17 published to Settlement Class Members, except that the Parties will notify any Settlement Class
18 Member who has filed a written Objection Statement of any change to the date of the Final Approval
19 Hearing. In the event the Court does not enter the Final Judgment as specified on Exhibit C, or
20 decides to do so only with material modifications, then this entire Settlement shall become null and
21 void, unless the Parties hereto agree in writing to proceed with this Settlement as modified.

22 **XI. CONFIRMATORY DISCOVERY**

23 Prior to execution of the Settlement Agreement Defendant shall provide confirmatory
24 discovery to Class Counsel regarding the Covered Products and the Settlement Class. To the extent
25 necessary, Defendant and Plaintiff will provide any additional confirmatory discovery as may be
26 necessary to effectuate the terms of the Settlement.
27
28

1 **XII. PARTIES' AUTHORITY**

2 The signatories represent that they are fully authorized to enter into this Settlement and bind
3 the Parties to its terms and conditions.

4 **XIII. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with each other to accomplish the terms of this
6 Settlement, including but not limited to, execution of such documents and the taking of such other
7 action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall
8 use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
9 may become necessary by order of the Court, or otherwise, to effectuate this Settlement. As soon as
10 practicable after execution of this Settlement, Class Counsel, with the assistance and cooperation of
11 Defendant and its counsel, shall take all necessary steps to secure the Court's final approval of this
12 Settlement. Defendant agrees that it will not attempt to discourage Settlement Class Members from
13 submitting Claim Forms.

14 **XIV. NO ADMISSION**

15 This Settlement is not to be construed or deemed as an admission of liability, culpability,
16 negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims
17 asserted in the Action. Each of the Parties has entered into this Settlement with the intention to avoid
18 further disputes and litigation with the attendant inconvenience and expenses. This Settlement is a
19 settlement document and shall, pursuant to Cal. Evid. Code §§ 1151 and 1152 and any comparable
20 laws of any other state or jurisdiction, be inadmissible in evidence in any proceeding in order to
21 establish liability or the propriety of class certification. The preceding sentence shall not apply to an
22 action or proceeding to approve or enforce this Settlement.

23 **XV. ENFORCEMENT ACTIONS**

24 The Court shall retain jurisdiction, and shall have sole and exclusive jurisdiction, to enforce,
25 interpret and implement this Settlement, including any alleged violations of the Settlement, and the
26 terms of any order entered pursuant to this Settlement.
27
28

XVI. COMPLETE DEFENSE

To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement.

XVII. NOTICES

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement shall be in writing and shall be deemed to have been given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

| For the Settlement Class | For Defendant |
|---|--|
| Lisa Omoto (SBN 303830) FARUQI & FARUQI, LLP 1901 Avenue of the Stars, Suite 1060 Los Angeles, CA 90067 | Patrick J. Somers (SBN 318766) KENDALL BRILL & KELLY, LLP 10100 Santa Monica Blvd, Ste 1725 Los Angeles, CA 90067-4013 |

XVIII. CONSTRUCTION

The Parties agree that the terms and conditions of this Settlement are the result of arm's-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement.

XIX. MATERIAL TERMS; CAPTIONS

Each term of this Settlement is a material term of the Settlement, not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder. Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions.

XX. INTEGRATION CLAUSE

1 This Settlement and its exhibits (all of which are incorporated herein by reference) contain
2 the entire agreement between the Parties relating to the Settlement, and all prior or contemporaneous
3 agreements, understandings, representations, and statements, whether oral or written, and whether
4 by Class Counsel or Defendant's counsel, are extinguished.

5 **XXI. NON-EVIDENTIARY USE**

6 Neither this Settlement nor any of its terms shall be offered or received into evidence in the
7 Action, or in any other action or proceeding; provided, however, that nothing contained in this "non-
8 evidentiary use" section shall prevent this Settlement Agreement from being used, offered, or
9 received in any proceeding to enforce, construe, or finalize this Settlement.

10 **XXII. NO COLLATERAL ATTACK**

11 This Settlement shall not be subject to collateral attack by any Settlement Class Member or
12 any recipient of the notices to the Settlement Class after the Final Judgment. Such prohibited
13 collateral attacks shall include claims made before the Final Approval Hearing that a Settlement
14 Class Member's Individual Cash Settlement Payment or Individual Voucher Settlement Payment
15 was improperly calculated or adjusted.

16 **XXIII. AMENDMENTS**

17 The terms and provisions of this Settlement may be amended only by a written agreement,
18 which is both (1) signed by the Parties who have executed this Settlement; and (2) approved by the
19 Court.

20 **XXIV. GOVERNING LAW**

21 This Settlement shall be governed by, construed under, and interpreted by, and the rights of
22 the Parties determined in accordance with, the laws of the State of California, irrespective of the
23 State of California's choice of law principles.

24 **XXV. BINDING ON ASSIGNS**

25 This Settlement shall be binding upon and inure to the benefit of the Parties and their
26 respective heirs, trustees, executors, administrators, successors, and assigns.

27 **XXVI. CLASS COUNSEL SIGNATORIES**

1 It is agreed that because the Settlement Class appears to be so numerous, it is impossible or
2 impractical to have each member of the Settlement Class execute this Settlement. The notice plan
3 set forth herein will advise Settlement Class Members of all material terms of this Settlement,
4 including the binding nature of the releases and such shall have the same force and effect as if this
5 Settlement were executed by each Settlement Class Member.

6 **XXVII. DISPUTE RESOLUTION**

7 If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class Member, or
8 Defendant's counsel, on behalf of Defendant, at any time believe that the other Party has breached
9 or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged
10 violation. The Parties shall meet and confer in good faith to resolve the dispute. If the Parties are
11 unable to resolve their differences within twenty (20) calendar days, either Party shall first contact
12 the mediator (Hon. Louis Meisinger) or a replacement selected by Signature Resolution or a
13 comparable agency to try to resolve the dispute. If that proves unsuccessful, the Party may file an
14 appropriate motion for enforcement with the Court. The Parties agree that the Court shall have sole
15 and exclusive jurisdiction for motions to enforce this Settlement.

16 **XXVIII. COUNTERPARTS**

17 This Settlement may be executed in counterparts, and when each party has signed and
18 delivered at least one such counterpart, each counterpart shall be deemed an original, and, when
19 taken together with other signed counterparts, shall constitute one Settlement, which shall be binding
20 upon and effective as to all Parties and the Settlement Class. This Settlement may be executed by
21 electronic or PDF signatures.

22 **XXIX. ENFORCEMENT**

23 In any proceeding arising under or seeking to enforce or construe this Settlement the
24 prevailing party or parties shall be entitled to recover his, her or its attorneys' fees and costs.

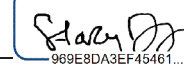
25 **IN WITNESS WHEREOF**, the Parties have duly executed this Settlement as of the dates
26 indicated below:

27 **CLASS REPRESENTATIVE AND SETTLEMENT CLASS COUNSEL:**

1 DATED: May¹⁷, 2023

Stacy Dorcas

DocuSigned by:


989E8DA3EF45461...

Individually and on behalf of the
Settlement Class

5 **DEFENDANT:**

6 DATED: May^{5/19/2023}, 2023

Aterian, Inc.



By: Christopher Porcelli

General Counsel

EXHIBIT A

Mueller Settlement

CLAIM FORM

INSTRUCTIONS

This class action alleges that Defendant falsely and deceptively labeled and advertised the Covered Products with an image of the Austrian flag and the name “Austria”, which led reasonable consumers into believing that the Covered Products were made in Austria paid more for the Covered Products as a result of those alleged statements when, the Covered Products were not made in Austria.

You are a Settlement Class Member if you:

- purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period are Class Members.

To be eligible for payment you must submit a valid Claim no later than MONTH DAY YEAR

How Do I Fill Out and Submit This Claim Form?

If you believe you are eligible and you would like to submit a Claim, you have two options: (1) complete and submit the online Claim Form at www.XXXXXXXXXX.com, or (2) complete a paper Claim Form and send it by First-Class Mail to:

Mueller Settlement Administrator
c/o A.B. Data, Ltd.
P.O. Box 1730XX
Milwaukee, WI 53217

Your Claim must be submitted online, or post-marked, by MONTH DAY YEAR. Please read and follow these instructions carefully. Please do not omit any information asked for. Failure to provide complete and accurate information may result in a delay in the processing of your Claim Form.

Settlement payments will be digitally sent to you via email. Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment. When you receive the email and/or mobile phone text notifying you of your Settlement payment, you will be provided with several digital payment options, such as PayPal, Amazon, or a virtual debit card, to immediately receive your Settlement payment.

The information provided on this Claim Form will be used solely by the Court-approved Settlement Administrator for the purposes of administering the Settlement and will not be provided to any third party or sold for marketing purposes.

MUELLER SETTLEMENT CLAIM FORM**NAME***

FIRST NAME, LAST NAME

STREET ADDRESS***APT**

CITY***STATE*****ZIP***

MOBILE PHONE NUMBER*
 () -
EMAIL ADDRESS*

VERIFY EMAIL ADDRESS*

Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide the Settlement Administrator with a current, valid email address and mobile phone number for payment.

You have two options for filing your claim. If you wish to receive a cash or electronic payment you may choose **Option A**. If you wish to receive a voucher usable at muellerdirect.com, you may choose **Option B**. Please select which option you wish to receive below: *(Please select only one option below)*

- ☐ **Option A**, you can receive \$7.50 per Mueller Branded Product, up to \$15.00 depending on the number of products you purchased. The actual amount you may receive may be higher or lower than the above depending on the number of claimants who select this option.

Select Payment Method

- ☐ PayPal Email:
- ☐ Venmo Phone: () -
- ☐ Digital Mastercard Email:
- ☐ Check

- ☐ **Option B**, you can receive \$15.00 per Mueller Branded Product, up to \$30.00 depending on the number of products you purchased. The actual amount you may receive may be higher or lower than the above depending on the number of claimants who select this option.

A listing of all covered products is available beginning on the next page. Please review the products and provide the number of products you purchased below:

Number of Covered Products claimed*

No proof of purchase is required at this time however, the Settlement Administrator may seek additional documentation to verify your claim during the review process. Failure to provide proof, if requested, will result in a denial of your claim.

CERTIFICATION

By signing this Claim submission, I certify, under penalty of perjury, that the information included with this Claim submission is accurate and complete to the best of my knowledge, information, and belief. I am a member of the Settlement Class, and have not submitted a request to exclude myself, or "opt out of," the Settlement. I agree and consent to be communicated with electronically via email and/or mobile phone text (message & data rates may apply). I agree to furnish additional information regarding this Claim submission if requested to do so by the Settlement Administrator.

SIGNATURE***DATE***

Mueller Covered Products

| SKU | Description | ASIN |
|------------|--|------------|
| MLR010024N | Mueller 4 Blade Onion Chopper | B07SVBY6BH |
| MLR010015N | Mueller Julienne Vegetable Peeler | B07PWG9BBX |
| MLR010017N | Mueller Conical Burr Grinder | B0833F31MS |
| MLR010006N | Mueller Deluxe Knife Set Acrylic Stand | B08BBD95WG |
| MLR010555N | Mueller Electric Coffee Grinder (Black) | B08WC8TYXL |
| MLR010556N | Mueller Electric Coffee Grinder (Gray) | B08WC6RHQ7 |
| MLR010554N | Mueller Electric Coffee Grinder (Red) | B08WC371TP |
| MLR010018N | Mueller Electric Hand Mixer | B08B2ZWLT6 |
| MLR010008N | Mueller French Press | B07JGBK6XV |
| MLR010001N | Mueller Hand Blender | B075X1KPLZ |
| MLR010553N | Mueller Hand Mixer (Black) | B08WC7DR9B |
| MLR010551N | Mueller Hand Mixer (Red) | B08WD13RG3 |
| MLR010552N | Mueller Hand Mixer (White) | B08WCJF86Q |
| MLR010014N | Mueller Handheld Vegetable V-Slicer | B0854R2NDM |
| MLR010019N | Mueller HyperGrind Electric Spice/Coffee | B076FJ92M4 |
| MLR010011N | Mueller 5L Salad Spinner - Large | B07GH6GTH4 |
| MLR010010N | Mueller Mandoline Slicer | B01CT63964 |
| MLR010012N | Mueller Mandoline Zester Pro | B09S185RJQ |
| MLR010020N | Mueller Premium 1500W Electric Kettle | B07TZ5YHJN |
| MLR010004N | Mueller Single Serve Coffee Maker | B08CY7BQG6 |
| MLR010022N | Mueller Single Serve Coffee Maker | B07PYPX7M9 |
| MLR010005N | Mueller Stainless Steel Knife Set With Block | B08BBNCYN2 |
| MLR010002N | Mueller Steam Iron | B082XJTJBS |
| MLR010009N | Mueller Stove Top Whistling Tea Kettle | B07MNXLLZW |
| MLR010007N | Mueller Toaster Oven 4 Slice | B078SD1JT8 |
| MLR010016N | Mueller Ultra 12-Cup Coffee Maker | B0833FGJJN |
| MLR010013N | Mueller Ultra Chef Chopper | B07NMV8TB1 |
| MLR010021N | Mueller Ultra Juicer | B07D3C6NVL |
| MLR010023N | Mueller UltraPot 6Q Pressure Cooker | B07Q5BZFLB |
| MLR010003N | Mueller Vacuum Sealer Machine | B07J2SR7YT |
| MU010138 | Mueller Manual Citrus Press (Black) | B08R99XD8X |
| MU010139 | Mueller Manual Citrus Press (Gray) | B08R993YJK |
| MU010140 | Mueller Manual Citrus Press (White) | B08R9BJWF7 |
| MU010268 | Meuller Meat Cleaver With Leather Sheath, 7-inch | B0B4PYC1LQ |
| MU010200 | Mueller 12-Cup Drip Coffee Maker | B08TYTBX8X |
| MU010021 | Mueller 2-Blade Chopper | B01HC7BNJA |
| MU010057 | Mueller 7-inch Cleaver Knife with Pakkawood Handle | B08BX7136Z |
| MU010332 | Mueller Airtight Food Storage Containers, 12-Piece Set (Blue) | B09FYHR4J5 |
| MU010333 | Mueller Airtight Food Storage Containers, 12-Piece Set (White) | B09FYGKQRB |
| MU010287 | Mueller Airtight Food Storage Containers, 14-Piece Set (Blue) | B0B8FT5FMK |
| MU010325 | Mueller Airtight Food Storage Containers, 14-Piece Set (Gray) | B09FYMM8Q4 |
| MU010335 | Mueller Airtight Food Storage Containers, 14-Piece Set (White) | B09FP2HLKL |
| MU010336 | Mueller Airtight Food Storage Containers, 24-Piece Set (Blue) | B09FNSSM7P |
| MU010326 | Mueller Airtight Food Storage Containers, 24-Piece Set (Dark Gray) | B09FYKFXFM |
| MU010337 | Mueller Airtight Food Storage Containers, 24-Piece Set (White) | B09FP72KJ5 |
| MH010049 | Mueller Anti-Fatigue Compression Mat - Large (Beige) | B09TV7VGVV |
| MH010051 | Mueller Anti-Fatigue Compression Mat - Large (Black) | B09TV99GY5 |
| MH010050 | Mueller Anti-Fatigue Compression Mat - Large (Brown) | B09TV8WGTZ |
| MH010046 | Mueller Anti-Fatigue Compression Mat - Medium (Beige) | B09TV5MPMJ |
| MH010048 | Mueller Anti-Fatigue Compression Mat - Medium (Black) | B09TV5MCY9 |
| MH010047 | Mueller Anti-Fatigue Compression Mat - Medium (Brown) | B09TV65CDV |
| MH010043 | Mueller Anti-Fatigue Compression Mat - Small (Beige) | B09TVHN6PV |
| MH010045 | Mueller Anti-Fatigue Compression Mat - Small (Black) | B09TV4ZY3S |

Mueller Covered Products

| SKU | Description | ASIN |
|------------|---|------------|
| MH010044 | Mueller Anti-Fatigue Compression Mat - Small (Brown) | B09TV5YDYR |
| MU010201 | Mueller Avocado Slicer and Pitter | B0B8LBQ79K |
| CG010002 | Mueller Basketball Arcade | B0BGK3W1W7 |
| MU010274 | Mueller Cast Iron Skillet - 10 inch | B0B4PYW5R7 |
| MU010273 | Mueller Cast Iron Skillet - 12 inch | B0B4PX747K |
| MU010050 | Mueller Chef Knife | B08B7WK4VW |
| MU010076 | Mueller Citrus Squeezer (Beige) | B08M9PQCM3 |
| MU010078 | Mueller Citrus Squeezer (Gray) | B08M9HG2NG |
| MU010077 | Mueller Citrus Squeezer (Mocha) | B08M8KCTYB |
| MU010079 | Mueller Citrus Squeezer (Orange) | B08M8YJ5Z6 |
| MU010035 | Mueller Citrus Zester and Cheese Grater Set | B07NMTWX8T |
| MU010080 | Mueller Colander (Beige) | B08MBBYKSV |
| MU010082 | Mueller Colander (Gray) | B08MBFK1TG |
| MU010081 | Mueller Colander (Mocha) | B08MBFDWYR |
| MU010162 | Mueller ConvectionToaster Oven, 8-Slice | B08TVZQSLK |
| MU010344 | Mueller Corded Hair Clipper and Trimmer Kit | B09H3N9RR5 |
| MU010362 | Mueller Cordless Leaf Blower, 20V | B09R74FC6Y |
| B09BBNY8H7 | Mueller Digital Thermometer (Gray) | B08WNPSB81 |
| MU010161 | Mueller Digital Thermometer (Red) | B08WNBYPK5 |
| MU010182 | Mueller Dish Drying Rack With Utensil Holder - Small (Beige/Red) | B08ZJW4WZX |
| MU010183 | Mueller Dish Drying Rack With Utensil Holder - Small (Gray/Gray) | B08ZJTGf8V |
| MU010180 | Mueller Dish Drying Rack With Utensil Holder - Small (Gray/Green) | B08ZJVDHHX |
| MU010181 | Mueller Dish Drying Rack With Utensil Holder - Small (Mocha/Beige) | B08ZJWH4N4 |
| MU010184 | Mueller Dish Drying Rack With Utensil Holder - Small (White /Turquoise) | B08ZJXDh5T |
| MU010349 | Mueller Dish Rack - Large (Beige/Red) | B09NB1GJ46 |
| MU010347 | Mueller Dish Rack - Large (Dark Gray/Green) | B09NB3229D |
| MU010348 | Mueller Dish Rack - Large (Light Gray/Gark Gray) | B09N9ZQWRW |
| MU010345 | Mueller Dish Rack - Large (Mocha/Beige) | B09NB3HJ33 |
| MU010346 | Mueller Dish Rack - Large (White/Turquoise) | B09NB1TZTZ |
| MU010266 | Mueller Dish Rack - Medium (Beige/Red) | B09NB21BJ3 |
| MU010311 | Mueller Dish Rack - Medium (Gray/Gray) | B09NB3FGY2 |
| MU010312 | Mueller Dish Rack - Medium (Gray/Green) | B09NB1VLNK |
| MU010313 | Mueller Dish Rack - Medium (Mocha/Beige) | B09NB2XNWL |
| MU010322 | Mueller Dish Rack - Medium (White/Turquoise) | B09NB1NCZ5 |
| MH010052 | Mueller Double Waffle Maker, 1200W | B09VRG6K5R |
| MU010272 | Mueller Durablend 10-SPEED Blender | B0B94R1KKY |
| MU010132 | Mueller Ear Forehead Thermometer (White) | B08Q76G3TX |
| MU010236 | Mueller Electric Indoor Grill, 14-inch | B0B9PZNR27 |
| MU010054 | Mueller Electric Knife Sharpener | B08BFCV94W |
| MU010029 | Mueller Electric Toothbrush | B07BSPKDSB |
| MU010364 | Mueller Expandable Garden Hose, 50-foot | B09V3J242G |
| MU010148 | Mueller Flatware Organizer - Large (Beige/Red) | B08SHZT3Z9 |
| MU010149 | Mueller Flatware Organizer - Large (Green/Dark Gray) | B08SJ85QJ8 |
| MU010150 | Mueller Flatware Organizer - Large (Light/Dark Gray) | B08SHT6PH7 |
| MU010151 | Mueller Flatware Organizer - Large (Mocha/Beige) | B08SHXH2L8 |
| MU010153 | Mueller Flatware Organizer - Medium (Mocha) | B08SVFGR7D |
| MU010152 | Mueller Flatware Organizer - Medium (Beige) | B08SHW6CTL |
| MU010154 | Mueller Flatware Organizer - Medium (Dark Gray) | B08SHYZNCV |
| MU010155 | Mueller Flatware Organizer - Medium (Light Gray) | B08STRM47N |
| MU010156 | Mueller Flatware Organizer - Small (Beige) | B08SV33QX5 |
| MU010159 | Mueller Flatware Organizer - Small (Light Gray) | B08SV6MF7S |
| MU010157 | Mueller Flatware Organizer Small - (Mocha) | B08SVTLCFR |
| MU010301 | Mueller Flatware Set, 20-Piece Stainless Steel Silverware | B0B8L8PXLV |

Mueller Covered Products

| SKU | Description | ASIN |
|----------|---|------------|
| MU010302 | Mueller Flatware Set, 20-Piece Stainless Steel Silverware (Black) | NO ASIN |
| MU010324 | Mueller Food Storage Containers, 12-Piece Set (Dark Gray) | B09FYL52D9 |
| MU010330 | Mueller Food Storage Containers, 4-Piece Set (Blue) | B09FYH62P5 |
| MU010323 | Mueller Food Storage Containers, 4-Piece Set (Dark Gray) | B09FYJNDM6 |
| MU010331 | Mueller Food Storage Containers, 4-Piece Set (White) | B09FYFCMMS |
| MU010084 | Mueller Fruit Basket (Black) | B08MNSQM2C |
| MU010357 | Mueller Fruit Basket (Copper) | B09TWT8DNJ |
| MU010358 | Mueller Fruit Basket (Gold) | B09TWWFDQF |
| MU010083 | Mueller Fruit Basket (Gray) | B08MNV1TF2 |
| MU010087 | Mueller Fruit Basket (Green) | B08MTBVBQQ |
| MU010085 | Mueller Fruit Basket (Red) | B08MSXL5XN |
| MU010086 | Mueller Fruit Basket (White) | B08MT7CP3R |
| MU010060 | Mueller Glass French Press | B08GRQVN51 |
| MU010215 | Mueller HealthyStone Fry Pan 10-inch (Black) | B08SBHF9XF |
| MU010216 | Mueller HealthyStone Fry Pan 10-inch (Gray) | B08SBMPP1Y |
| MU010217 | Mueller HealthyStone Fry Pan 12-inch (Black) | B08SBXGQG1 |
| MU010218 | Mueller HealthyStone Fry Pan 12-inch (Gray) | B08SBJJXQ8 |
| MU010212 | Mueller HealthyStone Fry Pan 8-inch (Black) | B08SBHGR1Q |
| MU010224 | Mueller HealthyStone Fry Pan 8-inch (Gray) | B0958KKCBW |
| MU010001 | Mueller Hydro Press Coffee Maker | B075MQZ88P |
| MU010360 | Mueller Indoor Grill and Griddle Combo | B09P5P2P3C |
| MU010137 | Mueller Induction Cooktop | B08QMP7VD3 |
| MU010262 | Mueller Kitchen Utensil Holder, Heavy Duty Flatware Drying Basket (Beige) | B0B41CXK7Q |
| MU010261 | Mueller Kitchen Utensil Holder, Heavy Duty Flatware Drying Basket (Gray) | B0B4128ZDG |
| MU010296 | Mueller Kitchen Utensil Holder, Heavy Duty Flatware Drying Basket (White) | B0B4196T2P |
| MU010283 | Mueller Lunch Bag (Camo White) | B09BBGN76L |
| MU010282 | Mueller Lunch Bag (Camo) | B09B91MXCR |
| MU010285 | Mueller Lunch Bag (Circular Design) | B09BBC3S4N |
| MU010284 | Mueller Lunch Bag (Gray) | B09BBHXJHC |
| MU010072 | Mueller Makeup Organizer (Pink) | B08LHL4HG7 |
| MU010073 | Mueller Makeup Organizer (White) | B08LJQ2NWX |
| MU010055 | Mueller Manual Knife Sharpener | B08BFJ8WYY |
| MU010196 | Mueller Microwave Popcorn Maker (Black) | B0B459M2TQ |
| MU010197 | Mueller Microwave Popcorn Maker (Red) | B0B45HF71W |
| MU010198 | Mueller Microwave Popcorn Maker (Yellow) | B0B459LVTV |
| MH010055 | Mueller Mini-Heart Waffle Maker | B09WJLZWGD |
| MU010148 | Mueller Mixing Bowl Set, 3-Piece (Beige) | B08RMKJH4Q |
| MU010145 | Mueller Mixing Bowl Set, 3-Piece (Gray) | B08RMTMVP1 |
| MU010146 | Mueller Mixing Bowl Set, 3-Piece (Mocha) | B08RN2W1K2 |
| MU010147 | Mueller Mixing Bowl Set, 3-Piece (Red) | B08RMNWZ1X |
| MU010071 | Mueller Mixing Bowls, 4-Piece Set | B08LG7D358 |
| MU010135 | Mueller Non-Contact Thermometer (Gray) | B08QRB8YD |
| MU010134 | Mueller Non-Contact Thermometer (White) | B08QRHN3T2 |
| MU010340 | Mueller Nylon Kitchen Turner (Black) | B0B6GPH9RN |
| MU010329 | Mueller Nylon Kitchen Turner (Gray) | B0B6GQBSFC |
| MU010174 | Mueller Plant and Flower Pot, 2-Piece Set (Peach Pink) | B08ZHLJLBH |
| MU010173 | Mueller Plant and Flower Pot, 2-Piece Set (White) | B08ZH6H4DS |
| MU010172 | Mueller Plant and Flower Pot, 2-Piece Set(Beige) | B08ZHB85JD |
| MU010171 | Mueller Plant and Flower Pot, 2-Piece Set(Mocha) | B08ZHLYN16 |
| MU010226 | Mueller Plant and Flower Pot, 4-Piece Set (Beige) | B0959VV49V |
| MU010228 | Mueller Plant and Flower Pot, 4-Piece Set (Gray) | B095BC18XZ |
| MU010227 | Mueller Plant and Flower Pot, 4-Piece Set (Mocha) | B095BLPQGH |
| MU010178 | Mueller Plant and Flower Pot, 5-Piece Set (Beige) | B08ZHRHVDD |

Mueller Covered Products

| SKU | Description | ASIN |
|-------------------|--|------------|
| MU010176 | Mueller Plant and Flower Pot, 5-Piece Set (Dark Gray) | B08ZHJDQZJ |
| MU010177 | Mueller Plant and Flower Pot, 5-Piece Set (Mocha) | B08ZHJWKPF |
| MU010179 | Mueller Plant and Flower Pot, 5-Piece Set (White) | B08ZHT7GCR |
| MU010168 | Mueller Plant and Flower Pot, 6-Piece Set (Beige) | B08ZHF48WV |
| MU010166 | Mueller Plant and Flower Pot, 6-Piece Set (Dark Gray) | B08ZGPV3GB |
| MU010167 | Mueller Plant and Flower Pot, 6-Piece Set (Mocha) | B08ZHL4PF6 |
| MU010165 | Mueller Plant and Flower Pot, 6-Piece Set (Multi-Color) | B08ZGZC6B2 |
| MU010169 | Mueller Plant and Flower Pot, 6-Piece Set (White) | B08ZHNJQLC |
| MU010175 | Mueller Plant and Flower Pot, 2-Piece Set (Mint Green) | B08ZHV57F9 |
| MU010170 | Mueller Plant Flower Pot, 2-Piece Set (Dark Gray) | B08ZHT7ZV8 |
| MU010270 | Mueller Plastic Storage Bins (Beige) | B0B8QYLLMV |
| MU010279 | Mueller Plastic Storage Bins (Blush Rose) | B0B8Q161FY |
| MU010280 | Mueller Plastic Storage Bins (Dark Gray) | B0B8QR66G1 |
| MU010255 | Mueller Portable Charcoal Grill and Smoker | B09XSCHGNM |
| MU010130 | Mueller Pots and Pans Set 11-Piece | B08PQ4PSS3 |
| MU010125 | Mueller Pots and Pans Set, 14-Piece Copper Non-Stick Coating | B08PHW452F |
| MU010127 | Mueller Pots and Pans Set, 16-Piece Healthy Stone Cookware (Gray) | B08PHP9KVG |
| MU010297/MU010128 | Mueller Pots and Pans Set, 24-Piece (Sapphire) | B08PHQVBFX |
| MU010214 | Mueller Pots and Pans Set, 16-Piece Healthy Stone Cookware Set (Turquoise) | B08TDZMW91 |
| MU010037 | Mueller Premium Apple Corer | B07PWJ3FVK |
| MU010269 | Mueller Pro Hair Trimmer | B097Z36JPV |
| MU010124 | Mueller Professional Series Kitchen Sink Faucet | B08PDVCNKT |
| MU010220 | Mueller Quick Brew Coffee & Tea | B0945R9ZXL |
| MU010295 | Mueller Reusbale Swedish Dishcloth (Blue) | B09BBRB6JG |
| MU010260 | Mueller Reusbale Swedish Dishcloth (Multi-Color) | B09BBNJ491 |
| MU010294 | Mueller Reusbale Swedish Dishcloth (Orange) | B09BBNY8H7 |
| MU010293 | Mueller Reusbale Swedish Dishcloth (Yellow) | B09B8W8XM2 |
| MU010088 | Mueller Reversible Serving Tray (Beige) | B08MVCG1P9 |
| MU010089 | Mueller Reversible Serving Tray (Gray) | B08MVCWJFG |
| MU010090 | Mueller Reversible Serving Tray (Mocca) | B08MVF2CZ5 |
| MU010040 | Mueller Rolling Chopper | B07YF6N3H1 |
| MU010041 | Mueller Rolling Chopper - Large | B07YF692Q1 |
| MU010065 | Mueller Salad Container (Blue) | B08KSKJ681 |
| MU010063 | Mueller Salad Container (Gray) | B08KSMH4SG |
| MU010062 | Mueller Salad Container (Green) | B08KSJKBPV |
| MU010064 | Mueller Salad Container (Pink) | B08KSJRK4 |
| MU010059 | Mueller Salad Spinner | B08GD347VH |
| MU010299 | Mueller Sewing Machine (Gray) | B08TCH41D1 |
| MU010300 | Mueller Sewing Machine (White) | B08TCHH8F2 |
| MU010123 | Mueller Single Handle Stainless Steel Kitchen Sink Faucet | B08PDX3RYS |
| MU010163 | Mueller Single-Hole Bathroom Sink Faucet With Drain Assembly | B08VC64745 |
| MU010339 | Mueller Single-Hole Bathroom Sink Faucet With Drain Assembly (Black) | B09CFMHY9Y |
| MU010075 | Mueller Smart Bidet Toilet | B08LMFJS45 |
| MU010190 | Mueller Soft Grip Garden Pruning Shears | B0915F9NGB |
| MU010052 | Mueller Stainless Steel Deba Knife, 6-inch | B08GDHXZXC |
| MU010303 | Mueller Stainless Steel Faltware Set, 20-Piece (Black) | NO ASIN |
| MU010306 | Mueller Step Stool - Small (Dark Gray) | B0B4KVB2BX |
| MU010307 | Mueller Step Stool - Small (Gray) | B0B4LNKK95 |
| MU010308 | Mueller Step Stool - Small (Purple) | B0B4KSMQJQ |
| MU010309 | Mueller Step Stool - Small (White) | B0B4KS14HP |
| MU010143 | Mueller SuperGrind Burr Coffee Grinder | B08RLJNBKK |
| MU010131 | Mueller Two-Speed Pull Vegetable Chopper | B08Q39VDX5 |
| MU010363 | Mueller Ultra Glide Swivel Peeler | NO ASIN |

Mueller Covered Products

| SKU | Description | ASIN |
|------------|--|------------|
| MU010341 | Mueller Ultra Prep Food Processor, 8-Cup (Silver) | B0B3ZW23SZ |
| MU010069 | Mueller UltraBlade Pro Trimmer | B07YYNFSM9 |
| MU010245 | Mueller Ultra-Carver Electric Knife (Gray) | B08TTNRD53 |
| MU010244 | Mueller Ultra-Carver Electric Knife (White) | B08TT76PBF |
| MHMU010343 | Mueller Ultra-Groom Cordless Clippers Kit | B0BG17BMDR |
| MU010185 | Mueller UltraPrecise Garden Snips With Safety Lock | B08ZWT64LP |
| MU010310 | Mueller Ultra-Prep Food Processor | B08VC1LZ56 |

EXHIBIT B

TO ALL PERSONS WHO PURCHASED MUELLER-BRANDED PRODUCTS IN THE UNITED STATES, ITS TERRITORIES, OR AT ANY UNITED STATES MILITARY FACILITY OR EXCHANGE FROM DECEMBER 9, 2018 THROUGH NOTICE DATE YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

Read This Notice Carefully. You Could Receive a Payment From This Class Action Settlement.

This Court-Authorized Notice describes your rights and gives information about the proposed settlement. This Notice is only a summary. Details of the settlement are available at www.XXXXXXXXXXXXXX.com or by writing to or calling the Class Action Settlement Administrator at the address or toll-free number below.

What Is This Case About? In the lawsuit entitled *Stacy Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117, Superior Court for the State of California, County of San Bernardino, plaintiff Stacy Dorcas (“Plaintiff” or “Class Representative”), on behalf of herself and a proposed class, alleges that Defendant falsely and deceptively labeled and advertised the Covered Products with an image of the Austrian flag and the name “Austria” (together, the “Austrian Representations”), which led reasonable consumers into believing that the Covered Products were made in Austria paid more for the Covered Products as a result of those alleged statements when, the Covered Products were not made in Austria. A list of the Covered Products is available on the settlement website www.XXXXXXXXXXXXXX.com. The Court has not ruled on the merits of the claims or Aterian’s defenses.

Who Is A Class Member? All Persons who purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period are Class Members. (“Settlement Class Members”).

What Are The Terms Of The Settlement? Aterian has agreed to pay \$800,000 (\$500,000 shall be made available in the form of cash (“Cash Fund”), and \$300,000 shall be made available in the form of Vouchers (“Voucher Fund”) into a non-reversionary Settlement Fund in full and complete settlement and release of all claims of Plaintiff and the Settlement Class Members, as described in the Settlement. The Settlement Fund will be used to pay Settlement Awards to Settlement Class Members who send in a valid Claim Form, after attorneys’ fees and costs, notice and settlement administration costs, and an incentive award to the Class Representative have been deducted.

Settlement Class Members can elect to receive a \$7.50 cash payment per Covered Product purchased during the Class Period for up to two (2) Covered Products or, in lieu of a cash payment, Settlement Class Members can elect to receive a \$15.00 Voucher per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed).

Class Counsel will ask the Court to approve payment of up to \$200,000 in attorneys’ fees, to be paid from the Settlement Fund. The requested fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel also will ask the Court to approve reasonable costs and expenses spent prosecuting the case and a payment of \$1,500 to Stacy Dorcas for her services as Class Representative, to be paid from the Settlement Fund. The Court may award less than these amounts.

How Do You Make A Claim? To receive a Settlement Award, you must submit a signed and completed Claim Form online to the Class Action Settlement Administrator by **no later than** MONTH DAY, YEAR. Claim Forms may also be submitted to the Class Action Settlement Administrator by mail if postmarked **no later than** MONTH DAY YEAR. The Claim Form is available for online submission and download at www.XXXXXXXXXXXXXX.com.

What Are My Other Options? If you do not want to be legally bound by the Settlement, you may opt out of the Settlement by sending a request for exclusion to the Class Action Settlement Administrator **no later than** MONTH DAY, YEAR. If you exclude yourself from the Settlement, you will not receive any money from the Settlement. If you stay in the Settlement (*i.e.*, do not exclude yourself from the Settlement), you may object to the Settlement by writing to the Court explaining why you do not like the Settlement by **no later than** MONTH DAY, YEAR. You will be bound by the Settlement if your objection is rejected. If you do nothing (*i.e.*, submit no Claim Form or request for exclusion), you will not receive any benefits from the Settlement, but will nevertheless be bound by any judgment approving the Settlement and will give up any right to sue Defendant or related parties as described in the Settlement.

Final Approval Hearing. The Court will hold a hearing in this case to consider whether to approve the Settlement on MONTH DAY, YEAR, at TIME p.m., Superior Court for the State of California, County of San Bernardino, ADDRESS. The date of the Final Approval Hearing may change without further notice to the class. Settlement Class Members should be advised to check the settlement website to confirm that the date has not been changed and whether the hearing may be held virtually due to COVID-19.

THIS NOTICE IS ONLY A SUMMARY. MORE INFORMATION ABOUT THE LAWSUIT AND THE PRECISE TERMS AND CONDITIONS OF THE SETTLEMENT IS AVAILABLE AT WWW.XXXXXXXXXX.COM, OR WRITE OR CALL THE CLASS ACTION SETTLEMENT ADMINISTRATOR AT MUELLER SETTLEMENT ADMINISTRATOR, P.O. BOX 1730XX, MILWAUKEE, WI 53217 OR 877-XXX-XXXX (TOLL-FREE), OR BY VISITING THE OFFICE OF THE CLERK OF THE COURT FOR THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, ADDRESS, BETWEEN 9:00 A.M. AND 4:00 P.M., MONDAY THROUGH FRIDAY, EXCLUDING COURT HOLIDAYS.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT C

FARUQI & FARUQI, LLP
Lisa Omoto (SBN 303830)
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E-mail: lomoto@faruqilaw.com

Attorneys for Plaintiff Stacy Dorcas

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

STACY DORCAS, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

ATERIAN, INC.,

Defendant.

CASE NO. CIVSB2222117

CLASS ACTION

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT AND
FINAL JUDGMENT**

Date:

Time:

Dept.: S23

Judge: Hon. Donald R. Alvarez

Action Filed: December 9, 2022

1 WHEREAS, on _____, 2023, the Court entered an Order Granting Preliminary
2 Approval of Settlement (“Preliminary Approval Order”), preliminarily approving the proposed
3 settlement of this Action pursuant to the terms of the Settlement Agreement (the “Settlement”) and
4 directing that notice be given to the members of the Settlement Class.

5 WHEREAS, on _____, 2023, this Court conducted a Final Approval Hearing.
6 Upon the pending Motion for Final Approval (“Motion”), this Court, having, heard the
7 presentations of counsel, having reviewed all of the submissions presented with respect to the
8 proposed Settlement, having carefully considered the requirements for class certification, having
9 determined that the Settlement is fair, adequate, and reasonable, having considered the application
10 of Class Counsel for awards of attorneys’ fees, costs, and expenses, and for an incentive award for
11 the Plaintiff, and having reviewed the materials in support thereof, orders that the Motion is
12 GRANTED, subject to the following terms and conditions:

13 1. With respect to the capitalized terms set forth herein, the Court, for purposes of this
14 Order Granting Motion for Final Approval and Final Judgment (“Final Order”) adopts the
15 definitions set forth in the Settlement.

16 2. This Court has continuing and exclusive jurisdiction over the Settlement and all
17 Parties hereto for the purpose of construing, enforcing, and administering the Settlement.

18 3. The Court finally certifies, for settlement purposes only, the following Settlement
19 Class:

20 all Persons who purchased any of the Covered Products in the United States, its
21 territories, or at any United States military facility or exchange during the Class
22 Period. Excluded from the Settlement Class shall be the assigned Judge to the
23 Action, counsel to the Parties, Mediator Louis M. Meisinger, and their employees,
24 legal representatives, heirs, successors, assigns, or any members of their
25 immediate family; any government entity; Defendant, any entity in which
26 Defendant has a controlling interest, any of Defendant’s subsidiaries, parents,
27 affiliates, and officers, directors, employees, legal representatives, predecessors in
28 interest, heirs, successors, or assigns, or any members of their immediate family;
and any Persons who timely opt-out of the Settlement Class.

1 4. With respect to the Settlement Class, this Court finds that: (a) the members of the
2 Settlement Class are so numerous their joinder is impracticable; (b) there are questions of law and
3 fact common to the Settlement Class which predominate over any individual questions; (c) the
4 claims of Plaintiff are typical of the claims of the Settlement Class; (d) Plaintiff and Class Counsel
5 have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a
6 class action is superior to other available methods for the fair and efficient adjudication of the
7 controversy, considering: (i) the interests of the Settlement Class in individually controlling the
8 prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the
9 controversy already commenced by the Settlement Class, (iii) the desirability or undesirability of
10 concentrating the litigation of these claims in this particular forum, and (iv) the difficulties likely to
11 be encountered in the management of the Action.

12 5. Notice to the Settlement Class has been provided in accordance with the
13 Preliminary Approval Order. These materials satisfied the requirements of Cal. Code Civ. Pro. §
14 382 and Cal. Civ. Code § 1781, and Rule 3.766 of the California Rules of Court and (a) provided
15 the best practicable notice, (b) were reasonably calculated, under the circumstances, to apprise the
16 Settlement Class of the pendency of the Action, the terms of the Settlement Agreement, and of
17 their right to appear or object to or exclude themselves from the Settlement Class, (c) were
18 reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive
19 notice, and (d) fully complied with the applicable laws of the State of California. Accordingly, the
20 Court determines that all members of the Settlement Class are bound by this Final Order.

21 6. The Court dismisses with prejudice all claims currently pending before it belonging
22 to Plaintiff and members of the Settlement Class who did not request exclusion from the
23 Settlement Class in the time and manner provided for in the Settlement.

24 7. The Settlement was arrived at after extensive arm's length negotiations conducted
25 in good faith by counsel for the Parties, and is supported by the majority of the members of the
26 Settlement Class. Accordingly, this Court hereby approves the Settlement Agreement as fair,
27 reasonable and adequate in light of the complexity, expense and duration of the litigation, and the
28

1 risks inherent and involved in establishing liability and damages, and in maintaining the class
2 action as to liability issues through trial and appeal.

3 8. The promises and commitments of the Parties under the terms of the Settlement
4 constitute fair value given in exchange for the releases of the Released Claims. Therefore, the
5 Settlement and this Final Order release and absolutely and forever discharge the Defendant and the
6 other Discharged Parties of and from any and all Released Claims as set forth in the Settlement.

7 9. All members of the Settlement Class who did not make a valid request for exclusion
8 from the Settlement Class in the time and manner provided in the Settlement are barred,
9 permanently enjoined, and restrained from commencing or prosecuting any action, suit,
10 proceeding, claim, or cause of action in any jurisdiction or court against Defendant and/or the
11 Released Parties based upon, relating to, or arising out of, any of the Released Claims. However,
12 all members of the Settlement Class who did make a valid request for exclusion from the
13 Settlement Class in the time and manner provided in the Settlement are not barred, permanently
14 enjoined, or restrained from commencing or prosecuting any action, suit, proceeding, claim, or
15 cause of action in any jurisdiction or court against Defendant and/or the Released Parties based
16 upon, relating to, or arising out of, any of the Released Claims.

17 10. The Court has considered any and all Objection Statements and overrules them to
18 the extent they are inconsistent with the findings of fact and conclusions of law as set forth in this
19 Final Order.

20 11. By operation of this Final Order, Defendant and/or the Released Parties shall be
21 deemed to have, fully, finally, and forever released, relinquished and discharged each and all
22 members of the Settlement Class, Plaintiff and Class Counsel from all claims (including unknown
23 claims), arising out of, relating to, or in connection with the institution, prosecution, assertion,
24 settlement or resolution of this Action or the Released Claims.

25 12. Solely for purposes of implementing this Settlement, the Court approves Plaintiff
26 Dorcas as the Class Representative and approves a Class Representative Service Award in the
27 amount of \$_____ for the time and expense Plaintiff expended in connection with the prosecution
28

1 of the Action, which shall be paid by Defendant. The Settlement Administrator shall pay the Class
2 Representative Service Award to Plaintiff within fifteen (15) calendar days of the Effective Date

3 13. Solely for purposes of implementing this settlement, the Court approves Faruqi &
4 Faruqi as Class Counsel. Upon hearing and review of the motion for award of Class Counsel fees,
5 costs and expenses, the Court awards \$_____. The attorneys' fees and
6 reimbursement of expenses awarded by the Court shall be paid by Defendant within 15 calendar
7 days after this Final Order has been entered. Defendant will pay the amount awarded by the Court
8 directly to an account established by Class Counsel.

9 14. The Settlement Administrator shall distribute the Residual Settlement Amount and
10 Voucher Fund to the Authorized Claimants in the manner specified in the Settlement Agreement
11 within forty-five (45) calendar days of the Effective Date.

12 15. A declaration of payment will be filed by the Settlement Administrator with the
13 Court and provided to the Parties within ten (10) calendar days of mailing and digitally paying the
14 settlement proceeds.

15 16. The ____ Person who have submitted valid and timely and Requests for Exclusions
16 listed in Exhibit ____ to the Declaration of _____ are excluded from the Settlement Class and
17 not by this Order and Final Judgement.

18 17. For a period of no less than five (5) years after the Effective Date, and subject to all
19 necessary regulatory approvals by appropriate governing agencies, Defendant shall not use the
20 word "Austria" or the Austrian flag on any of the Mueller-branded products, its packaging,
21 labeling, and/or its online marketing, including but not limited to its Mueller-branded products
22 listings on third-party retail sites such as Amazon.com and websites maintained by Aterian
23 (including muellerdirect.com). Defendant shall be permitted four (4) weeks from entry of this Final
24 Order to modify the online marketing described in the proceeding sentence ("Online Marketing
25 Deadline"). For removal of any doubt, however, references by third-party retail sites to "Mueller
26 Austria", "Mueller Austria Store" or third-party references to prior Mueller-branded products will
27 not be construed as a violation of the injunctive relief. Additionally, Defendant shall be permitted
28

1 to sell through existing inventory of the Products that contain the word “Austria” and/or the
2 Austrian flag.

3 18. The Settlement shall not be offered or be admissible in evidence by or against
4 Defendant or cited or referred to in any other action or proceeding, except (1) in any action or
5 proceeding brought by or against the Parties to enforce or otherwise implement the terms of the
6 Settlement, or (2) in any action involving Plaintiff, members of the Settlement Class, or any of
7 them, to support a defense of res judicata, collateral estoppel, release, or other theory of claim
8 preclusion, issue preclusion, or similar defense.

9 19. In the event that the Settlement is terminated, pursuant to its terms or otherwise, this
10 Judgment shall be vacated *nunc pro tunc*.

11 20. Without affecting the finality of this Final Order in any way, the Court hereby
12 retains continuing jurisdiction over (a) the implementation of this Settlement and any award or
13 distribution to the Settlement Class members; (b) hearing and determining of an application for
14 attorneys’ fees and costs and (c) all Parties for the purpose of enforcing and administering the
15 Settlement pursuant to Cal. Code Civ. Pro. § 664.6 or otherwise.

16 21. The Clerk is directed to enter this Final Order forthwith.

17 **IT IS SO ORDERED.**

18
19 Dated: _____, 2023

The Hon. Donald R. Alvarez
The

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

Stacy Dorcas v. Aterian, Inc., Case No. CIVSB2222117

If you are a person who purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period (December 9, 2018 through NOTICE DATE). you may be entitled to a payment from a class action settlement.

A court authorized this Notice. This is not a solicitation from a lawyer.

- Aterian has agreed to pay \$800,000 (the “Settlement Fund”) to fully resolve and release claims of all persons who purchased any of the Mueller-branded products listed on the settlement website (“Covered Products”) during the time period set forth above and as described in the settlement agreement (“Settlement”).
- The Settlement Fund shall be a non-reversionary common fund of \$800,000 which shall be used to fund payments to Settlement Class Members, Class Notice and administration costs, any Class Counsel Award and costs awarded by the Court, and any Class Representative Service Award to Plaintiff awarded by the Court. Of the \$800,000 Common Fund, \$500,000 shall be made available in the form of cash (“Cash Fund”), and \$300,000 shall be made available in the form of Vouchers (“Voucher Fund”) which Settlement Class Members can use towards the purchase of any Mueller branded product.
- The Settlement resolves a lawsuit alleging that during the Class Period, Defendant falsely and deceptively labeled and advertised the Covered Products with an image of the Austrian flag and the name “Austria” (together, the “Austrian Representations”), which led reasonable consumers into believing that the Covered Products were made in Austria paid more for the Covered Products as a result of those alleged statements when, the Covered Products were not made in Austria.
- The two sides disagree on whether Plaintiff and the Settlement Class could have prevailed at trial. By entering into the Settlement, Aterian has not conceded the truth or validity of any of the claims against it.
- Your legal rights may be affected whether you act, or don’t act. Read this Notice carefully.

Your Legal Rights and Options In This Settlement:

| | |
|--------------------------------|--|
| SUBMIT A CLAIM FORM | To participate in the settlement and make a claim for your share of the settlement benefits you must submit a valid Claim Form by DATE . |
| EXCLUDE YOURSELF FROM THE CASE | This is the only option that allows you to sue Aterian on your own regarding the legal claims in this case, but you will not receive compensation under the Settlement. The deadline for excluding yourself is DATE . |
| OBJECT TO THE SETTLEMENT | Write to the Court about why you do not like the Settlement. A Settlement Class Member who objects remains in the Settlement Class and must submit a Claim Form in order to obtain a monetary award. The deadline for objecting is DATE . |
| DO NOTHING | If you do nothing, you will receive no benefit from the Settlement, but you will still give up certain rights to sue the defendant. |

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case has still to decide whether to approve the Settlement. Compensation will be issued if the Court approves the Settlement and after appeals are resolved, if any.

BASIC INFORMATION

1. Why was this Notice issued?

This Notice was issued because a Court has conditionally “certified” this case as a class action lawsuit for settlement purposes only and your rights may be affected. Mueller-branded products, attached hereto as Attachment A, during the Class Period, you may have legal rights and options in this case.

This Notice explains all of these issues. Judge Donald Alvarez of the Superior Court for the State of California, County of San Bernardino is overseeing this class action. The case is known as *Stacy Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117 (the “Action”). The people who sued are called the Plaintiffs. The company they sued, Aterian, is called the Defendant.

2. Why is this a class action?

In a class action, one or more people, called “Class Representatives” (in this case Stacy Dorcas, the named “Plaintiff”), sue on behalf of all people who have similar claims. Together, these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Here, the Court has certified a class action for settlement purposes only. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at www.XXXXXXXSettlement.com.

3. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Aterian. Plaintiff thinks she would have prevailed at trial. Aterian thinks the Plaintiff would not have won anything from a trial. But there was no trial. Instead, both sides agreed to this Settlement. That way, both sides avoid the risk and cost of a trial, and the Settlement Class Members will receive compensation. The Class Representative and their attorneys think the Settlement is best for all Settlement Class Members.

THE CLAIMS IN THE LAWSUIT

4. What is the lawsuit about?

The lawsuit claims that during the Class Period, Defendant falsely and deceptively labeled and advertised the Covered Products with an image of the Austrian flag and the name “Austria” (together, the “Austrian Representations”), which led reasonable consumers into believing that the Covered Products were made in Austria when, the Covered Products were not made in Austria. Plaintiff further alleges that Plaintiff and Settlement Class Members paid more for the Covered Products as a result of those alleged statements. Plaintiff has asserted claims on behalf of herself and for others similarly situated in the United States based on such allegations.

The lawsuit claims that Aterian violated, among others, the California Consumers Legal Remedies Act, California’s False Advertising Law, and California’s Unfair Competition Law; that Aterian breached express and implied warranties; that Aterian committed fraud and made negligent and intentional misrepresentations; and that Aterian was unjustly enriched. Aterian denied these claims. More information can be found in the [COMPLAINT], available at www.XXXXXXXSettlement.com.

MEMBERS OF THE SETTLEMENT CLASS

5. How do I know if I am a part of the Settlement Class?

The Court has certified this case for settlement purposes only as a class action. The class (the “Settlement Class”) is defined as:

All Persons who purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period.

Excluded from the Settlement Class shall be the assigned Judge to the Action, counsel to the Parties, Mediator Louis M. Meisinger, and their employees, legal representatives, heirs, successors, assigns, or any members of their immediate family; any government entity; Defendant, any entity in which Defendant has a controlling interest, any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, predecessors in interest, heirs, successors, or assigns, or any members of their immediate family; and any Persons who timely opt-out of the Settlement Class.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Aterian has agreed to pay \$800,000 (\$500,000 shall be made available in the form of cash (“Cash Fund”), and \$300,000 shall be made available in the form of Vouchers (“Voucher Fund”)) into a non-reversionary Settlement Fund in full and complete settlement and release of all claims of Plaintiff and the Settlement Class Members, as described in the Settlement. The Settlement Fund will be used to pay Settlement Awards

to Settlement Class Members who send in a valid Claim Form, after attorneys' fees and costs, notice and settlement administration costs, and an incentive award to the Class Representative have been deducted.

Class Counsel will ask the Court to approve an award of up to 25% of the Settlement Fund (or \$200,000) for attorneys' fees; notice and settlement administration costs; reasonable costs and expenses spent in prosecuting the case; and \$1,500 to the Class Representative, all to be paid from the Settlement Fund before Settlement Awards are paid to the Settlement Class. You cannot receive compensation unless you submit a Claim Form as set forth below.

7. How much will my payment be?

Authorized Claimants can elect to receive a \$7.50 cash payment per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed), **OR**, alternatively, in lieu of a cash payment, Authorized Claimants can elect to receive a \$15.00 Voucher per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed).

Proof of purchase is not required for either the Individual Cash Settlement Payment or the Individual Voucher Settlement Payment. Authorized Claimants shall be solely responsible for any and all taxes arising from payment of the Individual Cash Settlement Payments.

Individual Cash Settlement Payments will be issued digitally to Authorized Claimants, via the email provided on the Claim Form. Authorized Claimants will be provided with several digital payment options such as PayPal, Venmo, or a digital debit card, to immediately receive the Individual Cash Settlement Payment. A valid email address is required to receive digital payment. You will also have the option to request a paper check be mailed using the address information provided on the Claim Form. If the email or mailing address you have on file changes or becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive payment.

8. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you will be part of the Settlement Class, and you cannot sue, continue to sue, or be part of any other lawsuit against Aterian asserting a released claim. It also means that all of the Court's orders will apply to you and legally bind you. If you file a Claim Form or do nothing, you will agree to release Aterian from any and all claims under federal and state law that arise from the allegations at issue in this action.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes. The Court has appointed Faruqi & Faruqi as Class Counsel to represent you and the Class in this case. These lawyers have experience handling similar cases. More information about these lawyers and their law firms is available at www.faruqilaw.com.

10. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is representing you and all the other members of the Settlement Class. If you want someone other than Class Counsel to speak for you, you may hire your own lawyer at your own expense.

11. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$200,000 in attorneys' fees, to be paid from the Settlement Fund. The requested fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel also will ask the Court to approve reasonable costs and expenses spent prosecuting the case and a payment of \$1,500 to Stacy Dorcas for her services as Class Representative, to be paid from the Settlement Fund. The Court may award less than these amounts.

HOW TO APPLY FOR COMPENSATION

12. How can I get compensation under the Settlement?

To qualify for compensation under the Settlement, you must submit a Claim Form. A Claim Form is available on the internet at www.XXXXXXXSettlement.com. Read the instructions carefully, fill out the form, sign it, and submit it online no later than [DATE]. You may also submit a Claim Form by mail if postmarked by no later than [DATE].

To receive a Settlement Award, each Settlement Class Member must attest under penalty of perjury that they purchased a Aterian product during the Class Period, and the information supplied in the Claim Form is true and correct to the best of the Settlement Class Member's knowledge.

Covered Products in the Settlement are comprised of the Aterian products listed in Attachment A only.

13. When would I receive compensation?

The Court will hold a hearing on [DATE], at [TIME] [].m. to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement through information posted at www.XXXXXXXSettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I get out of the Settlement?

If you do not want a Settlement Award under this Settlement, and you want to keep the right to sue or continue to sue Aterian regarding the allegation that are the subject of the Action, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the Settlement, you must send a letter by mail to the Class Action Settlement Administrator that (a) states your name and address; (b) is personally signed by you, and not your attorney or anyone acting on your behalf; and (c) includes a statement that indicates that you wish to be excluded from the class settlement in *Stacy Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117." No request for exclusion will be valid unless all of the information described above is included.

You must mail your exclusion request postmarked no later than **[DATE]**, to the Class Action Settlement Administrator at the following address:

Aterian Settlement Administrator
ATTN: Exclusions
A.B. Data, Ltd.
P.O. Box 173001
Milwaukee, WI 53217

15. If I do not exclude myself, can I sue Defendant for the same thing later?

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) Aterian for the claims that this Settlement resolves.

16. If I exclude myself, can I get compensation under this Settlement?

No. If you ask to be excluded, you will not get any compensation under the Settlement, and you cannot object to the Settlement.

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court that I do not agree with the Settlement?

You can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement Awards will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. A Settlement Class Member who objects still remains in the Settlement Class and must timely submit a Claim Form in order to obtain a monetary award.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Stacy Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117), (b) be submitted to the Settlement Administrator at the address below, and (c) be postmarked on or before **[DATE]**.

Aterian Settlement Administrator
ATTN: Objections
A.B. Data, Ltd.
P.O. Box 173001
Milwaukee, WI 53217

Written objections must also contain: (i) Information sufficient to identify and contact the objecting Settlement Class Members, including name, address, telephone number, and, if available, email address, and if represented by counsel, the foregoing information for his/her counsel; (ii) Whether the Settlement Class Member, or his or her counsel, intends to appear at the Final Approval Hearing; (iii) A clear and concise statement of the Settlement Class Member's objection, including all bases and legal grounds for the

objection and copies of paper, briefs, or other documents upon which the objection is based; (iv) Documents sufficient to establish the person's standing as a Settlement Class Member, i.e., verification under penalty of perjury as to the person's purchase of Covered Products during the Class Period, or a proof of purchase; and (v) The Settlement Class Member's signature.

18. What is the difference between objections and excluding myself from the Settlement?

Objecting means telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement means that you do not want to be part of the Settlement Class. If you exclude yourself, then you have no basis to object to the Settlement.

A Settlement Class Member who objects still remains in the Settlement Class and must timely submit a Claim Form in order to obtain a monetary award.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class and you will give up your rights to sue Aterian; however, you will not receive any compensation because you must submit a valid Claim Form in order to receive compensation under this Settlement.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at [TIME] [] .m. on [DATE], 2023, at the Superior Court for the State of California, County of San Bernardino, [ADDRESS]. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are valid objections that comply with the requirements herein, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and the Class Representatives.

The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should check the Settlement Website to confirm that the date has not been changed and whether the hearing may proceed virtually due to COVID-19.

21. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

22. May I speak at the hearing?

You, or any lawyer you retain, may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your objection to the Settlement a statement saying that it is your intent to appear at the Final Approval Hearing. Your Objection and notice of intent to appear must be submitted to the Settlement Administrator and postmarked no later than [DATE]. You cannot speak at the hearing if you excluded yourself from the Settlement.

GETTING MORE INFORMATION

23. Is this the entire Settlement?

No. This Notice is only a summary of the proposed Settlement. More information about the action and the precise terms and conditions of the Settlement is available at www.XXXXXXXSettlement.com, or by calling toll-free 8XX-XXX-XXXX, or by writing to Aterian Class Action Settlement Administrator c/o A.B. Data, Ltd., P.O. Box XXXXXX, Milwaukee, WI 53217, or visiting the office of the Clerk of the Court for the Superior Court for the State of California, County of San Bernardino, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays, or by contacting Class Counsel at the information listed in paragraph 9 above..

Please do not telephone the Court or the Court Clerk's Office to inquire about this Settlement or the Claims Process.

EXHIBIT E

FARUQI & FARUQI, LLP
Lisa Omoto (SBN 303830)
1901 Avenue of the Stars, Suite 1060
Los Angeles, CA 90067
Telephone: (424) 256-2884
Facsimile: (424) 256-2885
E-mail: lomoto@faruqilaw.com

Attorneys for Plaintiff Stacy Dorcas

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

STACY DORCAS, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

ATERIAN, INC.,

Defendant.

Case No CIVSB2222117

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
SETTLEMENT**

Date:

Time:

Dept.: S23

Judge: Hon. Donald R. Alvarez

Action Filed: December 9, 2022

1 WHEREAS, Plaintiff, Stacy Dorcas (“Plaintiff”), and Defendant, Aterian, Inc.,
2 (“Defendant”), (collectively, the “Parties”) have reached a proposed settlement and compromise
3 of the disputes between them (the “Settlement”); in the above captioned action (“Action”);

4 WHEREAS, the Parties have applied to the Court for preliminary approval of the proposed
5 Settlement, the terms and conditions of which are set forth in the Settlement;

6 AND NOW, the Court, having read and considered the Settlement and accompanying
7 documents and the Motion For Preliminary Settlement Approval and supporting papers, and the
8 Parties to the Settlement having consented to the entry of this Order, and all capitalized terms used
9 herein having the meaning defined in the Settlement,

10 IT IS HEREBY ORDERED AS FOLLOWS:

11 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
12 Settlement.

13 2. Subject to further consideration by the Court at the time of the Final Approval
14 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
15 Settlement Class, as falling within the range of possible final approval, and as meriting submission
16 to the Settlement Class for its consideration.

17 3. Based upon the submissions of the Parties, and for purposes of this Settlement only,
18 the Court conditionally makes the following findings:

- 19 a. The members of the Settlement Class are so numerous as to make joinder
20 impracticable.
- 21 b. There are questions of law and fact common to the Settlement Class, and such
22 questions predominate over any questions affecting only individual Settlement
23 Class Members for purposes of the Settlement.
- 24 c. Plaintiff’s claims and the defenses thereto are typical of the claims of the
25 Settlement Class Members and the defenses thereto for purposes of the
26 Settlement.
- 27 d. Plaintiff and her counsel have fairly and adequately protected, and will continue
28

1 to fairly and adequately protect, the interests of the Settlement Class Members
2 with respect to the Settlement.

3 e. The proposed Settlement is superior to all other available methods for fairly and
4 efficiently resolving this Action.

5 f. Accordingly, for settlement purposes only, the Court certifies a Settlement Class
6 comprised of:

7 all Persons who purchased any of the Covered Products in the United States, its
8 territories, or at any United States military facility or exchange during the Class
9 Period. Excluded from the Settlement Class shall be the assigned Judge to the
10 Action, counsel to the Parties, Mediator Louis M. Meisinger, and their
11 employees, legal representatives, heirs, successors, assigns, or any members of
12 their immediate family; any government entity; Defendant, any entity in which
13 Defendant has a controlling interest, any of Defendant's subsidiaries, parents,
14 affiliates, and officers, directors, employees, legal representatives, predecessors
15 in interest, heirs, successors, or assigns, or any members of their immediate
16 family; and any Persons who timely opt-out of the Settlement Class.

17 4. This matter is preliminarily certified as a class action for settlement purposes only,
18 pursuant to Cal. Code Civ. Pro. § 382, Cal Civ. Code § 1781 and Rule 3.769(c) and (d) of the
19 California Rules of Court. If the Court does not finally approve the Settlement, Defendant retains
20 the right to assert that this Action may not be certified as a class action for liability purposes, and
21 no Party shall rely on this preliminary approval as support for the certification of a class in this or
22 any other action.

23 5. The Court hereby appoints Plaintiff Stacy Dorcas as Class Representative.

24 6. The Court hereby appoints Lisa T. Omoto of Faruqi & Faruqi, LLP as Class
25 Counsel.

26 7. The Court hereby appoints A.B. Data, Ltd. as Settlement Administrator.

27 8. The Settlement shall be used for settlement purposes only. The fact of, or any
28 provision contained in, the Settlement or any action taken pursuant to it shall not constitute an
admission of the validity of any claim or any factual allegation that was or could have been made
by Plaintiff and members of the Settlement Class in the present action or of any wrongdoing or
liability of any kind on the part of Defendant. The Settlement shall not be offered or be admissible

1 in evidence by or against Defendant (or any of the Released Parties as defined in the Settlement) or
2 cited or referred to in any other action or proceeding, except (a) in any action or proceeding
3 brought by or against the Parties to enforce or otherwise implement the terms of the Settlement, or
4 (b) in any action involving Plaintiff, or members of Settlement Class, in which the allegations are
5 based on the same factual bases and allegations set forth in this case, to support a defense of res
6 judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion,
7 or similar defense.

8 9. A final hearing (the “Final Approval Hearing”) shall be held before this Court on
9 _____ at _____.m., to determine whether (a) this Action meets each of the prerequisites
10 for class certification set forth in Cal. Code Civ. Pro. § 382 and Cal Civ. Code § 1781, and may
11 properly be maintained as a class action on behalf of the Settlement Class; (b) the Settlement
12 should receive final approval as fair, reasonable, adequate, and is in the best interests of the
13 Settlement Class in light of any objections presented by Settlement Class Members and the Parties’
14 responses to any such objections; (c) orders granting final approval of the Settlement, entering
15 final judgment and dismissing the Complaint, as provided in the Settlement, should be entered; and
16 (d) the application of Class Counsel for the payment of attorneys’ fees, and costs and expenses,
17 and an incentive award for Plaintiff is reasonable and should be approved. The Final Approval
18 Hearing may be postponed, adjourned or continued by further order of this Court, and the Parties
19 will publish the new hearing date on the Settlement website.

20 10. Any person included within the Settlement Class who wishes to be excluded from
21 membership in the Settlement Class must do so in writing by mailing a written request for
22 exclusion to the Settlement Administrator no later than _____, 2023. The request must
23 include: (i) the Settlement Class Member’s name; (ii) the Settlement Class Member’s address; (iii)
24 a statement that indicates that the Settlement Class Member wishes to be excluded from Dorcas v.
25 Aterian, Inc., Case No. CIVSB2222117; and (iv) be signed by the Settlement Class Member.

26 11. Any Settlement Class Member who has not timely filed a written request for
27 exclusion from the Settlement Class may object to the fairness, reasonableness or adequacy of the
28

1 proposed Settlement. Each Settlement Class Member who wishes to object to any term of the
2 Settlement must do so in writing by mailing a written Objection Statement to the Settlement
3 Administrator. Any such objection must be postmarked, no later than _____, 2023. In
4 the event that the postmark is illegible, the Objection Statement shall be deemed untimely unless it
5 is received by the Settlement Administrator after five (5) calendar days of the Objection/Exclusion
6 Deadline. Any Objection Statement must contain a caption or title that identifies it as “Objection to
7 Class Settlement in Dorcas v. Aterian, Inc., Case No. CIVSB2222117” and shall also contain: (i)
8 information sufficient to identify and contact the objecting Settlement Class Members, including
9 name, address, telephone number, and, if available, email address, and if represented by counsel,
10 the foregoing information for his/her counsel; (ii) whether the Settlement Class Member, or his or
11 her counsel, intends to appear at the Final Approval Hearing; (iii) a clear and concise statement of
12 the Settlement Class Member’s objection, including all bases and legal grounds for the objection
13 and copies of paper, briefs, or other documents upon which the objection is based; (iv) documents
14 sufficient to establish the person’s standing as a Settlement Class Member, i.e., verification under
15 penalty of perjury as to the person’s purchase of Covered Products during the Class Period, or a
16 proof of purchase; and (v) the Settlement Class Member’s signature.

- 17 a. Any objection that fails to satisfy the requirements stated herein, or that is not
18 properly and timely submitted, will be deemed ineffective, and will be deemed by
19 the Parties to have been waived, and the Parties reserve their right to argue that
20 the Settlement Class Member asserting such objection is not entitled to have his
21 or her objection heard or otherwise considered by the Court.

22 12. The Court approves, as to form and content, the Claim Form, Email Notice, Long
23 Form Notice and Publication Notice Form attached to the Settlement Agreement as Exhibits A, B,
24 D, and F.

25 13. The Court finds that the Parties’ plan for providing notice (the “Notice Plan”) will
26 provide the best notice practicable to the Settlement Class under the circumstances and constitute
27 valid, due, and sufficient notice to all Settlement Class Members, fully complying with Cal. Code
28

1 of Civ. Pro. § 382, Cal. Civ. Code § 1781, the Constitution of the State of California, the
2 Constitution of the United States, and other applicable law. All costs incurred in connection with
3 the preparation and dissemination of any notices to the Settlement Class shall be borne by
4 Defendant.

5 14. The Court further finds that the Notice Plan adequately informs members of the
6 Settlement Class of their right to object to the Settlement or to exclude themselves from the
7 Settlement Class so as not to be bound by the terms of the Settlement.

8 15. Not later than ___ calendar days after the entry of this Order, Defendant shall cause
9 notice to be disseminated as follows:

- 10 i. dissemination of the Publication Notice in *Los Angeles Daily News*; and
11 ii. establishment and publishing of a Settlement website by the Claims
12 Administrator (www.MuellerSettlement.com)

13 16. The Claims Administrator shall post the Settlement on the Settlement website. The
14 Settlement website shall include the approved class definition set forth in Paragraph 3 above and
15 the Claim Form, Email Notice, Long Form Notice and Publication Notice attached to the
16 Settlement Agreement as Exhibits A, B, D, and F.

17 17. Defendant shall transmit to the Settlement Administrator the Settlement Amount no
18 later than seven (7) calendar days after the entry of this Order.

19 18. The Parties shall file and serve papers in support of final approval of the Settlement
20 by _____, 2023.

21 19. Class Counsel shall file any application for an award of attorneys' fees, costs and
22 litigation expenses, and an incentive award for Plaintiff by _____, 2023.

23 20. Class Counsel shall file a single memorandum of law that addresses: (i) arguments
24 in support of final approval of the Settlement; and (ii) Class Counsel's application for an award of
25 attorneys' fees, costs and litigation expenses, and incentive award for Plaintiff's efforts and
26 expenses. Such memorandum of law shall not exceed 50 pages in length.

21. The Parties shall file and serve reply papers in further support of final approval of the Settlement; and/or Class Counsel's application for an award of attorneys' fees, costs and litigation expenses, and reimbursement awards for Plaintiffs' expenses by no later than _____, 2023.

22. The Final Approval Hearing shall be held at _____.m. on _____, 2023 in Department S23.

23. The following chart lists the important dates in chronological order:

| Event | Proposed Date |
|--|--|
| Preliminary Approval Order | _____, 2023 |
| Publication of notice in <i>Los Angeles Daily News</i> ; Send Direct Email Notice; and establishment of Settlement website (including Long Form Notice). | Within 20 days after entry of Preliminary Approval Order _____, 2023 |
| Claims/Objection/Opt-out Deadline | 180 after entry of Preliminary Approval Order _____, 2013 |
| Class Counsel's briefs in support of Final Approval, Award of Attorneys' Fees & Costs Due | No later than 30 days prior Claims/Objection/Opt-out Deadline _____, 2023 |
| Responses to Any Objections Due | No later than 14 days prior to the Final Approval Hearing _____, 2023 |
| Final Approval Hearing | No earlier than 30 days after the Claims/Objection/Opt-out Deadline _____, 2023 |

24. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class Members.

25. Pending further orders by this Court, all proceedings in this Action— other than proceedings pursuant to this Order — shall be stayed and all members of the Settlement Class who

do not request exclusion from the Settlement Class in the manner required by this Order shall be enjoined from commencing or prosecuting any action, suit, proceeding, claim, or cause of action (except those based on or relating to personal injury or wrongful death), in any jurisdiction or court against Defendant relating to or arising out of the subject matter of this action.

26. If the proposed Settlement is finally approved, the Court shall enter a separate order finally approving the Settlement, entering judgment and dismissing the Complaint. Such order and judgment shall be fully binding with respect to all members of the Settlement Class.

27. In the event that the proposed Settlement is not approved by the Court, or in the event that the Settlement becomes null and void pursuant to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this civil action or in any other case or controversy; in such event the Settlement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement.

IT IS SO ORDERED.

Dated: _____, 2023

The Hon. Donald R. Alvarez

EXHIBIT F

**IF YOU PURCHASED MUELLER
BRANDED PRODUCTS YOU COULD
GET CASH OR A VOUCHER FROM
A PROPOSED CLASS ACTION
SETTLEMENT**

The Court has tentatively approved a proposed settlement in *Stacy Dorcas v. Aterian, Inc., Case No. CIVSB2222117*, a class action that challenges the marketing and sale of Mueller Branded Products. While Defendant denies all wrongdoings, the parties have agreed to settle the claims. If you purchased a Mueller Branded Products between December 9, 2018 and _____, 2023, you may be entitled to a cash award of up to \$15.00. or a voucher worth up to \$30.00.

The deadline to submit a claim form for is _____, 2023.

You may exclude yourself from the settlement. A judgment, whether favorable or not, will bind all those who do not request exclusion. To exclude yourself, you must mail a letter to _____ by _____, 2023.

A hearing to consider the fairness of the settlement will be held on _____, 2023, at ____:____ a.m. To object to the settlement, you must mail a letter to _____ and file your objection with the Court. The deadline to object is _____. You may enter an appearance through counsel.

This notice is only a summary. For more information, please visit www._____.com or call 1-(XXX)-YYY-ZZZ. **Please do not contact the Court for information.**

EXHIBIT G

| SKU | Description | ASIN |
|------------|--|-------------|
| MLR010024N | Mueller 4 Blade Onion Chopper | B07SVBY6BH |
| MLR010015N | Mueller Julienne Vegetable Peeler | B07PWG9BBX |
| MLR010017N | Mueller Conical Burr Grinder | B0833F31MS |
| MLR010006N | Mueller Deluxe Knife Set Acrylic Stand | B08BBD95WG |
| MLR010555N | Mueller Electric Coffee Grinder (Black) | B08WC8TYXL |
| MLR010556N | Mueller Electric Coffee Grinder (Gray) | B08WC6RHHQ7 |
| MLR010554N | Mueller Electric Coffee Grinder (Red) | B08WC371TP |
| MLR010018N | Mueller Electric Hand Mixer | B08B2ZWLT6 |
| MLR010008N | Mueller French Press | B07JGBK6XV |
| MLR010001N | Mueller Hand Blender | B075X1KPLZ |
| MLR010553N | Mueller Hand Mixer (Black) | B08WC7DR9B |
| MLR010551N | Mueller Hand Mixer (Red) | B08WD13RG3 |
| MLR010552N | Mueller Hand Mixer (White) | B08WCJF86Q |
| MLR010014N | Mueller Handheld Vegetable V-Slicer | B0854R2NDM |
| MLR010019N | Mueller HyperGrind Electric Spice/Coffee | B076FJ92M4 |
| MLR010011N | Mueller 5L Salad Spinner - Large | B07GH6GTH4 |
| MLR010010N | Mueller Mandoline Slicer | B01CT63964 |
| MLR010012N | Mueller Mandoline Zester Pro | B09S185RJQ |
| MLR010020N | Mueller Premium 1500W Electric Kettle | B07TZ5YHJN |
| MLR010004N | Mueller Single Serve Coffee Maker | B08CY7BQG6 |
| MLR010022N | Mueller Single Serve Coffee Maker | B07PYPX7M9 |
| MLR010005N | Mueller Stainless Steel Knife Set With Block | B08BBNCYN2 |
| MLR010002N | Mueller Steam Iron | B082XJTJBS |
| MLR010009N | Mueller Stove Top Whistling Tea Kettle | B07MNXLLZW |
| MLR010007N | Mueller Toaster Oven 4 Slice | B078SD1JT8 |
| MLR010016N | Mueller Ultra 12-Cup Coffee Maker | B0833FGJJN |
| MLR010013N | Mueller Ultra Chef Chopper | B07NMV8TB1 |
| MLR010021N | Mueller Ultra Juicer | B07D3C6NVL |
| MLR010023N | Mueller UltraPot 6Q Pressure Cooker | B07Q5BZFLB |
| MLR010003N | Mueller Vacuum Sealer Machine | B07J2SR7YT |
| MU010138 | Mueller Manual Citrus Press (Black) | B08R99XD8X |
| MU010139 | Mueller Manual Citrus Press (Gray) | B08R993YJK |
| MU010140 | Mueller Manual Citrus Press (White) | B08R9BJWF7 |
| MU010268 | Mueller Meat Cleaver With Leather Sheath, 7-inch | B0B4PYC1LQ |
| MU010200 | Mueller 12-Cup Drip Coffee Maker | B08TYTBX8X |
| MU010021 | Mueller 2-Blade Chopper | B01HC7BNJA |
| MU010057 | Mueller 7-inch Cleaver Knife with Pakkawood Handle | B08BX7136Z |
| MU010332 | Mueller Airtight Food Storage Containers, 12-Piece Set (Blue) | B09FYHR4J5 |
| MU010333 | Mueller Airtight Food Storage Containers, 12-Piece Set (White) | B09FYGKQRB |
| MU010287 | Mueller Airtight Food Storage Containers, 14-Piece Set (Blue) | B0B8FT5FMK |
| MU010325 | Mueller Airtight Food Storage Containers, 14-Piece Set (Gray) | B09FYMM8Q4 |
| MU010335 | Mueller Airtight Food Storage Containers, 14-Piece Set (White) | B09FP2HLKL |
| MU010336 | Mueller Airtight Food Storage Containers, 24-Piece Set (Blue) | B09FNSSM7P |
| MU010326 | Mueller Airtight Food Storage Containers, 24-Piece Set (Dark Gray) | B09FYKFXXM |
| MU010337 | Mueller Airtight Food Storage Containers, 24-Piece Set (White) | B09FP72KJ5 |
| | Mueller Anti-Fatigue Compression Mat - Large (Beige) | |
| | Mueller Anti-Fatigue Compression Mat - Large (Black) | |
| | Mueller Anti-Fatigue Compression Mat - Large (Brown) | |
| | Mueller Anti-Fatigue Compression Mat - Medium (Beige) | |
| | Mueller Anti-Fatigue Compression Mat - Medium (Black) | |
| | Mueller Anti-Fatigue Compression Mat - Medium (Brown) | |
| | Mueller Anti-Fatigue Compression Mat - Small (Beige) | |
| | Mueller Anti-Fatigue Compression Mat - Small (Black) | |
| | Mueller Anti-Fatigue Compression Mat - Small (Brown) | |

| | | |
|------------|---|------------|
| MU010201 | Mueller Avocado Slicer and Pitter | B0B8LBQ79K |
| CG010002 | Mueller Basketball Arcade | B0BGK3W1W7 |
| MU010274 | Mueller Cast Iron Skillet - 10 inch | B0B4PYW5R7 |
| MU010273 | Mueller Cast Iron Skillet - 12 inch | B0B4PX747K |
| MU010050 | Mueller Chef Knife | B08B7WK4VW |
| MU010076 | Mueller Citrus Squeezer (Beige) | B08M9PQCM3 |
| MU010078 | Mueller Citrus Squeezer (Gray) | B08M9HG2NG |
| MU010077 | Mueller Citrus Squeezer (Mocha) | B08M8KCTYB |
| MU010079 | Mueller Citrus Squeezer (Orange) | B08M8YJ5Z6 |
| MU010035 | Mueller Citrus Zester and Cheese Grater Set | B07NMTWX8T |
| MU010080 | Mueller Colander (Beige) | B08MBBYKSV |
| MU010082 | Mueller Colander (Gray) | B08MBFK1TG |
| MU010081 | Mueller Colander (Mocha) | B08MBFDWYR |
| MU010162 | Mueller ConvectionToaster Oven, 8-Slice | B08TVZQSLK |
| MU010344 | Mueller Corded Hair Clipper and Trimmer Kit | B09H3N9RR5 |
| MU010362 | Mueller Cordless Leaf Blower, 20V | B09R74FC6Y |
| B09BBNY8H7 | Mueller Digital Themometer (Gray) | B08WNPSB81 |
| MU010161 | Mueller Digital Themometer (Red) | B08WNBYPK5 |
| MU010182 | Mueller Dish Drying Rack With Utensil Holder - Small (Beige/Red) | B08ZJW4WZX |
| MU010183 | Mueller Dish Drying Rack With Utensil Holder - Small (Gray/Gray) | B08ZJTGf8V |
| MU010180 | Mueller Dish Drying Rack With Utensil Holder - Small (Gray/Green) | B08ZJVDHHX |
| MU010181 | Mueller Dish Drying Rack With Utensil Holder - Small (Mocha/Beige) | B08ZJWH4N4 |
| MU010184 | Mueller Dish Drying Rack With Utensil Holder - Small (White /Turquoise) | B08ZJXDH5T |
| MU010349 | Mueller Dish Rack - Large (Beige/Red) | B09NB1GJ46 |
| MU010347 | Mueller Dish Rack - Large (Dark Gray/Green) | B09NB3229D |
| MU010348 | Mueller Dish Rack - Large (Light Gray/Gark Gray) | B09N9ZQWRW |
| MU010345 | Mueller Dish Rack - Large (Mocha/Beige) | B09NB3HJ33 |
| MU010346 | Mueller Dish Rack - Large (White/Turquoise) | B09NB1TZTZ |
| MU010266 | Mueller Dish Rack - Medium (Beige/Red) | B09NB21BJ3 |
| MU010311 | Mueller Dish Rack - Medium (Gray/Gray) | B09NB3FGY2 |
| MU010312 | Mueller Dish Rack - Medium (Gray/Green) | B09NB1VLNK |
| MU010313 | Mueller Dish Rack - Medium (Mocha/Beige) | B09NB2XNWL |
| MU010322 | Mueller Dish Rack - Medium (White/Turquoise) | B09NB1NCZ5 |
| MH010052 | Mueller Double Waffle Maker, 1200W | B09VRG6K5R |
| MU010272 | Mueller Durablend 10-SPEED Blender | B0B94R1KKY |
| MU010132 | Mueller Ear Forehead Thermometer (White) | B08Q76G3TX |
| MU010236 | Mueller Electric Indoor Grill, 14-inch | B0B9PZNR27 |
| MU010054 | Mueller Electric Knife Sharpener | B08BFCV94W |
| MU010029 | Mueller Electric Toothbrush | B07BSPKDSB |
| MU010364 | Mueller Expandable Garden Hose, 50-foot | B09V3J242G |
| MU010148 | Mueller Flatware Organizer - Large (Beige/Red) | B08SHZT3Z9 |
| MU010149 | Mueller Flatware Organizer - Large (Green/Dark Gray) | B08SJ85QJ8 |
| MU010150 | Mueller Flatware Organizer - Large (Light/Dark Gray) | B08SHT6PH7 |
| MU010151 | Mueller Flatware Organizer - Large (Mocha/Beige) | B08SHXH2L8 |
| MU010153 | Mueller Flatware Organizer - Medium (Mocha) | B08SVFGR7D |
| MU010152 | Mueller Flatware Organizer - Medium (Beige) | B08SHW6CTL |
| MU010154 | Mueller Flatware Organizer - Medium (Dark Gray) | B08SHYZNCV |
| MU010155 | Mueller Flatware Organizer - Medium (Light Gray) | B08STRM47N |
| MU010156 | Mueller Flatware Organizer - Small (Beige) | B08SV33QX5 |
| MU010159 | Mueller Flatware Organizer - Small (Light Gray) | B08SV6MF7S |
| MU010157 | Mueller Flatware Organizer Small - (Mocha) | B08SVTLCFR |
| MU010301 | Mueller Flatware Set, 20-Piece Stainless Steel Silverware | B0B8L8PXLV |
| MU010302 | Mueller Flatware Set, 20-Piece Stainless Steel Silverware (Black) | |
| MU010324 | Mueller Food Storage Containers, 12-Piece Set (Dark Gray) | B09FYL52D9 |
| MU010330 | Mueller Food Storage Containers, 4-Piece Set (Blue) | B09FYH62P5 |

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| MU010323 | Mueller Food Storage Containers, 4-Piece Set (Dark Gray) | B09FYJNDM6 |
| MU010331 | Mueller Food Storage Containers, 4-Piece Set (White) | B09FYFCMMS |
| MU010084 | Mueller Fruit Basket (Black) | B08MNSQM2C |
| MU010357 | Mueller Fruit Basket (Copper) | B09TWT8DNJ |
| MU010358 | Mueller Fruit Basket (Gold) | B09TWWFDQF |
| MU010083 | Mueller Fruit Basket (Gray) | B08MNV1TF2 |
| MU010087 | Mueller Fruit Basket (Green) | B08MTBVBQQ |
| MU010085 | Mueller Fruit Basket (Red) | B08MSXL5XN |
| MU010086 | Mueller Fruit Basket (White) | B08MT7CP3R |
| MU010060 | Mueller Glass French Press | B08GRQVN51 |
| MU010215 | Mueller HealthyStone Fry Pan 10-inch (Black) | B08SBHF9XF |
| MU010216 | Mueller HealthyStone Fry Pan 10-inch (Gray) | B08SBMPP1Y |
| MU010217 | Mueller HealthyStone Fry Pan 12-inch (Black) | B08SBXGQG1 |
| MU010218 | Mueller HealthyStone Fry Pan 12-inch (Gray) | B08SBJJXQ8 |
| MU010212 | Mueller HealthyStone Fry Pan 8-inch (Black) | B08SBHGR1Q |
| MU010224 | Mueller HealthyStone Fry Pan 8-inch (Gray) | B0958KKCBW |
| MU010001 | Mueller Hydro Press Coffee Maker | B075MQZ88P |
| MU010360 | Mueller Indoor Grill and Griddle Combo | B09P5P2P3C |
| MU010137 | Mueller Induction Cooktop | B08QMP7VD3 |
| MU010262 | Mueller Kitchen Utensil Holder, Heavy Duty Flatware Drying Basket (Beige) | B0B41CXK7Q |
| MU010261 | Mueller Kitchen Utensil Holder, Heavy Duty Flatware Drying Basket (Gray) | B0B4128ZDG |
| MU010296 | Mueller Kitchen Utensil Holder, Heavy Duty Flatware Drying Basket (White) | B0B4196T2P |
| MU010283 | Mueller Lunch Bag (Camo White) | B09BBGN76L |
| MU010282 | Mueller Lunch Bag (Camo) | B09B91MXCR |
| MU010285 | Mueller Lunch Bag (Circular Design) | B09BBC3S4N |
| MU010284 | Mueller Lunch Bag (Gray) | B09BBHXJHC |
| MU010072 | Mueller Makeup Organizer (Pink) | B08LHL4HG7 |
| MU010073 | Mueller Makeup Organizer (White) | B08LJQ2NWW |
| MU010055 | Mueller Manual Knife Sharpener | B08BFJ8WYY |
| MU010196 | Mueller Microwave Popcorn Maker (Black) | B0B459M2TQ |
| MU010197 | Mueller Microwave Popcorn Maker (Red) | B0B45HF71W |
| MU010198 | Mueller Microwave Popcorn Maker (Yellow) | B0B459LTVV |
| MH010055 | Mueller Mini-Heart Waffle Maker | B09WJLZWGD |
| MU010148 | Mueller Mixing Bowl Set, 3-Piece (Beige) | B08RMKJH4Q |
| MU010145 | Mueller Mixing Bowl Set, 3-Piece (Gray) | B08RMTMVP1 |
| MU010146 | Mueller Mixing Bowl Set, 3-Piece (Mocha) | B08RN2W1K2 |
| MU010147 | Mueller Mixing Bowl Set, 3-Piece (Red) | B08RMNWZ1X |
| MU010071 | Mueller Mixing Bowls, 4-Piece Set | B08LG7D358 |
| MU010135 | Mueller Non-Contact Thermometer (Gray) | B08QRBF8YD |
| MU010134 | Mueller Non-Contact Thermometer (White) | B08QRHN3T2 |
| MU010340 | Mueller Nylon Kitchen Turner (Black) | B0B6GPH9RN |
| MU010329 | Mueller Nylon Kitchen Turner (Gray) | B0B6GQBSFC |
| MU010174 | Mueller Plant and Flower Pot, 2-Piece Set (Peach Pink) | B08ZHLJLBH |
| MU010173 | Mueller Plant and Flower Pot, 2-Piece Set (White) | B08ZH6H4DS |
| MU010172 | Mueller Plant and Flower Pot, 2-Piece Set (Beige) | B08ZHB85JD |
| MU010171 | Mueller Plant and Flower Pot, 2-Piece Set (Mocha) | B08ZHLYN16 |
| MU010226 | Mueller Plant and Flower Pot, 4-Piece Set (Beige) | B0959VV49V |
| MU010228 | Mueller Plant and Flower Pot, 4-Piece Set (Gray) | B095BC18XZ |
| MU010227 | Mueller Plant and Flower Pot, 4-Piece Set (Mocha) | B095BLPQGH |
| MU010178 | Mueller Plant and Flower Pot, 5-Piece Set (Beige) | B08ZHRHVDD |
| MU010176 | Mueller Plant and Flower Pot, 5-Piece Set (Dark Gray) | B08ZHJDQZJ |
| MU010177 | Mueller Plant and Flower Pot, 5-Piece Set (Mocha) | B08ZHJWKPF |
| MU010179 | Mueller Plant and Flower Pot, 5-Piece Set (White) | B08ZHT7GCR |
| MU010168 | Mueller Plant and Flower Pot, 6-Piece Set (Beige) | B08ZHF48WV |
| MU010166 | Mueller Plant and Flower Pot, 6-Piece Set (Dark Gray) | B08ZGPV3GB |

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| MU010167 | Mueller Plant and Flower Pot, 6-Piece Set (Mocha) | B08ZHL4PF6 |
| MU010165 | Mueller Plant and Flower Pot, 6-Piece Set (Multi-Color) | B08ZGZC6B2 |
| MU010169 | Mueller Plant and Flower Pot, 6-Piece Set (White) | B08ZHNJQLC |
| MU010175 | Mueller Plant and Flower Pot, 2-Piece Set (Mint Green) | B08ZHV57F9 |
| MU010170 | Mueller Plant Flower Pot, 2-Piece Set (Dark Gray) | B08ZHT7ZV8 |
| MU010270 | Mueller Plastic Storage Bins (Beige) | B0B8QYLLMV |
| MU010279 | Mueller Plastic Storage Bins (Blush Rose) | B0B8Q161FY |
| MU010280 | Mueller Plastic Storage Bins (Dark Gray) | B0B8QR66G1 |
| MU010255 | Mueller Portable Charcoal Grill and Smoker | B09XSCHGNM |
| MU010130 | Mueller Pots and Pans Set 11-Piece | B08PQ4PSS3 |
| MU010125 | Mueller Pots and Pans Set, 14-Piece Copper Non-Stick Coating | B08PHW452F |
| MU010127 | Mueller Pots and Pans Set, 16-Piece Healthy Stone Cookware (Gray) | B08PHP9KVG |
| MU010297 | Mueller Pots and Pans Set, 24-Piece (Sapphire) | |
| MU010214 | Mueller Pots and Pans Set, 16-Piece Healthy Stone Cookware Set (Turquoise) | B08TDZMW91 |
| MU010037 | Mueller Premium Apple Corer | B07PWJ3FVK |
| MU010269 | Mueller Pro Hair Trimmer | B097Z36JPV |
| MU010124 | Mueller Professional Series Kitchen Sink Faucet | B08PDVCNKT |
| MU010220 | Mueller Quick Brew Coffee & Tea | B0945R9ZXL |
| MU010295 | Mueller Reusbale Swedish Dishcloth (Blue) | B09BBRB6JG |
| MU010260 | Mueller Reusbale Swedish Dishcloth (Multi-Color) | B09BBNJ491 |
| MU010294 | Mueller Reusbale Swedish Dishcloth (Orange) | B09BBNY8H7 |
| MU010293 | Mueller Reusbale Swedish Dishcloth (Yellow) | B09B8W8XM2 |
| MU010088 | Mueller Reversible Serving Tray (Beige) | B08MVCG1P9 |
| MU010089 | Mueller Reversible Serving Tray (Gray) | B08MVCWJFG |
| MU010090 | Mueller Reversible Serving Tray (Mocca) | B08MVF2CZ5 |
| MU010040 | Mueller Rolling Chopper | B07YF6N3H1 |
| MU010041 | Mueller Rolling Chopper - Large | B07YF692Q1 |
| MU010065 | Mueller Salad Container (Blue) | B08KSKJ681 |
| MU010063 | Mueller Salad Container (Gray) | B08KSMH4SG |
| MU010062 | Mueller Salad Container (Green) | B08KSJKBPV |
| MU010064 | Mueller Salad Container (Pink) | B08KSJRKP4 |
| MU010059 | Mueller Salad Spinner | B08GD347VH |
| MU010299 | Mueller Sewing Machine (Gray) | B08TCH41D1 |
| MU010300 | Mueller Sewing Machine (White) | B08TCHH8F2 |
| MU010123 | Mueller Single Handle Stainless Steel Kitchen Sink Faucet | B08PDX3RYS |
| MU010163 | Mueller Single-Hole Bathroom Sink Faucet With Drain Assembly | B08VC64745 |
| MU010339 | Mueller Single-Hole Bathroom Sink Faucet With Drain Assembly (Black) | B09CFMHY9Y |
| MU010075 | Mueller Smart Bidet Toilet | B08LMFJS45 |
| MU010190 | Mueller Soft Grip Garden Pruning Shears | B0915F9NGB |
| MU010052 | Mueller Stainless Steel Deba Knife, 6-inch | B08GDHXZXC |
| MU010303 | Mueller Stainless Steel Faltware Set, 20-Piece (Black) | |
| MU010306 | Mueller Step Stool - Small (Dark Gray) | B0B4KVB2BX |
| MU010307 | Mueller Step Stool - Small (Gray) | B0B4LNKK95 |
| MU010308 | Mueller Step Stool - Small (Purple) | B0B4KSMQJQ |
| MU010309 | Mueller Step Stool - Small (White) | B0B4KS14HP |
| MU010143 | Mueller SuperGrind Burr Coffee Grinder | B08RLJNBKK |
| MU010131 | Mueller Two-Speed Pull Vegetable Chopper | B08Q39VDX5 |
| MU010363 | Mueller Ultra Glide Swivel Peeler | |
| MU010341 | Mueller Ultra Prep Food Processor, 8-Cup (Silver) | B0B3ZW23SZ |
| MU010069 | Mueller UltraBlade Pro Trimmer | B07YYNFSM9 |
| MU010245 | Mueller Ultra-Carver Electric Knife (Gray) | B08TTNRD53 |
| MU010244 | Mueller Ultra-Carver Electric Knife (White) | B08TT76PBF |
| MHMU010343 | Mueller Ultra-Groom Cordless Clippers Kit | B0BG17BMDR |
| MU010185 | Mueller UltraPrecise Garden Snips With Safety Lock | B08ZWT64LP |
| MU010310 | Mueller Ultra-Prep Food Processor | B08VC1LZ56 |

EXHIBIT 2



Faruqi & Faruqi, LLP focuses on complex civil litigation, including securities, antitrust, wage and hour, consumer, and pharmaceutical class actions as well as shareholder derivative and merger and transactional litigation. The firm is headquartered in New York, and maintains offices in California, Pennsylvania and Georgia.

Since its founding in 1995, Faruqi & Faruqi, LLP has served as lead or co-lead counsel in numerous high-profile cases which have provided significant recoveries to investors, consumers and employees.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

From its inception, Faruqi & Faruqi, LLP has devoted a substantial portion of its practice to class action securities fraud litigation. In *In re PurchasePro.com, Inc. Securities Litigation*, No. CV-S-01-0483 (JLQ) (D. Nev.), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a \$24.2 million settlement in a securities fraud litigation even though the corporate defendant was in bankruptcy. As noted by Senior Judge Justin L. Quackenbush in approving the settlement, ***“I feel that counsel for plaintiffs evidenced that they were and are skilled in the field of securities litigation.”***

Other past achievements include: *In re Olsten Corp. Sec. Litig.*, No. 97-CV-5056 (RDH) (E.D.N.Y.) (recovered \$24.1 million dollars for class members) (Judge Hurley stated: “The quality of representation here I think has been excellent.”), *In re Tellium, Inc. Sec. Litig.*, No. 02-CV-5878 (FLW) (D.N.J.) (recovered \$5.5 million dollars for class members); *In re Mitcham Indus., Inc. Sec. Litig.*, No. H-98-1244 (S.D. Tex.) (recovered \$3 million dollars for class members despite the fact that corporate defendant was on the verge of declaring bankruptcy), and *Ruskin v. TIG Holdings, Inc.*, No. 98 Civ. 1068 LLS (S.D.N.Y.) (recovered \$3 million dollars for class members).

Recently, Faruqi & Faruqi, LLP, as sole lead counsel, won a historic appeal in the United States Court of Appeals for the Fourth Circuit in *Zak v. Chelsea Therapeutics Inc. Int’l, Ltd.*, Civ. No. 13-2730 (2015), where the Court reversed a trial court’s *scienter* ruling for the first time since the enactment of the Private Securities Litigation Reform Act of 1995 (“PSLRA”). The Court remanded the case to the district court, where Faruqi & Faruqi, LLP defeated defendants’ motion to dismiss and subsequently obtained final approval of a \$5.5 million settlement for the class. *McIntyre v. Chelsea Therapeutics Int’l, LTD*, No. 12-CV-213 (MOC) (DCK) (W.D.N.C.). In *In re Avalanche Biotechnologies Sec. Litig.*, No. 3:15-cv-03185-JD (N.D. Cal.), Faruqi & Faruqi, LLP served as sole lead counsel for the class in the federal court action, and, together with counsel in the parallel state court action, secured final approval of a \$13 million global settlement of both actions on January 19, 2018. In *Larkin v. GoPro, Inc.*, No. 4:16-CV-06654-CW (N.D.



Cal.), the court denied defendants' motion to dismiss, and on September 20, 2019, Faruqi & Faruqi, LLP, as sole lead counsel, secured final approval of a \$6.75 million settlement for the class. In *Rihn v. Acadia Pharmaceuticals, Inc.*, No. 3:15-cv-00575-BTM-DHB (S.D. Cal.), the court denied defendants' first motion to dismiss, and on January 8, 2018, Faruqi & Faruqi, LLP, as sole lead counsel for the class, secured final approval of a \$2.95 million settlement for the class, which represented approximately 36% of the total recognized losses claimed by the class. In *In re Geron Corp., Sec. Litig.*, No. 14-CV-1424 (CRB) (N.D. Cal.), Faruqi & Faruqi, LLP, as sole lead counsel for the class, defeated defendants' motion to dismiss and, on July 21, 2017, obtained final approval of a settlement awarding \$6.25 million to the class. Also, in *In re Dynavax Techs. Corp. Sec. Litig.*, No. 13-CV-2796 (CRB) (N.D. Cal.), Faruqi & Faruqi, LLP, as sole lead counsel for the class, defeated defendants' motion to dismiss, and on February 6, 2017, secured final approval of a \$4.5 million settlement on behalf of the class. In *In re L&L Energy, Inc. Sec. Litig.*, No. 13-cv-6704 (RA) (S.D.N.Y.), Faruqi & Faruqi, LLP, as co-lead counsel, obtained final approval on July 31, 2015 of a \$3.5 million settlement for the class. In *In re Ebix, Inc. Securities Litigation*, No. 11-cv-2400 (RWS) (N.D. Ga.), the court denied defendants' motion to dismiss and Faruqi & Faruqi, LLP, as sole lead counsel, obtained final approval on June 13, 2014 of a \$6.5 million settlement for the class. In *Shapiro v. Matrixx Initiatives, Inc.*, No. CV-09-1479 (PHX) (ROS) (D. Ariz.), Faruqi & Faruqi, LLP, as co-lead counsel for the class, defeated defendants' motion to dismiss, succeeded in having the action certified as a class action, and secured final approval of a \$4.5 million settlement for the class. See also *Lowthorp v. Mesa Air Group, Inc., et al.*, No. 2:20-cv-00648-MTL (D. Ariz.) (as sole lead counsel, obtained final approval of a \$5 million settlement on behalf of the class); *In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, No. 13 Civ. 214 (HB) (S.D.N.Y.) (as sole lead counsel, obtained final approval of a \$1.34 million settlement on behalf of the class); *Simmons v. Spencer, et al.*, No. 13 Civ. 8216 (RWS) (S.D.N.Y.) (as co-lead counsel obtained final approval of settlement awarding \$1.5 million to the class); *In re: Revolution Lighting Technologies, Inc. Securities Litigation*, No. 1:19-cv-00980-JPO (S.D.N.Y.) (where, as sole lead counsel, the firm obtained final approval of \$2,083,333.33 settlement); *Sterrett v. Sonim Techs., Inc.*, No. 3:19-cv-06416-MMC (N.D. Cal.) (where, as sole lead counsel, the firm obtained final approval of \$2 million settlement); *Rudani v. Ideanomics, Inc.*, No. 1:19-cv-06741-GBD (S.D.N.Y.) (where, as sole lead counsel, the firm obtained final approval of \$5 million settlement); *In re CV Scis., Inc. Sec. Litig.*, No. 2:18-cv-01602-JAD-BNM (D. Nev.) (where, as sole lead counsel, the firm obtained final approval of \$712,500 settlement).

Additionally, Faruqi & Faruqi, LLP is serving as court-appointed lead counsel in the following cases:



- *In re Tahoe Res., Inc. Sec. Litig.*, No. 2:17-cv-01868 (RFB) (NJK) (D. Nev.) (appointed sole lead counsel for the class);
- *In re Allergan PLC Securities Litigation*, No. 18 Civ. 12089 (CM) (GWG) (S.D.N.Y.) (appointed as sole lead counsel for the class);
- *Halman Aldubi Provident and Pension Funds Ltd. v. Teva Pharmaceuticals Industries Ltd.*, No. 20-4660-KSM (E.D. Pa.) (appointed as sole lead counsel for the class);
- *In Re Peloton Interactive, Inc. Securities Litigation*, No. 1:21-cv-02369-CBA-PK (S.D.N.Y.) (appointed as sole lead counsel for the class);
- *Aramic LLC v. Revance Therapeutics, Inc.*, No. 5:21-cv-09585-EJD (N.D. Cal.) (appointed as sole lead counsel for the class);
- *In re: Lumen Technologies, Inc. Securities Litigation*, No. 3:12-cv-00286-TAD-KDM (W.D. La.) (appointed as co-lead counsel for the class);
- *Murphy v. Argo Blockchain plc*, No. 1:23-cv-00572-NRM-SJB (E.D.N.Y.) (appointed as sole lead counsel for the class);
- *Kain v. Ampio Pharmaceuticals, Inc.*, No. 1:22-cv-02105-WJM-MEH (D. Colo.) (appointed as sole lead counsel for the class);
- *Johnson v. Luminar Technologies, Inc.*, No. 6:23-cv-982-PGB-LHP (M.D. Fla.) (appointed as sole lead counsel for the class); and
- *Lim v. Hightower*, No. 4:23-cv-01454-BYP (N.D. Ohio) (appointed sole lead counsel for the class).

SHAREHOLDER MERGER AND TRANSACTIONAL LITIGATION

Faruqi & Faruqi, LLP is nationally recognized for its excellence in prosecuting shareholder class actions brought nationwide against officers, directors and other parties responsible for corporate wrongdoing. Most of these cases are based upon state statutory or common law principles involving fiduciary duties owed to investors by corporate insiders as well as Exchange Act violations.

Faruqi & Faruqi, LLP has obtained significant monetary and therapeutic recoveries, including millions of dollars in increased merger consideration for public shareholders; additional disclosure of significant material information so that shareholders can intelligently gauge the fairness of the terms of proposed transactions and other types of therapeutic relief designed to increase competitive bids and protect shareholder value. As noted by Judge Timothy S. Black of the United States District Court for the Southern District of Ohio in appointing lead counsel *Nichting v. DPL Inc.*, Case No. 3:11-cv-141 (S.D. Ohio), "[a]lthough all of the firms seeking appointment as Lead Counsel have impressive resumes, the Court is most impressed with Faruqi & Faruqi."

For example, in *Hall v. Berry Petroleum Co.*, No. 8476-VCG (Del. Ch.), Faruqi & Faruqi, LLP as sole lead counsel was credited by the Delaware Chancery Court with contributing to an increase in exchange ratio in an all-stock transaction that provided Berry Petroleum Co. stockholders with an additional \$600 million in consideration for their shares as well as the disclosure of additional material information regarding the transaction. The court noted at the settlement hearing "[t]he ability of petitioning counsel



[Faruqi] is known to the Court, and plaintiff's counsel [Faruqi] are well versed in the prosecution of corporate law actions." Faruqi & Faruqi, LLP achieved a similar result in *In Re Energysolutions, Inc. Shareholder Litigation*, Cons. C.A. No. 8203-VCG (Del. Ch.), in which the Faruqi Firm, as co-lead counsel, was credited in part with an increase in the merger consideration from \$3.75 to \$4.15 in cash per Energysolution share by the acquirer Energy Capital, and credited with additional material disclosures distributed to stockholders. In approving the settlement of the case and noting that the price increase amounted to an extra \$36 million for stockholders, the Delaware Court stated that the standing and ability of the stockholders' counsel, including Faruqi & Faruqi, LLP and its co-counsel, is "...among the highest in our bar." See *In Re Energysolutions, Inc. S'holder Litig.*, Cons. C.A. No. 8203-VCG (Del. Ch. Feb. 11, 2014). In *In Re Jefferies Group, Inc. Shareholders Litigation*, C.A. No. 8059-CB (Del. Ch.), Faruqi & Faruqi, LLP acted as co-lead counsel representing Jefferies Group, Inc. stockholders in challenging the transaction with Leucadia National Corporation. After years of vigorous litigation, the parties reached a settlement that recovered \$70 million additional consideration for the former Jefferies Group Inc. stockholders.

In *In re Playboy Enterprises, Inc. Shareholders Litigation*, Consol. C.A. No. 5632-VCN (Del. Ch.), Faruqi & Faruqi, LLP achieved a substantial post close settlement of \$5.25 million. In *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.) Faruqi & Faruqi, LLP, as co-lead counsel, obtained a post-close cash settlement of \$1.9 million after two years of hotly contested litigation; In *Rice v. Lafarge North America, Inc., et al.*, No. 268974-V (Montgomery Cty., Md. Circuit Ct.), Faruqi & Faruqi, LLP, as co-lead counsel represented the public shareholders of Lafarge North America ("LNA") in challenging the buyout of LNA by its French parent, Lafarge S.A., at \$75.00 per share. After discovery and intensive injunction motions practice, the price per share was increased from \$75.00 to \$85.50 per share, or a total benefit to the public shareholders of \$388 million. The Lafarge court gave Class counsel, including Faruqi & Faruqi, LLP, shared credit with a special committee appointed by the company's board of directors for a significant portion of the price increase.

Similarly, in *In re: Hearst-Argyle Shareholder Litig.*, Lead Case No. 09-Civ-600926 (N.Y. Sup. Ct.) as co-lead counsel for plaintiffs, Faruqi & Faruqi, LLP litigated, in coordination with Hearst-Argyle's special committee, an increase of over 12.5%, or \$8,740,648, from the initial transaction value offered for Hearst-Argyle Television Inc.'s stock by its parent company, Hearst Corporation. Faruqi & Faruqi, LLP, in *In re Alfa Corp. Shareholder Litig.*, Case No. 03-CV-2007-900485.00 (Montgomery Cty, Ala. Cir. Ct.) was instrumental, along with the Company's special committee, in securing an increased share price for Alfa Corporation shareholders of \$22.00 from the originally-proposed \$17.60 per share offer, which represented over a \$160 million benefit to class members, and obtained additional proxy disclosures to ensure that Alfa



shareholders were fully-informed before making their decision to vote in favor of the merger, or seek appraisal.

Moreover, in *In re Fox Entertainment Group, Inc. S'holders Litig.*, Consolidated C.A. No. 1033-N (Del. Ch. 2005), Faruqi & Faruqi, LLP, a member of the three (3) firm executive committee, and in coordination with Fox Entertainment Group's special committee, created an increased offer price from the original proposal to shareholders, which represented an increased benefit to Fox Entertainment Group, Inc. shareholders of \$450 million. Also, in *In re Howmet Int'l S'holder Litig.*, Consolidated C.A. No. 17575 (Del. Ch. 1999) Faruqi & Faruqi, LLP, in coordination with Howmet's special committee, successfully obtained an increased benefit to class members of \$61.5 million dollars).

Recently, in *In re Orchard Enterprises, Inc. Stockholder Litigation*, C.A. No. 7840-VCL (Del. Ch.), Faruqi & Faruqi, LLP acted as co-lead counsel with two other firms. That action involved the approval of a merger by Orchard's Board of Directors pursuant to which Dimensional Associates LLC would cash-out the stock of Orchard's minority common stockholders at a price of \$2.05 per share and then take Orchard private. On April 11, 2014, the parties reached an agreement to settle their claims for a payment of \$10.725 million to be distributed among the Class, which considerably exceeded the \$2.62 per share difference between the \$2.05 buyout price and the \$4.67 appraisal price determined in *In re Appraisal of The Orchard Enterprises, Inc.*, C.A. No. 5713-CS, 2012 WL 2923305 (Del. Ch. July 18, 2012).

Faruqi also has noteworthy successes in achieving injunctive or declaratory relief pre and post close in cases where corporate wrongdoing deprives shareholders of material information or an opportunity to share in potential profits. In *In re Harleysville Group, Inc. S'holders Litigation*, C.A. No. 6907-VCP (Del. Ch. 2014), Faruqi as sole lead counsel obtained significant disclosures for stockholders pre-close and secured valuable relief post close in the form of an Anti-Flip Provision providing former stockholders with 25% of any profits in Qualifying Sale. In April 2012, Faruqi as sole lead obtained an unprecedented injunction in *Knee v. Brocade Communications Systems, Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Apr. 10, 2012) (Kleinberg, J.). In *Brocade*, Faruqi, as sole lead counsel for plaintiffs, successfully obtained an injunction enjoining Brocade's 2012 shareholder vote because certain information relating to projected executive compensation was not properly disclosed in the proxy statement. (Order After Hearing [Plaintiff's Motion for Preliminary Injunction; Motions to Seal]). In *Kajaria v. Cohen*, No. 1:10-CV-03141 (N.D. Ga., Atlanta Div.), Faruqi & Faruqi, LLP, succeeded in having the district court order Blueminx Holdings Inc., the target company in a tender offer, to issue additional material disclosures to its recommendation statement to shareholders before the expiration of the tender offer.



SHAREHOLDER DERIVATIVE LITIGATION

Faruqi & Faruqi, LLP has extensive experience litigating shareholder derivative actions on behalf of corporate entities. This litigation is often necessary when the corporation has been injured by the wrongdoing of its officers and directors. This wrongdoing can be either active, such as the wrongdoing by certain corporate officers in connection with purposeful backdating of stock-options, or passive, such as the failure to put in place proper internal controls, which leads to the violation of laws and accounting procedures. A shareholder has the right to commence a derivative action when the company's directors are unwilling or unable, to pursue claims against the wrongdoers, which is often the case when the directors themselves are the wrongdoers.

The purpose of the derivative action is threefold: (1) to make the company whole by holding those responsible for the wrongdoing accountable; (2) the establishment of procedures at the company to ensure the damaging acts can never again occur at the company; and (3) make the company more responsive to its shareholders. Improved corporate governance and shareholder responsiveness are particularly valuable because they make the company a stronger one going forward, which benefits its shareholders. For example, studies have shown the companies with poor corporate governance scores have 5-year returns that are 3.95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91 % above the industry-adjusted average. The difference in performance between these two groups is 11.86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University. Faruqi & Faruqi, LLP has achieved all three of the above stated goals of a derivative action. The firm regularly obtains significant corporate governance changes in connection with the successful resolution of derivative actions, in addition to monetary recoveries that inure directly to the benefit of the company. In each case, the company's shareholders indirectly benefit through an improved market price and market perception.

In *In re UnitedHealth Group Incorporated Derivative Litig.*, Case No. 27 CV 06-8065 (Minn. 4th Judicial Dist. 2009) Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, obtained a recovery of more than \$930 million for the benefit of the Company and corporate governance reforms designed to make UnitedHealth a model of corporate responsibility and transparency. ***At the time, the settlement reached was believed to be the largest settlement ever in a derivative case.*** See "UnitedHealth's Former Chief



to Repay \$600 Million," Bloomberg.com, December 6, 2007 ("the settlement . . . would be the largest ever in a 'derivative' suit . . . according to data compiled by Bloomberg.").

As co-lead counsel in *Weissman v. John, et al.*, Cause No. 2007-31254 (Tex. Harris County 2008) Faruqi & Faruqi, LLP, diligently litigated a shareholder derivative action on behalf of Key Energy Services, Inc. for more than three years and caused the company to adopt a multitude of corporate governance reforms which far exceeded listing and regulatory requirements. Such reforms included, among other things, the appointment of a new senior management team, the realignment of personnel, the institution of training sessions on internal control processes and activities, and the addition of 14 new accountants at the company with experience in public accounting, financial reporting, tax accounting, and SOX compliance.

More recently, Faruqi & Faruqi, LLP concluded shareholder derivative litigation in *The Booth Family Trust, et al. v. Jeffries, et al.*, Lead Case No. 05-cv-00860 (S.D. Ohio 2005) on behalf of Abercrombie & Fitch Co. Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, litigated the case for six years through an appeal in the U.S. Court of Appeals for the Sixth Circuit where it successfully obtained reversal of the district court's ruling dismissing the shareholder derivative action in April 2011. Once remanded to the district court, Faruqi & Faruqi, LLP caused the company to adopt important corporate governance reforms narrowly targeted to remedy the alleged insider trading and discriminatory employment practices that gave rise to the shareholder derivative action.

The favorable outcome obtained by Faruqi & Faruqi, LLP in *In re Forest Laboratories, Inc. Derivative Litigation*, Lead Civil Action No. 05-cv-3489 (S.D.N.Y. 2005) is another notable achievement for the firm. After more than six years of litigation, Faruqi & Faruqi, LLP, as co-lead counsel, caused the company to adopt industry-leading corporate governance measures that included rigorous monitoring mechanisms and Board-level oversight procedures to ensure the timely and complete publication of clinical drug trial results to the investing public and to deter, among other things, the unlawful off-label promotion of drugs.

ANTITRUST LITIGATION

The attorneys at Faruqi & Faruqi, LLP represent direct purchasers, competitors, third-party payors, and consumers in a variety of individual and class action antitrust cases brought under Sections 1 and 2 of the Sherman Act. These actions, which typically seek treble damages under Section 4 of the Clayton Act, have been commenced by businesses and consumers injured by anticompetitive agreements to fix prices or allocate markets, conduct that excludes or delays competition, and other monopolistic or conspiratorial conduct that harms competition.



Actions for excluded competitors. Faruqi & Faruqi represents competitors harmed by anticompetitive practices that reduce their sales, profits, and/or market share. One representative action is *Babyage.com, Inc., et al. v. Toys "R" Us, Inc., et al.* where Faruqi & Faruqi was retained to represent three internet retailers of baby products, who challenged a dominant retailer's anticompetitive scheme, in concert with their upstream suppliers, to impose and enforce resale price maintenance in violation of §§ 1 and 2 of the Sherman Act and state law. The action sought damages measured as lost sales and profits. This case was followed extensively by the Wall Street Journal. After several years of litigation, this action settled for an undisclosed amount.

Actions for direct purchasers. Faruqi & Faruqi represents direct purchasers who have paid overcharges as a result of anticompetitive practices that raise prices. These actions are typically initiated as class actions. A representative action on behalf of direct purchasers is *Rochester Drug Co-Operative, Inc. v. Warner Chilcott Public Limited Company, et al.*, No. 12-3824 (E.D. Pa.), in which Faruqi & Faruqi was appointed co-lead counsel for the proposed plaintiff class under Federal Rule of Civil Procedure 23(g). Faruqi & Faruqi's attorneys are counsel to direct purchasers (typically wholesalers) in multiple such class actions.

Actions for third-party payors. Faruqi & Faruqi represents, both in class actions and in individual actions, insurance companies who have reimbursed their policyholders at too high a rate due to anticompetitive prices that raise prices. One representative action is *In re Tricor Antitrust Litigation*, No. 05-360 (D. Del.), where Faruqi & Faruqi represented PacifiCare and other large third-party payors challenging the conduct of Abbott Laboratories and Laboratories Fournier in suppressing generic drug competition, in violation of §§ 1 and 2 of the Sherman Act. The *Tricor* litigation settled for undisclosed amount in 2010.

Results. Faruqi & Faruqi's attorneys have consistently obtained favorable results in their antitrust engagements. Non-confidential results include the following: *In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-md-2343, (E.D. Tenn.) (\$73 million settlement); *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431 (E.D. Pa.) (\$37.5 million partial settlement); *In re Iowa Ready-Mixed Concrete Antitrust Litigation*, No. C 10-4038 (N.D. Iowa) (\$18.5 million settlement); *In re Metoprolol Succinate Direct Purchaser Antitrust Litigation*, 06-52 (D. Del.) (\$20 million settlement); *In re Ready-Mixed Concrete Antitrust Litigation*, No. 05-979 (S.D. Ind.) (\$40 million settlement); *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs, Inc.*, No. 07-142-SLR (D. Del.) (\$17.25 million settlement).

A more complete list of Faruqi & Faruqi's active and resolved antitrust cases can be found on its web site at www.faruqilaw.com.



CONSUMER PROTECTION LITIGATION

Attorneys at Faruqi & Faruqi, LLP have advocated for consumers' rights, successfully challenging some of the nation's largest and most powerful corporations for a variety of improper, unfair and deceptive business practices. Through our efforts, we have recovered hundreds of millions of dollars and other significant remedial benefits for our consumer clients.

For example, in *Bates v. Kashi Co., et al.*, Case No. 11-CV-1967-H BGS (S.D. Cal. 2011), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a \$5.0 million settlement fund on behalf of California consumers who purchased Kashi products that were deceptively labeled as "nothing artificial" and "all natural." The settlement provides class members with a full refund of the purchase price in addition to requiring Kashi to modify its labeling and advertising to remove "All Natural" and "Nothing Artificial" from certain products. As noted by Judge Marilyn L. Huff in approving the settlement, "*Plaintiffs' counsel has extensive experience acting as class counsel in consumer class action cases, including cases involving false advertising claims.*" Moreover, in *Thomas v. Global Vision Products*, Case No. RG-03091195 (California Superior Ct., Alameda Cty.), Faruqi & Faruqi, LLP served as co-lead counsel in a consumer class action lawsuit against Global Vision Products, Inc., the manufacturer of the Avacor hair restoration product and its officers, directors and spokespersons, in connection with the false and misleading advertising claims regarding the Avacor product. Though the company had declared bankruptcy in 2007, Faruqi & Faruqi, LLP, along with its co-counsel, successfully prosecuted two trials to obtain relief for the class of Avacor purchasers. In January 2008, a jury in the first trial returned a verdict of almost \$37 million against two of the creators of the product. In November 2009, another jury awarded plaintiff and the class more than \$50 million in a separate trial against two other company directors and officers. This jury award represented the largest consumer class action jury award in California in 2009 (according to VerdictSearch, a legal trade publication).

Additionally, in *Rodriguez v. CitiMortgage, Inc.*, Case No. 11-cv-04718-PGG-DCF (S.D.N.Y. 2011), Faruqi & Faruqi, LLP, as co-lead class counsel, reached a significant settlement with CitiMortgage related to improper foreclosure practices of homes owned by active duty servicemembers. The settlement was recently finalized pursuant to a Final Approval Order dated October 6, 2015, which provides class members with a monetary recovery of at least \$116,785.00 per class member, plus the amount of any lost equity in the foreclosed property.

Below is a non-exhaustive list of settlements where Faruqi & Faruqi, LLP and its partners have served as lead or co-lead counsel:



- *In re Sinus Buster Products Consumer Litig.*, Case No. 1:12-cv-02429-ADS-AKT (E.D.N.Y. 2012). The firm represented a nationwide class of purchasers of assorted cold, flu and sinus products. A settlement was obtained, providing class members with a cash refund up to \$10 and requiring defendant to discontinue the marketing and sale of certain products.
- *In re: Alexia Foods, Inc. Litigation.*, Case No. 4:11-cv-06119 (N.D. Cal. 2011). The firm represented a proposed class of all persons who purchased certain frozen potato products that were deceptively advertised as “natural” or “all natural.” A settlement was obtained, providing class members with the cash refunds up to \$35.00 and requiring defendant to cease using a synthetic chemical compound in future production of the products.
- *In re: Haier Freezer Consumer Litig.*, Case No. 5:11-CV-02911-EJD (N.D. Cal. 2011). The firm represented a nationwide class of consumers who purchased certain model freezers, which were sold in violation of the federal standard for maximum energy consumption. A settlement was obtained, providing class members with cash payments of between \$50 and \$325.80.
- *Loreto v. Coast Cutlery Co.*, Case No. 11-3977 SDW-MCA (D.N.J. 2011) The firm represented a proposed nationwide class of people who purchased stainless steel knives and multi-tools that were of a lesser quality than advertised. A settlement was obtained, providing class members with a full refund of the purchase price.
- *Rossi v Procter & Gamble Company.*, Case No. 11-7238 (D.N.J. 2011). The firm represented a nationwide class of consumers who purchased deceptively marketed “Crest Sensitivity” toothpaste. A settlement was obtained, providing class members with a full refund of the purchase price.
- *In re: Michaels Stores Pin Pad Litig.*, Case No. 1:11-CV-03350 CPK (N.D. Ill. 2011). The firm represented a nationwide class of persons against Michaels Stores, Inc. for failing to secure and safeguard customers’ personal financial data. A settlement was obtained, which provided class members with monetary recovery for unreimbursed out-of-pocket losses incurred in connection with the data breach, as well as up to four years of credit monitoring services.
- *Kelly, v. Phiten*, Case No. 4:11-cv-00067 JEG (S.D. Iowa 2011). The firm represented a proposed nationwide class of consumers who purchased Defendant Phiten USA’s jewelry and other products, which were falsely promoted to balance a user’s energy flow. A settlement was obtained, providing class members with up to 300% of the cost of the product and substantial injunctive relief requiring Phiten to modify its advertising claims.
- *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal. 2006). The firm represented a proposed nationwide class of consumers who purchased defective laptops manufactured by defendant. A settlement was obtained, which provided full relief to class members, including among other benefits a cash payment up to \$650.00 per class member, or in the alternative, a repair free-of-charge and new limited warranties accompanying repaired laptops.
- *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002). The firm represented a proposed nationwide class of consumers (approximately 170,000 members) who purchased, HP dvd-100i dvd-writers (“HP 100i”) based on misrepresentations regarding the write-once (“DVD+R”) capabilities of the HP 100i and the compatibility of DVD+RW disks written by HP 100i with DVD players and other optical storage devices. A settlement was obtained, which provided full relief to class members, including among other benefits, the replacement of defective HP 100i with its more current, second generation DVD writer, the HP 200i, and/or refunds the \$99 it had charged some consumers to upgrade from the HP 100i to the HP 200i prior to the settlement.

In addition, Faruqi & Faruqi, LLP and its partners are currently serving as lead or co-lead counsel in the following class action cases:



- *Dei Rossi et al. v. Whirlpool Corp.*, Case No. 2:12-cv-00125-TLN-JFM (E.D. Cal. 2012) (representing a certified class of people who purchased mislabeled KitchenAid brand refrigerators from Whirlpool Corp.)
- *In re: Scotts EZ Seed Litigation*, Case No. 7:12-cv-04727-VB (S.D.N.Y. 2012) (representing a certified class of purchasers of mulch grass seed products advertised as a superior grass seed product capable of growing grass in the toughest conditions and with half the water.)
- *Forcellati et al., v Hyland's, Inc. et al.*, Case No. 2:12-cv-01983-GHK-MRW (C.D. Cal. 2012) (representing a certified nationwide class of purchasers of children's cold and flu products.)
- *Avram v. Samsung Electronics America, Inc., et al.*, Case No. 2:11-cv-06973 KM-MCA (D.N.J. 2011) (representing a proposed nationwide class of persons who purchased mislabeled refrigerators from Samsung Electronics America, Inc. for misrepresenting the energy efficiency of certain refrigerators.)
- *Dzielak v. Whirlpool Corp., et al.*, Case No. 12-CIV-0089 SRC-MAS (D.N.J. 2011) (representing a proposed nationwide class of purchasers of mislabeled Maytag brand washing machines for misrepresenting the energy efficiency of such washing machines.)
- *In re: Shop-Vac Marketing and Sales Practices Litigation*, Case No. 4:12-md-02380-YK (M.D. Pa. 2012) (representing a proposed nationwide class of persons who purchased vacuums or Shop Vac's with overstated horsepower and tank capacity specifications.)
- *In re: Oreck Corporation Halo Vacuum And Air Purifiers Marketing And Sales Practices Litigation*, MDL No. 2317 (the firm was appointed to the executive committee, representing a proposed nationwide class of consumers who purchased vacuums and air purifiers that were deceptively advertised effective in eliminating common viruses, germs and allergens.)

EMPLOYMENT PRACTICES LITIGATION

Faruqi & Faruqi, LLP is a recognized leader in protecting the rights of employees. The firm's Employment Practices Group is committed to protecting the rights of current and former employees nationwide. The firm is dedicated to representing employees who may not have been compensated properly by their employer or who have suffered investment losses in their employer-sponsored retirement plan. The firm also represents individuals (often current or former employees) who assert that a company has allegedly defrauded the federal or state government.

Faruqi & Faruqi represents current and former employees nationwide whose employers have failed to comply with state and/or federal laws governing minimum wage, hours worked, overtime, meal and rest breaks, and unreimbursed business expenses. In particular, the firm focuses on claims against companies for (i) failing to properly classify their employees for purposes of paying them proper overtime pay, or (ii) requiring employees to work "off-the-clock," and not paying them for all of their actual hours worked.

In prosecuting claims on behalf of aggrieved employees, Faruqi & Faruqi has successfully defeated summary judgment motions, won numerous collective certification motions, and obtained significant monetary recoveries for current and former employees. In the course of litigating these claims, the firm has been a pioneer in developing the growing area of wage and hour law. In *Creely, et al. v. HCR ManorCare*,



Inc., C.A. No. 3:09-cv-02879 (N.D. OH), Faruqi & Faruqi, along with its co-counsel, obtained one of the first decisions to reject the application of the Supreme Court's Fed. R. Civ. P. 23 certification analysis in *Wal-Mart Stores, Inc. v. Dukes et. al.*, 131 S. Ct. 2541 (2011) to the certification process of collective actions brought pursuant to the Fair Labor Standards Act of 1938 ("FLSA"). The firm, along with its co-counsel, also recently won a groundbreaking decision for employees seeking to prosecute wage and hour claims on a collective basis in *Symczyk v. Genesis Healthcare Corp. et al.*, No. 10-3178 (3d Cir. 2011). In *Symczyk*, the Third Circuit reversed the district court's ruling that an offer of judgment mooted a named plaintiff's claim in an action asserting wage and hour violations of the FLSA. Notably, the Third Circuit also affirmed the two-step process used for granting certification in FLSA cases. The *Creely* decision, like the Third Circuit's *Genesis* decision, will invariably be relied upon by courts and plaintiffs in future wage and hour actions.

Some of the firm's notable recoveries include *Bazzini v. Club Fit Management, Inc.*, C.A. No. 08-cv-4530 (S.D.N.Y. 2008), wherein the firm settled a FLSA collective action lawsuit on behalf of tennis professionals, fitness instructors and other health club employees on very favorable terms. Similarly, in *Garcia, et al., v. Lowe's Home Center, Inc., et al.*, C.A. No. GIC 841120 (Cal. Sup. Ct. 2008), Faruqi & Faruqi served as co-lead counsel and recovered \$1.6 million on behalf of delivery workers who were unlawfully treated as independent contractors and not paid appropriate overtime wages or benefits.

The firm's Employment Practices Group also represents participants and beneficiaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA"). In particular the firm protects the interests of employees in retirement savings plans against the wrongful conduct of plan fiduciaries. Often, these retirement savings plans constitute a significant portion of an employee's retirement savings. ERISA, which codifies one of the highest duties known to law, requires an employer to act in the best interests of the plan's participants, including the selection and maintenance of retirement investment vehicles. For example, an employer who administers a retirement savings plan (often a 401(k) plan) has a fiduciary obligation to ensure that the retirement plan's assets (including employee and any company matching contributions to the plan) are directed into appropriate and prudent investment vehicles.

Faruqi & Faruqi has brought actions on behalf of aggrieved plan participants where a company and/or certain of its officers breached their fiduciary duty by allowing its retirement plans to invest in shares of its own stock despite having access to materially negative information concerning the company which materially impacted the value of the stock. The resulting losses can be devastating to employees' retirement accounts. Under certain circumstances, current and former employees can seek to hold their employers accountable for plan losses caused by the employer's breach of their ERISA-mandated duties.



The firm's Employment Practices Group also represents whistleblowers in actions under both federal and state False Claims Acts. Often, current and former employees of business entities that contract with, or are otherwise bound by obligations to, the federal and state governments become aware of wrongdoing that causes the government to overpay for a good or service. When a corporation perpetrates such fraud, a whistleblower may sue the wrongdoer in the government's name to recover up to three times actual damages and additional civil penalties for each false statement made. Whistleblowers who initiate such suits are entitled to a portion of the recovery attained by the government, generally ranging from 15% to 30% of the total recovery.

False Claims Act cases often arise in context of Medicare and Medicaid fraud, pharmaceutical fraud, defense contractor fraud, federal government contractor fraud, and fraudulent loans and grants. For instance, in *United States of America, ex rel. Ronald J. Streck v. Allergan, Inc. et al.*, No. 2:08-cv-05135-ER (E.D. Pa.), Faruqi & Faruqi represents a whistleblower in an un-sealed case alleging fraud against thirteen pharmaceutical companies who underpaid rebates they were obliged to pay to state Medicaid programs on drugs sold through those programs.

Based on its experience and expertise, the firm has served as the principal attorneys representing current and former employees in numerous cases across the country alleging wage and hour violations, ERISA violations and violations of federal and state False Claims Acts.

ATTORNEYS

NADEEM FARUQI

Mr. Faruqi is Co-Founder and a Managing Partner of Faruqi & Faruqi, LLP. Mr. Faruqi oversees all aspects of the firm's practice areas. Mr. Faruqi has acted as sole lead or co-lead counsel in many notable class or derivative action cases, such as: *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.) (recovered \$25 million dollars for class members); *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001) (\$24.2 million dollars recovery on behalf of the class in securities fraud action); *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999) (established certain new standards for preferred shareholders rights); *Dennis v. Pronet, Inc.*, C.A. No. 96-06509 (Tex. Dist. Ct.) (recovered over \$15 million dollars on behalf of shareholders); *In re Tellium, Inc. Secs. Litig.*, C.A. No. 02-CV-5878 (D.N.J.) (class action settlement of \$5.5 million); *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002) (achieved a \$51.5 million benefit to the corporation in derivative litigation).



Upon graduation from law school, Mr. Faruqi was associated with a large corporate legal department in New York. In 1988, he became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, and in 1992, became a member of that firm. While at Kaufman Malchman Kirby & Squire, Mr. Faruqi served as one of the trial counsel for plaintiff in *Gerber v. Computer Assocs. Int'l, Inc.*, 91-CV-3610 (E.D.N.Y. 1991). Mr. Faruqi actively participated in cases such as: *Colaprico v. Sun Microsystems*, No. C-90-20710 (N.D. Cal. 1993) (recovery in excess of \$5 million on behalf of the shareholder class); *In re Jackpot Secs. Enters., Inc. Secs. Litig.*, CV-S-89-805 (D. Nev. 1993) (recovery in excess of \$3 million on behalf of the shareholder class); *In re Int'l Tech. Corp. Secs. Litig.*, CV 88-440 (C.D. Cal. 1993) (recovery in excess of \$13 million on behalf of the shareholder class); and *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of \$70 million).

Mr. Faruqi earned his Bachelor of Science Degree from McGill University, Canada (B.Sc. 1981), his Master of Business Administration from the Schulich School of Business, York University, Canada (MBA 1984) and his law degree from New York Law School (J.D., *cum laude*, 1987). Mr. Faruqi was Executive Editor of New York Law School's Journal of International and Comparative Law. He is the author of "Letters of Credit: Doubts As To Their Continued Usefulness," Journal of International and Comparative Law, 1988. He was awarded the Professor Ernst C. Stiefel Award for Excellence in Comparative, Common and Civil Law by New York Law School in 1987.

Mr. Faruqi is licensed to practice law in New York and is admitted to the United States District Courts for the Southern, Eastern and Western Districts of New York, and the District of Colorado, and the United States Court of Appeals for the Second and Third Circuits.

LUBNA M. FARUQI

Ms. Faruqi is Co-Founder and a Managing Partner of Faruqi & Faruqi, LLP. Ms. Faruqi is involved in all aspects of the firm's practice. Ms. Faruqi has actively participated in numerous cases in federal and state courts which have resulted in significant recoveries for shareholders.

Ms. Faruqi was involved in litigating the successful recovery of \$25 million to class members in *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.). She helped to establish certain new standards for preferred shareholders in Delaware in *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999). Ms. Faruqi was also lead attorney in *In re Mitcham Indus., Inc. Secs. Litig.*, Master File No. H-98-1244 (S.D. Tex. 1998), where she successfully recovered \$3 million on behalf of class members despite the fact that the corporate defendant was on the verge of declaring bankruptcy.



Upon graduation from law school, Ms. Faruqi worked with the Department of Consumer and Corporate Affairs, Bureau of Anti-Trust, the Federal Government of Canada. In 1987, Ms. Faruqi became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, where she actively participated in cases such as: *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of \$70 million); *Kantor v. Zondervan Corp.*, C.A. No. 88 C5425 (W.D. Mich. 1989) (recovery of \$3.75 million on behalf of shareholders); and *In re A.L. Williams Corp. S'holders Litig.*, C.A. No. 10881 (Del. Ch. 1990) (recovery in excess of \$11 million on behalf of shareholders).

Ms. Faruqi graduated from McGill University Law School at the age of twenty-one with two law degrees: Bachelor of Civil Law (B.C.L.) (1980) and a Bachelor of Common Law (L.L.B.) (1981).

Ms. Faruqi is licensed to practice law in New York and is admitted to the United States District Court for the Southern District of New York.

PETER KOHN

Mr. Kohn is a Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Antitrust Litigation Practice Group.

Prior to joining the firm, Mr. Kohn was a shareholder at Berger & Montague, P.C., where he prepared for trial several noteworthy lawsuits under the Sherman Act, including *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) (\$220M settlement), *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) (\$110M settlement), *Meijer, Inc. v. Warner-Chilcott*, No. 05-2195 (D.D.C.) (\$22M settlement), *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) (\$175M settlement), *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) (\$75M settlement), *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) (\$72.5M settlement), and *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) (\$250M settlement). The court appointed him as co-lead counsel for the plaintiffs in *In re Pennsylvania Title Ins. Antitrust Litig.*, No. 08cv1202 (E.D. Pa.) (pending action on behalf of direct purchasers of title insurance alleging illegal cartel pricing under § 1 of the Sherman Act).

A sampling of Mr. Kohn's reported cases in the antitrust arena includes *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, Civil Action No. 14-md-02503-DJC, 2015 U.S. Dist. LEXIS 125999 (D. Mass. Aug. 14, 2015) (denying motion to dismiss reverse payment claims under the Sherman Act); *King Drug Co. of Florence v. Cephalon, Inc.*, 88 F. Supp. 3d 402 (E.D. Pa. 2015) (reverse payment claims under the Sherman Act survived summary judgment); *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 64 F. Supp. 3d 665 (E.D. Pa. 2014) (denying motion to dismiss product hopping claims



under the Sherman Act); *In re Lidoderm Antitrust Litig.*, 74 F. Supp. 3d 1052 (N.D. Cal. 2014) (denying motion to dismiss reverse payment claims under the Sherman Act); *Mylan Pharms., Inc. v. Warner Chilcott Pub.*, No. 12-3824, 2013 U.S. Dist. LEXIS 152467 (E.D. Pa. June 11, 2013) (denying motion to dismiss product hopping claims under the Sherman Act); *In re Hypodermic Prods. Antitrust Litig.*, 484 Fed. Appx. 669 (3d Cir. 2012) (issue of direct purchaser standing under *Illinois Brick*); *Wallach v. Eaton Corp.*, 814 F. Supp. 2d 428 (D. Del. 2011) (application of the Third Circuit's "complete involvement" exception to the *in pari delicto* doctrine); *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116 (9th Cir. 2008) (issue of direct purchaser standing under *Illinois Brick*); *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp.2d 575 (E.D. Pa. 2008) (denying defendants' motion to dismiss following the Supreme Court's decisions in *Twombly* and *Leegin*, and for the first time in the Third Circuit adopting the Merger Guidelines method of relevant market definition); *J.B.D.L. Corp. v. Wyeth-Ayerst Laboratories, Inc.*, 485 F.3d 880 (6th Cir. 2007) (affirming summary judgment in exclusionary contracting case); and *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 458 F. Supp.2d 263 (E.D. Pa. 2006) (discoverability of surreptitiously recorded statements prior to deposition of declarant).

Mr. Kohn is a 1989 graduate of the University of Pennsylvania (B.A., English) and a 1992 *cum laude* graduate of Temple University Law School, where he was senior staff for the *Temple Law Review* and received awards for trial advocacy. Mr. Kohn was recognized as a "recommended" antitrust attorney in the Northeast in 2009 by the Legal 500 guide (www.legal500.com) and was chosen by his peers as a "SuperLawyer" in Pennsylvania in 2009 - 2013, and 2016. Mr. Kohn was an invited speaker at the ABA Section of Antitrust Law's 2016 Spring Meeting in Washington, D.C., for the Health Care & Pharmaceuticals and State Enforcement Committee's program, "Exclusionary or Not? Product Hopping and REMS." He was also invited to speak for the ABA Section of Antitrust Law's program "Product Hopping Cases: Where Are We and Where Are We Headed" in December 2015, as well as Harris Martin Publishing's Antitrust Pay-for-Delay Litigation Conference in 2014 and 2015. In 2011, Mr. Kohn was selected as a Fellow in the Litigation Counsel of America, a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States District Court for the Eastern District of Pennsylvania (1995-present), the United States District Court for the Eastern District of Michigan (2010-present), the United States Court of Appeals for the Third Circuit (2000-present), the United States Court of Appeals for the Sixth Circuit (2005-present), the United States Court of Appeals for the Ninth Circuit (2016-present), and the United States Court of Appeals for the Federal Circuit (2011-present).



JOSEPH T. LUKENS

Mr. Lukens is a Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Antitrust Litigation Practice Group.

Mr. Lukens was a shareholder at the Philadelphia firm of Hangley Aronchick Segal Pudlin & Schiller, where he represented large retail pharmacy chains as opt-out plaintiffs in numerous lawsuits under the Sherman Act. Among those lawsuits were *In re Brand Name Prescription Drugs Antitrust Litigation* (MDL 897, N.D. Ill.), *In re Terazosin Hydrochloride Antitrust Litigation* (MDL 1317, S.D. Fla.), *In re TriCor Direct Purchaser Antitrust Litigation* (05-605, D. Del.), *In re Nifedipine Antitrust Litigation* (MDL1515, D.D.C.), *In re OxyContin Antitrust Litigation* (04-3719, S.D.N.Y), and *In re Chocolate Confectionary Antitrust Litigation* (MDL 1935, M.D. Pa.). While the results in the opt-out cases are confidential, the parallel class actions in those matters which are concluded have resulted in settlements exceeding \$1.1 billion.

Earlier in his career, Mr. Lukens concentrated in commercial and civil rights litigation at the Philadelphia firm of Schnader, Harrison, Segal & Lewis. The types of matters that Mr. Lukens handled included antitrust, First Amendment, contracts, and licensing. Mr. Lukens also worked extensively on several notable *pro bono* cases including *Commonwealth v. Morales*, which resulted in a rare reversal on a second post-conviction petition in a capital case in the Pennsylvania Supreme Court.

Mr. Lukens graduated from LaSalle University (B.A. Political Science, *cum laude*, 1987) and received his law degree from Temple University School of Law (J.D., *magna cum laude*, 1992) where he was an editor on the *Temple Law Review* and received several academic awards. After law school, Mr. Lukens clerked for the Honorable Joseph J. Longobardi, Chief Judge for the United States District Court for the District of Delaware (1992-93). Mr. Lukens is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States Supreme Court (1996-present); the United States District Court for the Eastern District of Pennsylvania (1993-present), the United States Court of Appeals for the Third Circuit (1993-present), and the United States Court of Appeals for the District of New Jersey (1994-present).

Mr. Lukens has several publications, including: *Bringing Market Discipline to Pharmaceutical Product Reformulations*, 42 Int'l Rev. Intel. Prop. & Comp. Law 698 (September 2011) (co-author with Steve Shadowen and Keith Leffler); *Anticompetitive Product Changes in the Pharmaceutical Industry*, 41 Rutgers L.J. 1 (2009) (co-author with Steve Shadowen and Keith Leffler); *The Prison Litigation Reform Act: Three Strikes and You're Out of Court — It May Be Effective, But Is It Constitutional?*, 70 Temp. L. Rev. 471



(1997); *Pennsylvania Strips The Inventory Search Exception From Its Rationale – Commonwealth v. Nace*, 64 Temp. L. Rev. 267 (1991).

JAMES M. WILSON, JR.

James M. Wilson, Jr. is a Partner in Faruqi & Faruqi LLP's New York office and Co-Chair of the firm's Securities Litigation Practice Group and is a lead attorney on several large securities class actions.

Prior to joining Faruqi & Faruqi, Mr. Wilson was a partner at Chitwood Harley Harnes, LLP, and a senior associate with Reed Smith, LLP. Mr. Wilson has represented institutional pension funds, corporations and individual investors in courts around the country and obtained significant recoveries, including the following securities class actions: *In re ArthroCare Sec. Litig.* No. 08-0574 (W.D. Tex.) (\$74 million); *In re Maxim Integrated Prod. Sec. Litig.*, No. 08-0832 (N.D. Cal.) (\$173 million); *In re TyCom Ltd. Sec. Litig.*, MDL No. 02-1335 (D.N.H.) (\$79 million); and *In re Providian Fin. Corp. Sec. Litig.*, No. 01-3952 (N.D. Cal.). Mr. Wilson also has obtained significant relief for shareholders in merger suits, including the following: *In re Zoran Corporation Shareholders Litig.*, No. 6212-VCP (Del. Chancery); and *In re The Coca-Cola Company Shareholder Litigation*, No. 10-182035 (Fulton County Superior Ct.).

Mr. Wilson has authored numerous articles addressing current developments including the following Expert Commentaries published by Lexis Nexis: *The Liability Faced By Financial Institutions From Exposure To Subprime Mortgages; Losses Attributable To Sub-Prime Mortgages; The Supreme Court's Decision in Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. et al.; Derivative Suite by LLC Members in New York: Tzolis v. Wolff*, 10 N.Y.3d 100 (Feb. 14, 2008).

Mr. Wilson obtained his undergraduate degree from Georgia State University (B.A. 1988), his law degree from the University of Georgia (J.D. 1991), and Masters in Tax Law from New York University (LL.M. 1992). He is licensed to practice law in Georgia and New York and is admitted to the United States District Courts for Middle and Northern Districts of Georgia, the Eastern and Southern Districts of New York, the Eastern District of Michigan and the District of Colorado, and the United States Courts of Appeals for the Second, Fifth and Eleventh Circuits.

ROBERT W. KILLORIN

Robert W. Killorin is a Partner with the firm and is based in the Atlanta Georgia office and is a member of the firm's Institutional Investor Practice Group and Co-Chair of the firm's Securities Litigation Practice Group. His practice is focused on shareholder merger and securities litigation. Mr. Killorin is a lead attorney on several large securities class actions. Mr. Killorin is an accomplished trial lawyer with over



twenty years of experience in civil litigation. Prior to joining Faruqi & Faruqi, Mr. Killorin was a partner at the firm of Chitwood Harley Harnes, LLP where he specialized in complex securities litigation. Mr. Killorin has represented numerous individual plaintiffs, as well as institutional pension funds, corporations and individual investors in courts around the country. He has obtained significant recoveries, including the following securities class actions: *In re FireEye, Inc. Sec. Litig.*, No. 14-266866 (\$10 million settlement pending); *In re ArthroCare Sec. Litig.* No. 08-0574 (W.D. Tex.) (\$74 million); *In re Maxim Integrated Prod. Sec. Litig.*, No. 08-0832 (N.D. Cal.) (\$173 million); *In re TyCom Ltd. Sec. Litig.*, MDL No. 02-1335 (D.N.H.) (\$79 million); and *In re Providian Fin. Corp. Sec. Litig.*, No. 01-3952 (N.D. Cal.). Mr. Killorin has obtained significant relief for shareholders in merger suits, including the following: *In re The Coca-Cola Company Shareholder Litigation*, No. 10-182035 (Fulton County Superior Ct.).

Mr. Killorin authored "Preparing Clients to Testify" – Chapter 19 of *Civil Trial Practice, Winning Techniques of Successful Trial Attorneys*, Lawyers and Judges Publishing Company (2000), and has written articles and lectured on various legal topics. He is listed in Who's Who in American Law and is an AV® Preeminent™ Peer Review Rated attorney.

Mr. Killorin obtained his undergraduate degree from Duke University (B.A., cum laude, 1980) and his law degree from the University of Georgia (J.D. 1983) where he was on the national mock trial team and a national moot court team. He is licensed to practice law in Georgia and is admitted to the United States Supreme Court, the United States Courts of Appeals for the Tenth and Eleventh Circuits, and the United States District Courts for Middle and Northern Districts of Georgia.

BRADLEY J. DEMUTH

Bradley J. Demuth's practice is focused on complex antitrust litigation with particular expertise in cases involving pharmaceutical overcharges resulting from delayed generic entry schemes, price fixing, and other anticompetitive conduct. Mr. Demuth is a Partner in the firm's New York office.

Upon graduating, cum laude, from American University Washington College of Law (1999), Mr. Demuth served as a law clerk to the United States Court of Appeals for the Second Circuit. While thereafter associated with Cadwalader, Wickersham & Taft LLP and Skadden, Arps, Slate, Meager & Flom LLP, Mr. Demuth successfully represented several national and multinational corporate defendants in a wide range of antitrust and other commercial disputes. His antitrust experience includes litigating issues in the pharmaceutical, high-tech, professional sports, consumer goods, luxury goods, financial benchmarking, commodities, and industrial materials contexts. In 2008, Mr. Demuth received the Pro Bono Service Award for briefing and arguing an appeal made to the New York Supreme Court Appellate Term (1st Dep't) on



behalf of displaced low-income tenants. From 2009-2010, Mr. Demuth served as a Special Assistant Corporation Counsel and acting lead trial counsel for the City of New York, where among other favorable resolutions, he obtained a verdict for the City after a two-week trial in *Richardson v. City of New York* (Index. No. 14216-99).

Upon joining the Plaintiffs' bar in 2012, Mr. Demuth has made notable contributions in several high-profile pharmaceutical antitrust cases that resulted in significant recoveries, including in:

- *American Sales Company, LLC v. Pfizer, Inc.* (E.D. Va.) (re Celebrex) (October 2017 \$94 million dollar settlement pending final approval);
- *In re Aggrenox Antitrust Litigation* (D. Conn.) (\$146 million settlement);
- *Castro v. Sanofi Pasteur, Inc.* (D.N.J.) (re Menactra) (\$61.5 million settlement); and
- *In re Flonase Antitrust Litigation* (E.D. Pa.) (\$150 million settlement).

Mr. Demuth is also currently involved in several other pending high-profile pharmaceutical antitrust matters including: *In re Generic Pharmaceutical Pricing Antitrust Litigation* (E.D. Pa.); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation* (E.D.N.Y.); and *In re Intuniv Antitrust Litigation* (D. Mass.).

Mr. Demuth is a member of the New York State bar and is admitted to practice before the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado.

TIMOTHY J. PETER

Timothy J. Peter is a Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Chair of the firm's Consumer Protection Litigation Practice Group.

Prior to joining Faruqi & Faruqi, Mr. Peter was an Associate at Cohen Placittella & Roth, P.C. where he was involved in such high profile litigation as: *In re Vioxx Products Liability Litigation* (\$8.25 million recovery for the Commonwealth of Pennsylvania) and *In re Evergreen Ultra Short Opportunities Fund Securities Litigation* (\$25 million class action securities settlement in which participating class members will recover over 65% of their losses). In addition, Mr. Peter played an important role in the resolution of *In re Minerva Group LP v. Mod-Pac Corp., et al.*, in which defendants increased the price of an insider buyout from \$8.20 to \$9.25 per share, a significant victory for shareholders. Prior to attending law school, Mr. Peter worked for one of largest financial institutions in the world where he gained significant insight into the inner workings of the financial services industry.

Mr. Peter is a 2009 cum laude graduate of the Michigan State University College of Law, where he



served as an associate editor of the Journal of Medicine and Law. He received his undergraduate degree in Economics from the College of Wooster in 2002.

Mr. Peter is admitted to practice in the Commonwealth of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania.

ADAM STEINFELD

Adam Steinfeld is a Partner in Faruqi & Faruqi, LLP's New York office. He practices in the area of antitrust litigation with a focus on competition in the pharmaceutical industry.

Mr. Steinfeld has litigated successfully with significant contributions in *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) (\$220M settlement); *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) (\$110M settlement); *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) (\$175M settlement); *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) (\$75M settlement); *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) (\$72.5M settlement); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) (\$250M settlement); and *Mylan Pharms., Inc. v. Warner Chilcott*, No. 12-cv-3824 (E.D. Pa.) (\$12 million settlement).

Prior to joining Faruqi & Faruqi, Mr. Steinfeld was associated with Grant and Eisenhofer, P.A. (2011-2015) and a partner at Garwin, Gerstein and Fisher, LLP, New York (1997-2009).

Mr. Steinfeld is the author of Nuclear Objections: The Persistent Objector and the Legality of the Use of Nuclear Weapons, 62 Brooklyn L. Rev. 1635 (winter, 1996).

Mr. Steinfeld received his law degree from Brooklyn Law School (J.D., 1997) where he was an editor on the Brooklyn Law Review and received several academic awards. Mr. Steinfeld is a member of the bars of the States of New York, New Jersey and Massachusetts; and is admitted to practice before the United States District Courts for the District New Jersey, Eastern District of New York, Southern District of New York, and Western District of New York. Mr. Steinfeld graduated from Brandeis University (B.A., Politics, 1994).

INNESSA MELAMED HUOT

Innessa M. Huot is a Partner in the firm's New York office and Chair of the firm's Employment Practice Group.

Ms. Huot represents workers across the country in both individual and class action lawsuits. Ms. Huot has litigated cases in both federal and state courts, involving FLSA claims, state wage and hour violations, discrimination and harassment claims, retaliation matters, FMLA and ADA violations, breach of



contract disputes, and other employment-related violations. Ms. Huot has served as lead or co-lead counsel in numerous cases filed against major businesses and corporations and has successfully recovered millions of dollars on behalf of her clients.

Serving as lead or co-lead counsel, some of Ms. Huot's more recent non-confidential class action settlements include the following: *Feliciano, et al. v. Metro. Transp. Auth., et al.*, No. 18-cv-00026-VSB (S.D.N.Y. Feb. 21, 2020) (\$5.4 million settlement); *Morell, et al. v. NYC Green Transp. Grp., LLC, et al.*, No. 1:18-cv-00918-PKC-VMS (E.D.N.Y. May 8, 2019) (\$700,000 settlement, representing 100% of wage damages and an additional 75% of liquidated damages); *Izzio, et al. v. Century Golf Partners Mgmt., L.P.*, 3:14-cv-03194-M (N.D. Tex. Feb. 13, 2019) (\$1.425 million settlement); *Reeves, et al. v. La Pecora Bianca, Inc, et al.*, No. 151153/2018 (N.Y. Sup. Ct.) (\$462,500 settlement, representing 100% of economic damages); *Ackerman v. New York Hospital Medical Center of Queens*, No. 702965/2013 (N.Y. Sup. Ct.) (\$550,000 settlement); *Run Them Sweet, LLC v. CPA Global LTD, et al.*, No. 1:16-cv-1347 (E.D. Va. Oct. 6, 2017) (\$5.6 million settlement); *Strong, et al. v. Safe Auto Ins. Grp., Inc., et al.*, Case No. 2:16-cv-765 (S.D. Ohio Aug. 28, 2017) (\$250,000 settlement, representing 82% of unpaid overtime and statutory damages); and *Foster, et al. v. L-3 Commc'ns EoTech, Inc., et al.*, No. 6:15-cv-03519-BCW (W.D. Mo. July 7, 2017) (\$51 million settlement).

Ms. Huot has been designated a "Super Lawyer" each year since 2017 and has been selected for inclusion into the America's Top 100 High Stakes Litigators list. Ms. Huot is active in multiple bar associations, including the Brooklyn Bar Association's Young Lawyers Section, American Bar Association's Section of Labor and Employment, and the National Employment Lawyers Association (NELA).

Ms. Huot earned her J.D., *magna cum laude*, from Pace Law School and her M.B.A. in Finance, *summa cum laude*, from Pace Lubin School of Business. Ms. Huot graduated from Syracuse University with a B.A., *summa cum laude*, in Political Science and International Relations.

Ms. Huot is licensed to practice law in New York, New Jersey, and Connecticut and is admitted to practice before the United States District Courts for the Southern District, Eastern District, Western District, and Northern District of New York, the District of New Jersey, and the Second Circuit Court of Appeals.

KATHERINE M. LENAHAN

Katherine M. Lenahan is a Partner in Faruqi & Faruqi, LLP's New York office.

Prior to joining Faruqi & Faruqi, Ms. Lenahan practiced securities litigation at Entwistle & Cappucci LLP. Ms. Lenahan gained further experience through internships for the Honorable Sherry Klein Heitler, Administrative Judge for Civil Matters, First Judicial District, and the Kings County District Attorney's Office.



Ms. Lenahan graduated from Fordham University (B.A., Political Science, *magna cum laude*, 2009) and Fordham University School of Law (J.D., 2012). While at Fordham Law School, Ms. Lenahan served as an associate editor of the Fordham Intellectual Property, Media and Entertainment Law Journal and was a fellow at the Center on Law and Information Policy.

Ms. Lenahan is licensed to practice law in New York, and is admitted to the United States District Court for the Southern District of New York, and the United States Courts of Appeals for the Second and Ninth Circuits.

KRISTYN FIELDS

Kristyn Fields' practice is focused on antitrust litigation. Ms. Fields is a Partner in the firm's New York office.

Prior to joining F&F, Ms. Fields interned for the Honorable Martin Marcus, New York Supreme Court, Bronx County. As well, Ms. Fields participated in the Brooklyn Law Incubator & Policy Clinic providing pro bono counsel to emerging start-up companies. While at Brooklyn Law School, Ms. Fields served as an Executive Articles Editor of the Brooklyn Journal of Corporate, Financial & Commercial Law. Also, Ms. Fields was a member of the Moot Court Honor Society.

Ms. Fields earned her J.D. from Brooklyn Law School (2016). Ms. Fields earned her undergraduate degree from Boston College (B.A., Political Science, 2013).

Ms. Fields is licensed to practice law in New York.

RAYMOND N. BARTO

Raymond N. Barto's practice is focused on antitrust litigation. Mr. Barto is a Partner in the firm's New York office.

Prior to joining F&F, Mr. Barto was an associate at a prominent New York City law firm where he represented consumers, shareholders, and employees in class action cases that involved consumer fraud, breach of fiduciary duty, and ERISA.

While at Brooklyn Law School, Mr. Barto served as an Articles Editor for the Brooklyn Law Review. As well, Mr. Barto served as an intern to the Honorable Judge William Pauley III of the United States District Court for the Southern District of New York; the United States Attorney's Office for the Eastern District of New York; the litigation department for Marsh & McLennan Companies; and the Kings County District Attorney's Office.



Mr. Barto earned his J.D, cum laude, from Brooklyn Law School (2013). Mr. Barto earned his undergraduate degree from Fordham University (B.A., History, 2007).

Mr. Barto is licensed to practice law in New York and New Jersey.

DAVID CALVELLO

David Calvello is a Partner in Faruqi & Faruqi, LLP's New York office where his focus is litigating Antitrust matters.

Mr. Calvello graduated from the University of Richmond (B.S., 2011) with a double major in Finance and Political Science and Pace Law School (J.D., *magna cum laude*, 2014). He is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Court for New Jersey.

Prior to joining Faruqi & Faruqi, Mr. Calvello was as an Associate at Kaufman Borgeest & Ryan, LLP where he focused primarily on insurance coverage matters with respect to Directors & Officers (D&O), Errors & Omissions (E&O), and Professional Liability lines of coverage. In law school, Mr. Calvello served as an editor on the Pace International Law Review and received the New Rochelle Bar Association Award upon graduation. He was also very active in moot court competitions, and competed in the Willem C. Vis International Commercial Arbitration Moot held in Vienna, Austria.

LISA OMOTO

Lisa Omoto is a Partner in Faruqi & Faruqi, LLP's Los Angeles office and focuses her practice on consumer protection litigation.

Prior to joining the firm, Ms. Omoto was a litigator at a prominent defense firm where she defended corporations and individuals in a wide variety of complex disputes in federal and state courts.

Ms. Omoto graduated from Boston College (B.A., 2010) and Santa Clara University School of Law (J.D., 2014). She is licensed to practice law in the State of California and is admitted to practice in the United States District Courts for the Eastern, Central, and Northern Districts of California.

STEPHEN G. DOHERTY

Stephen Doherty is Senior Counsel in the Pennsylvania office of Faruqi & Faruqi, LLP. Mr. Doherty practices in the area of antitrust law and is significantly involved in prosecuting antitrust class actions on behalf of direct purchasers of brand name and generic drugs and charging pharmaceutical manufacturers with price fixing and with illegally blocking the market entry of less expensive competitors.



Earlier in his career, Mr. Doherty litigated consumer fraud and employment discrimination cases in both state and federal courts in Pennsylvania and New Jersey. He has served on numerous volunteer boards, including Gilda's Club of Delaware Valley and the BCBA Pro Bono Committee, has served as a volunteer instructor for VITA Education Services, and as a pro bono lawyer for the Consumer Bankruptcy Assistance Project.

Mr. Doherty is a 1992 graduate of Temple University Law School, where he was senior staff for the Temple Law Review and received several academic awards and is the author of Joint Representation Conflicts of Interest: Toward A More Balanced Approach, 65 Temp. L. Rev. 561 (1992). Mr. Doherty is a 1988 graduate of Dickinson College (B.A., Anthropology and Latin American Studies).

NEILL CLARK

Neill Clark is Of Counsel in Faruqi and Faruqi, LLP's Pennsylvania office.

Before joining the firm, Mr. Clark was an associate at Berger & Montague, P.C. where he was significantly involved in prosecuting antitrust class actions on behalf of direct purchasers of brand name drugs and charging pharmaceutical manufacturers with illegally blocking the market entry of less expensive competitors.

Eight of those cases have resulted in substantial settlements totaling over \$950 million: *In re Cardizem CD Antitrust Litig.* settled in November 2002 for \$110 million; *In re Buspirone Antitrust Litig.* settled in April 2003 for \$220 million; *In re Relafen Antitrust Litig.* settled in February 2004 for \$175 million; *In re Platinol Antitrust Litig.* settled in November 2004 for \$50 million; *In re Terazosin Antitrust Litig.* settled in April 2005 for \$75 million; *In re Remeron Antitrust Litig.* settled in November 2005 for \$75 million; *In re Ovcon Antitrust Litig.* settled in 2009 for \$22 million; and *In re Tricor Direct Purchaser Antitrust Litig.* settled in April 2009 for \$250 million.

Mr. Clark was also principally involved in a case alleging a conspiracy among hospitals and the Arizona Hospital and Healthcare Association to depress the compensation of per diem and traveling nurses, *Johnson et al. v. Arizona Hospital and Healthcare Association et al.*, No. CV07-1292 (D. Ariz.).

Mr. Clark was selected as a "Rising Star" by Pennsylvania Super Lawyers and listed as one of the Top Young Lawyers in Pennsylvania in the December 2005 edition of Philadelphia Magazine. Two cases in which he has been significantly involved have been featured as "Noteworthy Cases" in the NATIONAL LAW JOURNAL articles, "The Plaintiffs' Hot List" (*In re Tricor Antitrust Litig.* October 5, 2009 and *Johnson v. Arizona Hosp. and Healthcare Ass'n.*, October 3, 2011).



Mr. Clark graduated cum laude from Appalachian State University in 1994 and from Temple University Beasley School of Law in 1998, where he earned seven "distinguished class performance" awards, an oral advocacy award and a "best paper" award.

SHAWN R. CLARK

Shawn Clark's practice is focused on employment litigation. Mr. Clark is an Associate in the firm's New York office.

Mr. Clark represents workers in all aspects of high-impact employment litigation in federal and state courts. Mr. Clark has litigated cases involving FLSA claims, state wage and hour violations, discrimination and harassment, retaliation, FMLA and ADA violations, breach of contract, and other employment-related violations. He has frequently appeared as first and second chair in bench and jury trials in the Southern and Eastern Districts of New York and has successfully recovered millions of dollars on behalf of his clients.

Prior to joining Faruqi & Faruqi, Mr. Clark worked as an attorney at a number of prominent New York firms representing employees in employment matters. Immediately following law school, Shawn began his legal career at the New York City Police Department and New York City Law Department as a legal fellow and Assistant Corporation Counsel.

Mr. Clark has been designated a Super Lawyers Rising Star each year since 2015 and has been selected for inclusion to the National Trial Lawyers Top 100 and the Million Dollar Advocates Forum. An active member of the legal community, Mr. Clark is a member of the National Employment Lawyers Association/New York and the Federal Bar Council.

Mr. Clark earned his J.D. in 2010 from New York University School of Law, where he was a Dean's Scholar and an Articles Editor for the Journal of Legislation and Public Policy. Mr. Clark graduated magna cum laude from the Macaulay Honors College at Hunter College with a Bachelor of Arts in Political Science and Religion.

Mr. Clark is licensed to practice law in New York and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York as well as the Second Circuit Court of Appeals.

THOMAS T. PAPAIN

Thomas T. Papain's practice focuses on securities litigation. Thomas is an Associate in the firm's New York office.



Before joining F&F, Mr. Papain was an associate at a prominent New York City law firm where he represented victims of construction accident and medical malpractice cases, as well as consumers in consumer fraud class actions.

Mr. Papain is a member of the Bronx County Bar Association's Judiciary Committee and the New York City Bar Association's International Law Committee. He is also an officer of the Hellenic Lawyer's Association.

Mr. Papain earned his J.D. from Fordham University School of Law (2012). Mr. Papain earned his undergraduate degree from Fordham University (B.A. in English and History, 2009).

Mr. Papain is licensed to practice law in New York.

FINN DUSENBERY

Finn Dusenbery's practice is focused on employment litigation. Mr. Dusenbery is an associate in the firm's New York Office.

Prior to joining F&F, Mr. Dusenbery was an associate at a prominent plaintiffs' employment firm representing employees on an individual and class basis in wage and hour cases. His litigation experiences there included a case against Hearst for workers who delivered the San Francisco Chronicle along with another case against Vail Resorts on behalf of ski instructors and other employees. Prior to that, Mr. Dusenbery worked at another plaintiffs' employment firm that brought class action wage and hour cases against large retail companies, such as Target and Walmart.

Mr. Dusenbery earned his law degree from Brooklyn Law (J.D. 2012). At Brooklyn Law, Mr. Dusenbery was awarded the highest academic scholarship along with serving as an intern for the United States Magistrate Judge Viktor Pohorelsky. As well, Mr. Dusenbery obtained his undergraduate degree from Columbia College, Columbia University (2008). At Columbia University, Mr. Dusenbery was awarded English Department honors and received the Bunner prize for the best senior thesis on American literature.

Mr. Dusenbery is licensed to practice law in New York and the United States District Courts for the Southern and Eastern Districts of New York.

TAYLOR J. CRABILL

Taylor Crabill's practice is focused on employment litigation. Mr. Crabill is an Associate in the firm's New York Office.

Prior to joining F&F, Mr. Crabill was an associate at a prominent New York firm where he represented employees on an individual and class basis on employment law matters, including, but not



limited to, discrimination, retaliation, sexual harassment, whistleblower retaliation, and breach of contract. Also, during law school, Mr. Crabill was an extern for the United States District Court Judge Edgardo Ramos and was a member of Fordham Law's Moot Court Board and the Brendan Moore Trial Advocacy Center.

Mr. Crabill earned his J.D. from Fordham University School of Law (J.D. 2017) and earned his undergraduate degree from Queens College (B.A., Political Science and Economics, 2011).

Mr. Crabill is licensed to practice law in New York and the United States District Courts for the Southern, Eastern, Western, and Northern Districts of New York, as well as the United States Court of Appeals for the Second Circuit.

KYLE J. CONWAY

Kyle J. Conway's practice is focused on Consumer Protection litigation. Mr. Conway is an associate in Faruqi & Faruqi's Pennsylvania office.

Prior to joining F&F, Mr. Conway worked with the Delaware Department of State's Corporations Division. As well, Mr. Conway has practiced law in the areas of insurance defense and family law.

Mr. Conway received his J.D. cum laude, from Villanova University Charles Widger School of Law (2018). In law school, Mr. Conway was the Managing Editor of the Environmental Law Journal. Mr. Conway received his undergraduate degree, summa cum laude, from the University of Pittsburg (2015).

Mr. Conway is licensed to practice law in the Commonwealth of Pennsylvania.

MATTHEW A. CONRAD

Matthew A. Conrad is an associate in the New York office of Faruqi & Faruqi. Mr. Conrad is focused on F&F's securities litigation practice.

Prior to joining Faruqi & Faruqi, Mr. Conrad was an associate at a regional defense firm where he represented business entities in construction, premises, and product liability actions in state and federal courts. While in law school, Mr. Conrad interned with the Financial Industry Regulatory Authority ("FINRA") and the New Jersey Bureau of Securities. Mr. Conrad also served as the Submissions Editor for Cardozo's International and Comparative Law Review.

Mr. Conrad earned his J.D. from Benjamin N. Cardozo School of Law (2018). As well, Mr. Conrad earned his undergraduate degree from the University of Maryland (2015).

Mr. Conrad is admitted to practice in New York State. Mr. Conrad is also admitted to practice in the Southern District of New York.



CAMILO BURR

Camilo Burr's practice is focused on employment and personal injury litigation. Mr. Burr is an Associate in the firm's New York office.

Prior to joining the firm, Mr. Burr interned with the firm's securities litigation practice group. Additionally, Mr. Burr gained further litigation experience as a legal intern at the Neighborhood Defender Service of Harlem. As well, Mr. Burr participated in the Brooklyn Law Mediation Clinic, providing pro bono mediation services at the Kings County Small Claims Court.

Mr. Burr earned his J.D. from Brooklyn Law School (2019) and his undergraduate degree from Boston University (B.A., Political Science; Minor in Archaeology, 2012).

Mr. Burr is licensed to practice law in New York.

THANH T. HOANG

Thanh T. Hoang's practice focuses on securities litigation. Thanh is an associate in the firm's New York office.

Before joining Faruqi & Faruqi, LLP, Ms. Hoang began her legal career as an Assistant District Attorney at the Kings County District Attorney's Office. There, she represented the People of the State of New York in criminal proceedings and gained experience in complex investigations and litigation issues.

Ms. Hoang earned her dual degree Master of Public Administration and Juris Doctorate with an Advanced Certificate in Forensic Accounting from John Jay College of Criminal Justice and City University of New York School of Law (2021). Ms. Hoang earned her Bachelor of Science in Physics and Mathematics from University of Arkansas (2014).

Ms. Hoang is licensed to practice law in New York.

EXHIBIT 3

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2023

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-38937

Aterian, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

83-1739858
(I.R.S. Employer
Identification Number)

350 Springfield Avenue, Suite 200
Summit, NJ
(Address of principal executive offices)

07901
(Zip Code)

(347) 676-1681
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|--|-------------------|---|
| Common Stock, \$0.0001 par value per share | ATER | The Nasdaq Stock Market LLC |

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐
Non-accelerated filer ☐

Accelerated filer ☒
Smaller reporting company ☒

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐
Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 1, 2023, the registrant had 90,213,264 shares of common stock, \$0.0001 par value per share, outstanding.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934 (the “Exchange Act”). Many of these statements can be identified by the use of terminology such as “believes,” “expects,” “intends,” “anticipates,” “plans,” “may,” “will,” “could,” “would,” “projects,” “continues,” “estimates,” “potential,” “opportunity” or the negative versions of these terms and other similar expressions. Our actual results or experience could differ significantly from the forward-looking statements. Factors that could cause or contribute to these differences include those discussed in “Risk Factors,” in Part II, Item 1A of this Quarterly Report on Form 10-Q as well as information provided elsewhere in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2022, which was filed with the Securities and Exchange Commission (the SEC) on March 16, 2023. You should carefully consider that information before you make an investment decision.

You should not place undue reliance on these types of forward-looking statements, which speak only as of the date that they were made. These forward-looking statements are based on the beliefs and assumptions of the Company’s management based on information currently available to management and should be considered in connection with any written or oral forward-looking statements that the Company may issue in the future as well as other cautionary statements the Company has made and may make. Except as required by law, the Company does not undertake any obligation to release publicly any revisions to these forward-looking statements after completion of the filing of this Quarterly Report on Form 10-Q to reflect later events or circumstances or the occurrence of unanticipated events.

The discussion of the Company’s financial condition and results of operations should be read in conjunction with the Company’s Condensed Consolidated Financial Statements and the related Notes thereto included in this Quarterly Report on Form 10-Q.

[Table of Contents](#)**PART I—FINANCIAL INFORMATION****Item 1. Financial Statements.**

ATERIAN, INC.
Condensed Consolidated Balance Sheets
(Unaudited)
(in thousands, except share and per share data)

| | December 31, 2022 | September 30, 2023 |
|--|------------------------------|-------------------------------|
| <u>ASSETS</u> | | |
| Current assets: | | |
| Cash | \$ 43,574 | \$ 27,955 |
| Accounts receivable, net | 4,515 | 3,271 |
| Inventory | 43,666 | 31,493 |
| Prepaid and other current assets | 8,261 | 5,963 |
| Total current assets | 100,016 | 68,682 |
| Property and equipment, net | 853 | 792 |
| Other intangibles, net | 54,757 | 12,016 |
| Other non-current assets | 813 | 541 |
| Total assets | <u>\$ 156,439</u> | <u>\$ 82,031</u> |
| <u>LIABILITIES AND STOCKHOLDERS' EQUITY</u> | | |
| Current Liabilities: | | |
| Credit facility | \$ 21,053 | \$ 14,182 |
| Accounts payable | 16,035 | 12,464 |
| Seller notes | 1,693 | 1,196 |
| Accrued and other current liabilities | 14,254 | 10,740 |
| Total current liabilities | 53,035 | 38,582 |
| Other liabilities | 1,452 | 1,540 |
| Total liabilities | 54,487 | 40,122 |
| Commitments and contingencies (Note 9) | | |
| Stockholders' equity: | | |
| Common stock, \$0.0001 par value, 500,000,000 shares authorized and 80,752,290 and 89,132,183 shares outstanding at December 31, 2022 and September 30, 2023, respectively | 8 | 9 |
| Additional paid-in capital | 728,339 | 735,110 |
| Accumulated deficit | (625,251) | (692,108) |
| Accumulated other comprehensive loss | (1,144) | (1,102) |
| Total stockholders' equity | 101,952 | 41,909 |
| Total liabilities and stockholders' equity | <u>\$ 156,439</u> | <u>\$ 82,031</u> |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

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ATERIAN, INC.
Condensed Consolidated Statements of Operations
(Unaudited)
(in thousands, except share and per share data)

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|---|-------------|--|-------------|
| | 2022 | 2023 | 2022 | 2023 |
| Net revenue | \$ 66,326 | \$ 39,668 | \$ 166,268 | \$ 109,811 |
| Cost of good sold | 36,135 | 20,085 | 81,118 | 56,236 |
| Gross profit | 30,191 | 19,583 | 85,150 | 53,575 |
| Operating expenses: | | | | |
| Sales and distribution | 33,792 | 20,921 | 88,632 | 61,704 |
| Research and development | 1,706 | 852 | 4,582 | 3,808 |
| General and administrative | 10,369 | 4,326 | 29,481 | 16,566 |
| Impairment loss on goodwill | 90,921 | — | 119,941 | — |
| Impairment loss on intangibles | 3,118 | — | 3,118 | 39,445 |
| Change in fair value of contingent earn-out liabilities | (774) | — | (5,240) | — |
| Total operating expenses | 139,132 | 26,099 | 240,514 | 121,523 |
| Operating loss | (108,941) | (6,516) | (155,364) | (67,948) |
| Interest expense, net | 904 | 359 | 2,043 | 1,076 |
| Gain on extinguishment of seller note | — | — | (2,012) | — |
| Loss on initial issuance of equity | 12,834 | — | 18,669 | — |
| Change in fair value of warrant liability | (5,528) | (567) | 2,365 | (2,410) |
| Other (income) expense, net | (174) | (128) | (199) | 101 |
| Loss before income taxes | (116,977) | (6,180) | (176,230) | (66,715) |
| Provision (benefit) for income taxes | (75) | 90 | (243) | 142 |
| Net loss | \$ (116,902) | \$ (6,270) | \$ (175,987) | \$ (66,857) |
| Net loss per share, basic and diluted | \$ (1.81) | \$ (0.08) | \$ (2.78) | \$ (0.86) |
| Weighted-average number of shares outstanding, basic and diluted | 64,648,650 | 79,022,467 | 63,397,196 | 77,801,774 |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

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ATERIAN, INC.
Condensed Consolidated Statements of Comprehensive Loss
(Unaudited)
(in thousands)

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|---|--------------------------|--|---------------------------|
| | 2022 | 2023 | 2022 | 2023 |
| Net loss | <u>\$ (116,902)</u> | <u>\$ (6,270)</u> | <u>\$ (175,987)</u> | <u>\$ (66,857)</u> |
| Other comprehensive loss: | | | | |
| Foreign currency translation adjustments | <u>(485)</u> | <u>(213)</u> | <u>(1,087)</u> | <u>42</u> |
| Other comprehensive loss | <u>(485)</u> | <u>(213)</u> | <u>(1,087)</u> | <u>42</u> |
| Comprehensive loss | <u><u>\$ (117,387)</u></u> | <u><u>\$ (6,483)</u></u> | <u><u>\$ (177,074)</u></u> | <u><u>\$ (66,815)</u></u> |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

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ATERIAN, INC.
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)
(in thousands, except share and per share data)

Three Months Ended September 30, 2022

| | Common Stock | | Additional | Accumulated | Accumulated | Total |
|---|---------------------|---------------|-------------------|---------------------|----------------------|----------------------|
| | Shares | Amount | Paid-in | Deficit | Other | Stockholders' |
| | | | Capital | | Comprehensive | Equity |
| | | | | | Loss | |
| BALANCE—July 1, 2022 | <u>69,219,384</u> | <u>\$ 7</u> | <u>\$ 689,955</u> | <u>\$ (488,044)</u> | <u>\$ (1,070)</u> | <u>\$ 200,848</u> |
| Net loss | — | — | — | (116,902) | — | (116,902) |
| Issuance of shares of restricted common stock | 329,968 | - | — | — | — | — |
| Forfeiture of shares of restricted common stock | (31,965) | — | — | — | — | — |
| Issuance of common stock | 23,362 | — | 43 | — | — | 43 |
| Loss on initial issuance of equity | — | — | 12,834 | — | — | 12,834 |
| Stock-based compensation expense | — | — | 2,943 | — | — | 2,943 |
| Other comprehensive loss | — | — | — | — | (485) | (485) |
| BALANCE—September 30, 2022 | <u>69,540,749</u> | <u>\$ 7</u> | <u>\$ 705,775</u> | <u>\$ (604,946)</u> | <u>\$ (1,555)</u> | <u>\$ 99,281</u> |

Three Months Ended September 30, 2023

| | Common Stock | | Additional | Accumulated | Accumulated | Total |
|---|---------------------|---------------|-------------------|---------------------|----------------------|----------------------|
| | Shares | Amount | Paid-in | Deficit | Other | Stockholders' |
| | | | Capital | | Comprehensive | Equity |
| | | | | | Loss | |
| BALANCE—July 1, 2023 | <u>88,014,844</u> | <u>\$ 9</u> | <u>\$ 733,878</u> | <u>\$ (685,838)</u> | <u>\$ (889)</u> | <u>\$ 47,160</u> |
| Net loss | — | — | — | (6,270) | — | (6,270) |
| Issuance of shares of restricted common stock | 3,959,679 | — | — | — | — | — |
| Forfeiture of shares of restricted common stock | (2,842,340) | — | — | — | — | — |
| Stock-based compensation expense | — | — | 1,232 | — | — | 1,232 |
| Other comprehensive income | — | — | — | — | (213) | (213) |
| BALANCE—September 30, 2023 | <u>89,132,183</u> | <u>\$ 9</u> | <u>\$ 735,110</u> | <u>\$ (692,108)</u> | <u>\$ (1,102)</u> | <u>\$ 41,909</u> |

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ATERIAN, INC.
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)
(in thousands, except share and per share data)

| Nine Months Ended September 30, 2022 | | | | | | |
|--|--------------------------------|--------------------------------|---|--------------------------------|---|---|
| | Common Stock Shares | Common Stock Amount | Additional Paid-in Capital | Accumulated Deficit | Accumulated Other Comprehensive Loss | Total Stockholders' Equity |
| BALANCE—January 1, 2022 | 55,090,237 | \$ 5 | \$ 653,650 | \$ (428,959) | \$ (468) | \$ 224,228 |
| Net loss | — | — | — | (175,987) | — | (175,987) |
| Issuance of shares of restricted common stock | 4,350,642 | 1 | — | — | — | 1 |
| Forfeiture of shares of restricted common stock | (233,561) | — | — | — | — | — |
| Exercise of prefunded warrants | 3,013,850 | — | 15,039 | — | — | 15,039 |
| Issuance of common stock settlement of seller note | 292,887 | — | 767 | — | — | 767 |
| Issuance of common stock, net of issuance costs | 7,003,332 | 1 | 27,006 | — | — | 27,007 |
| Issuance of warrants in connection with offering | — | — | (18,982) | — | — | (18,982) |
| Issuance of common stock | 23,362 | — | 43 | — | — | 43 |
| Loss on initial issuance of equity | — | — | 18,669 | — | — | 18,669 |
| Issuance of warrants to contractors | — | — | 1,137 | — | — | 1,137 |
| Stock-based compensation expense | — | — | 8,446 | — | — | 8,446 |
| Other comprehensive loss | — | — | — | — | (1,087) | (1,087) |
| BALANCE—September 30, 2022 | 69,540,749 | \$ 7 | \$ 705,775 | \$ (604,946) | \$ (1,555) | \$ 99,281 |
| Nine Months Ended September 30, 2023 | | | | | | |
| | Common Stock Shares | Common Stock Amount | Additional Paid-in Capital | Accumulated Deficit | Accumulated Other Comprehensive Loss | Total Stockholders' Equity |
| BALANCE—January 1, 2023 | 80,752,290 | \$ 8 | \$ 728,339 | \$ (625,251) | \$ (1,144) | \$ 101,952 |
| Net loss | — | — | — | (66,857) | — | (66,857) |
| Issuance of shares of restricted common stock | 12,050,644 | 1 | — | — | — | 1 |
| Forfeiture of shares of restricted common stock | (3,970,751) | — | — | — | — | — |
| Issuance of common stock | 300,000 | — | 290 | — | — | 290 |
| Stock-based compensation expense | — | — | 6,481 | — | — | 6,481 |
| Other comprehensive income | — | — | — | — | 42 | 42 |
| BALANCE—September 30, 2023 | 89,132,183 | \$ 9 | \$ 735,110 | \$ (692,108) | \$ (1,102) | \$ 41,909 |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

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ATERIAN, INC.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(in thousands)

| | Nine Months Ended September 30, | |
|---|--|------------------|
| | 2022 | 2023 |
| OPERATING ACTIVITIES: | | |
| Net loss | \$ (175,987) | \$ (66,857) |
| Adjustments to reconcile net loss to net cash used by operating activities: | | |
| Depreciation and amortization | 5,763 | 3,416 |
| Provision for sales returns | 134 | (215) |
| Amortization of deferred financing cost and debt discounts | 321 | 321 |
| Issuance of common stock | 43 | — |
| Stock-based compensation | 11,854 | 6,771 |
| Gain from decrease of contingent earn-out liability fair value | (5,240) | — |
| Change in inventory provisions | — | 213 |
| Loss (gain) in connection with the change in warrant fair value | 2,365 | (2,410) |
| Gain in connection with settlement of note payable | (2,012) | — |
| Loss on initial issuance of equity | 18,669 | — |
| Impairment loss on goodwill | 119,941 | — |
| Impairment loss on intangibles | 3,118 | 39,445 |
| Allowance for doubtful accounts and other | 219 | 59 |
| Changes in assets and liabilities: | | |
| Accounts receivable | 5,326 | 1,186 |
| Inventory | 2,588 | 11,960 |
| Prepaid and other current assets | 3,351 | 1,942 |
| Accounts payable, accrued and other liabilities | (9,994) | (4,289) |
| Cash used in operating activities | (19,541) | (8,458) |
| INVESTING ACTIVITIES: | | |
| Purchase of fixed assets | (29) | (80) |
| Purchase of Step and Go assets | — | (125) |
| Cash used in investing activities | (29) | (205) |
| FINANCING ACTIVITIES: | | |
| Proceeds from equity offering, net of issuance costs | 27,007 | — |
| Repayments on note payable to Smash | (2,868) | (518) |
| Payment of Squatty Potty earn-out | (3,983) | — |
| Borrowings from MidCap credit facilities | 107,678 | 63,978 |
| Repayments for MidCap credit facilities | (116,924) | (71,165) |
| Insurance obligation payments | (1,778) | (788) |
| Insurance financing proceeds | 2,099 | 986 |
| Cash provided (used) by financing activities | 11,231 | (7,507) |
| Foreign currency effect on cash, cash equivalents, and restricted cash | (936) | 42 |
| Net change in cash and restricted cash for the year | (9,275) | (16,128) |
| Cash and restricted cash at beginning of year | 38,315 | 46,629 |
| Cash and restricted cash at end of year | <u>\$ 29,040</u> | <u>\$ 30,501</u> |
| RECONCILIATION OF CASH AND RESTRICTED CASH: | | |
| Cash | 25,997 | 27,955 |
| Restricted Cash—Prepaid and other current assets | 2,914 | 2,417 |
| Restricted cash—Other non-current assets | 129 | 129 |
| TOTAL CASH AND RESTRICTED CASH | <u>\$ 29,040</u> | <u>\$ 30,501</u> |
| SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION | | |
| Cash paid for interest | \$ 1,409 | \$ 1,457 |
| Cash paid for taxes | \$ 58 | \$ 90 |
| NON-CASH INVESTING AND FINANCING ACTIVITIES: | | |
| Non-cash consideration paid to contractors | \$ 1,137 | \$ 321 |
| Fair value of warrants issued in connection with equity offering | \$ 18,982 | \$ — |
| Issuance of common stock related to exercise of warrants | \$ 767 | \$ — |
| Issuance of common stock | \$ 43 | \$ — |
| Exercise of prefunded warrants | \$ 15,039 | \$ — |

The accompanying notes are an integral part of these unaudited Condensed Consolidated Financial Statements.

[Table of Contents](#)**Aterian, Inc.****Notes to Condensed Consolidated Financial Statements****For the Three and Nine Months Ended September 30, 2022 and 2023 (Unaudited)****(In thousands, except share and per share data)****1. ORGANIZATION AND DESCRIPTION OF BUSINESS**

Aterian, Inc. is a technology-enabled consumer products company that predominantly operates through online retail channels such as Amazon and Walmart. The Company operates its owned brands, which were either incubated or purchased, selling products in multiple categories, including home and kitchen appliances, kitchenware, cooling and air quality appliances (dehumidifiers, humidifiers and air conditioners), health and beauty products and essential oils.

Headquartered in New Jersey, Aterian also maintains offices in China, Philippines, and Poland.

Liquidity and Going Concern

As an emerging growth company in the early commercialization stage of its lifecycle, we are subject to inherent risks and uncertainties associated with the development of our enterprise. In this regard, substantially all of our efforts to date have been devoted to the development and sale of our products in the marketplace, which includes our investment in organic growth at the expense of short-term profitability, our investment in incremental growth through mergers & acquisitions (“M&A strategy”), our recruitment of management and technical staff, and raising capital to fund the development of our enterprise. As a result of these efforts, we have incurred significant losses and negative cash flows from operations since our inception and expect to continue to incur such losses and negative cash flows for the foreseeable future until such time that we reach a scale of profitability to sustain our operations. We have also experienced declining revenues due to macroeconomic factors, including increased interest rates and reduced consumer discretionary spending, and other factors, and we intend to focus our efforts on a more limited number of products. In addition, our recent financial performance has been adversely impacted by inflationary pressures and reduced consumer spending.

In order to execute our growth strategy, we have historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively “outside capital”) to fund our cost structure, and we expect to continue to rely on outside capital for the foreseeable future, specifically for our M&A strategy. While we believe we will eventually reach a level of profitability to sustain our operations, there can be no assurance we will be able to achieve such profitability or do so in a manner that does not require our continued reliance on outside capital. Moreover, while we have historically been successful in raising outside capital, there can be no assurance we will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to us.

As of the date the accompanying Condensed Consolidated Financial Statements were issued (the “issuance date”), we evaluated the significance of the following adverse financial conditions in accordance with Accounting Standard Codification 205-40, Going Concern:

- Since our inception, we have incurred significant losses and used cash flows from operations to fund our enterprise. In this regard, during the nine months ended September 30, 2023, we incurred a net loss of \$66.9 million and used net cash flows in our operations of \$8.5 million. In addition, as of September 30, 2023, we had unrestricted cash and cash equivalents of \$28.0 million available to fund our operations and an accumulated deficit of \$692.1 million. Our revenue of \$109.8 million for the nine months ended September 30, 2023 declined from \$166.3 million for the nine months ended September 30, 2022.
- We are required to remain in compliance with certain financial covenants required by the MidCap Credit facility (See Note 6, Credit Facility, Term Loans and Warrants). We were in compliance with these financial covenants as of September 30, 2023, and expect to remain in compliance through at least September 30, 2024. However, with our short history of forecasting our business following the onset of the COVID-19 global pandemic, the current global inflation and related global supply chain disruptions, we can provide no assurances that we will remain in compliance with our financial covenants. Further, absent of our ability to generate cash inflows from our operations or secure additional outside capital, we may be unable to remain in compliance with these financial covenants. In the event we are unable to remain in compliance with these financial covenants (or other non-financial covenants required by the MidCap Credit Facility), and we are unable to secure a waiver or forbearance, MidCap may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among others, accelerating repayment of the outstanding borrowings and/or asserting its rights in the assets securing the loan.

- As of the issuance date, we have no firm commitments to secure additional outside capital from lenders or investors. While we expect to continue to explore raising additional outside capital, specifically to fund our M&A strategy, there can be no assurance we will be able obtain capital or do so on terms that are acceptable to us. Accordingly, absent our ability to generate cash inflows from our operations and/or secure additional outside capital in the near term, we may be unable to meet our obligations as they become due over the next twelve months beyond the issuance date.

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- The Company's plan is to continue to closely monitor our operating forecast, to pursue our M&A strategy, to pursue additional sources of outside capital on terms that are acceptable to us, and to secure a waiver or forbearance from MidCap if we are unable to remain in compliance with one or more of the covenants required by the MidCap Credit Facility. Further, the Company is enacting a strategy to reduce the number of SKUs it sells and will no longer be pursuing future sales of SKUs that are either not profitable or not core to the Company's strategy. If some or all of our plans prove unsuccessful, we may need to implement short-term changes to our operating plan, including but not limited to delaying expenditures, reducing investments in new products, delaying the development of our software, or reducing our sale and distribution infrastructure. We may also need to seek long-term strategic alternatives, such as a significant curtailment of our operations, a sale of certain of our assets, a divestiture of certain product lines, a sale of the entire enterprise to strategic or financial investors, and/or allow our enterprise to become insolvent.

Nasdaq Listing - On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC ("Nasdaq") indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2) (the "Bid Price Notice"). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement (the "Extension Notice").

The Bid Price Notice has no immediate effect on the continued listing status of our common stock on The Nasdaq Capital Market, and, therefore, our listing remains fully effective.

If at any time before April 22, 2024, the closing bid price of our common stock closes at or above \$1.00 per share for a minimum of 10 consecutive business days, subject to Nasdaq's discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H) to 20 consecutive business days, Nasdaq will provide written notification that the Company has achieved compliance with the minimum bid price requirement, and the matter would be resolved.

The Company will continue to monitor the closing bid price of its Common Stock and seek to regain compliance with all applicable Nasdaq requirements within the allotted compliance period. If the Company does not regain compliance within the allotted compliance period, Nasdaq will provide notice that the Common Stock will be subject to delisting. The Company would then be entitled to appeal that determination to a Nasdaq hearings panel. There can be no assurance that the Company will regain compliance with the minimum bid price requirement during the compliance period, or maintain compliance with the other Nasdaq listing requirements.

In the future, if our common stock remains below the continued listing standard of \$1.00 per share or otherwise fails to satisfy any of the Nasdaq continued listing requirements, and if we are unable to cure such deficiency during any subsequent cure period, our common stock could be delisted from the Nasdaq. If our common stock ultimately were to be delisted for any reason, we could face a number of significant material adverse consequences, including limited availability of market quotations for our common stock; limited news and analyst coverage; decreased ability to obtain additional financing or failure to comply with the covenants with our current lenders; limited liquidity for our stockholders due to thin trading; and the potential loss of confidence by investors, employees and other third parties who we do business with.

Further, we may decide to effect a reverse split of our common stock which could impact the market price for our stock, limit our ability to raise capital or otherwise limit our ability to execute acquisition transactions and there is no assurance that the market price or trading volume for our common stock will not further decline after announcing or effecting such split.

Restructuring - On May 9, 2023, the Company announced a plan to reduce expenses by implementing a reduction in its current workforce impacting approximately 50 employees and 15 contractors, primarily in the Philippines. The Company recognized restructuring charges of \$0.4 million and \$1.6 million for the three and nine months ended September 30, 2023, respectively.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation—The Condensed Consolidated Financial Statements and accompanying notes have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Unaudited Interim Financial Information—The accompanying interim Condensed Consolidated Financial Statements are unaudited and have been prepared on the same basis as the audited financial statements and, in the opinion of management, reflect

all adjustments necessary for the fair presentation of the Company's financial position as of September 30, 2023 and the results of its operations and its cash flows for the periods ended September 30, 2022 and 2023. The financial data and other information disclosed in these notes related to the three and nine months ended September 30, 2022 and 2023 are also unaudited. The results for the three and nine months ended September 30, 2023 are not necessarily indicative of results to be expected for the year ending December 31, 2023, any other interim periods or any future year or period.

Use of Estimates—Preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period covered by the financial statements and accompanying notes. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment, and makes adjustments when facts and circumstances dictate. As future events and their effects cannot be determined with precision, actual results could differ from those estimates.

Principles of Consolidation—The Condensed Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Restricted Cash—As of December 31, 2022, the Company has classified the following as restricted cash: \$0.1 million related to its Chinese subsidiary within “Other Non-current Assets” on the Consolidated Balance Sheets, \$2.0 million related to a letter of credit and \$0.9 million for cash sweeps account related to the Midcap Credit Facility within "Prepaid and Other Current Assets" on the Consolidated Balance Sheets.

As of September 30, 2023, the Company has classified the following as restricted cash: \$0.1 million related to its Chinese subsidiary within “Other Non-current Assets” on the Condensed Consolidated Balance Sheets, \$2.0 million related to a letter of credit and \$0.4 million for cash sweeps account related to the Midcap Credit Facility within "Prepaid and Other Current Assets" on the Condensed Consolidated Balance Sheets.

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Inventory and Cost of Goods Sold—The Company’s inventory consists almost entirely of finished goods. The Company currently records inventory on its balance sheet on a first-in first-out basis, or net realizable value, if it is below the Company’s recorded cost. The Company’s costs include the amounts it pays manufacturers for product, tariffs and duties associated with transporting product across national borders, and freight costs associated with transporting the product from its manufacturers to its warehouses, as applicable. The valuation of our inventory requires us to make judgments, based on available information such as historical data, about the likely method of disposition, such as through sales to individual customers or liquidations, and expected recoverable values of each disposition category. These assumptions about future disposition of inventory are inherently uncertain and changes in our estimates and assumptions may cause us to realize material write-downs in the future.

The “Cost of goods sold” line item in the Condensed Consolidated Statements of Operations consists of the book value of inventory sold to customers during the reporting period. When circumstances dictate that the Company use net realizable value as the basis for recording inventory, it bases its estimates on expected future selling prices less expected disposal costs.

Accounts Receivable—Accounts receivable are stated at historical cost less allowance for doubtful accounts. On a periodic basis, management evaluates its accounts receivable and determines whether to provide an allowance or if any accounts should be written off based on a past history of write-offs, collections and current credit conditions. A receivable is considered past due if the Company has not received payments based on agreed-upon terms. The Company generally does not require any security or collateral to support its receivables. The Company performs ongoing evaluations of its customers and maintains an allowance for bad and doubtful receivables. As of December 31, 2022 and September 30, 2023, the Company had an allowance for doubtful accounts of \$0.4 million and \$0.3 million.

Revenue Recognition—The Company accounts for revenue in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standard Codification (“ASC”) Topic 606, Revenue from Contracts with Customers (“ASC Topic 606”). The Company derives its revenue from the sale of consumer products. The Company sells its products directly to consumers through online retail channels and through wholesale channels.

For direct-to-consumer sales, the Company considers customer order confirmations to be a contract with the customer. Customer confirmations are executed at the time an order is placed through third-party online channels. For wholesale sales, the Company considers the customer purchase order to be the contract.

For all of the Company’s sales and distribution channels, revenue is recognized when control of the product is transferred to the customer (i.e., when the Company’s performance obligation is satisfied), which typically occurs at shipment date. As a result, the Company has a present and unconditional right to payment and record the amount due from the customer in accounts receivable.

Revenue from consumer product sales is recorded at the net sales price (transaction price), which includes an estimate of future returns based on historical return rates. There is judgment in utilizing historical trends for estimating future returns. The Company’s refund liability for sales returns was \$0.6 million at December 31, 2022 and \$0.4 million at September 30, 2023, which is included in accrued liabilities and represents the expected value of the refund that will be due to its customers.

The Company evaluated principal versus agent considerations to determine whether it is appropriate to record platform fees paid to Amazon as an expense or as a reduction of revenue. Platform fees are recorded as sales and distribution expenses and are not recorded as a reduction of revenue because it owns and controls all the goods before they are transferred to the customer. The Company can, at any time, direct Amazon, or similarly direct other third-party logistics providers (“Logistics Providers”), to return the Company’s inventory to any location specified by the Company. It is the Company’s responsibility to make customers whole following any returns made by customers directly to Logistic Providers and the Company retains the back-end inventory risk. Further, the Company is subject to credit risk (i.e., credit card charge backs), establishes prices of its products, can determine who fulfills the goods to the customer (Amazon or the Company) and can limit quantities or stop selling the goods at any time. Based on these considerations, the Company is the principal in this arrangement.

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Net Revenue by Category. The following table sets forth the Company's net revenue disaggregated by sales channel and geographic region based on the billing addresses of its customers:

| Three Months Ended September 30, 2022 | | | |
|--|------------------|------------------------|------------------|
| (in thousands) | | | |
| | Direct | Wholesale/Other | Total |
| North America | \$ 62,818 | \$ 2,530 | \$ 65,348 |
| Other | 978 | — | 978 |
| Total net revenue | <u>\$ 63,796</u> | <u>\$ 2,530</u> | <u>\$ 66,326</u> |

| Three Months Ended September 30, 2023 | | | |
|--|------------------|------------------------|------------------|
| (in thousands) | | | |
| | Direct | Wholesale/Other | Total |
| North America | \$ 38,314 | \$ 142 | \$ 38,456 |
| Other | 1,212 | — | 1,212 |
| Total net revenue | <u>\$ 39,526</u> | <u>\$ 142</u> | <u>\$ 39,668</u> |

| Nine Months Ended September 30, 2022 | | | |
|---|-------------------|------------------------|-------------------|
| (in thousands) | | | |
| | Direct | Wholesale/Other | Total |
| North America | \$ 158,399 | \$ 4,415 | \$ 162,814 |
| Other | 3,454 | — | 3,454 |
| Total net revenue | <u>\$ 161,853</u> | <u>\$ 4,415</u> | <u>\$ 166,268</u> |

| Nine Months Ended September 30, 2023 | | | |
|---|-------------------|------------------------|-------------------|
| (in thousands) | | | |
| | Direct | Wholesale/Other | Total |
| North America | \$ 103,451 | \$ 2,454 | \$ 105,905 |
| Other | 3,906 | — | 3,906 |
| Total net revenue | <u>\$ 107,357</u> | <u>\$ 2,454</u> | <u>\$ 109,811</u> |

Net Revenue by Product Categories. The following table sets forth the Company's net revenue disaggregated by product categories for the three and nine months ended September 30, 2022 and 2023:

| Three Months Ended September 30, | | | |
|---|------------------|------------------|--|
| | | | |
| | 2022 | 2023 | |
| (in thousands) | | | |
| Heating, cooling and air quality | \$ 27,179 | \$ 15,770 | |
| Kitchen appliances | 10,504 | 5,586 | |
| Health and beauty | 3,661 | 3,034 | |
| Personal protective equipment | 516 | — | |
| Cookware, kitchen tools and gadgets | 5,128 | 2,408 | |
| Home office | 3,045 | 2,116 | |
| Housewares | 8,787 | 6,418 | |
| Essential oils and related accessories | 6,262 | 3,935 | |
| Other | 1,244 | 401 | |
| Total net revenue | <u>\$ 66,326</u> | <u>\$ 39,668</u> | |

| Nine Months Ended September 30, | | | |
|--|-------------|-------------|--|
| | | | |
| | 2022 | 2023 | |
| (in thousands) | | | |
| Heating, cooling and air quality | \$ 56,835 | \$ 29,512 | |
| Kitchen appliances | 27,438 | 18,234 | |
| Health and beauty | 12,452 | 11,725 | |
| Personal protective equipment | 1,565 | 549 | |

| | | |
|--|-------------------|-------------------|
| Cookware, kitchen tools and gadgets | 14,229 | 8,315 |
| Home office | 10,077 | 7,410 |
| Housewares | 23,478 | 19,558 |
| Essential oils and related accessories | 17,102 | 12,787 |
| Other | 3,092 | 1,721 |
| Total net revenue | <u>\$ 166,268</u> | <u>\$ 109,811</u> |

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Intangibles—We review long-lived assets for impairment when performance expectations, events, or changes in circumstances indicate that the asset's carrying value may not be recoverable. The evaluation is performed at the lowest level of identifiable cash flows by comparing the carrying value of the asset group to the undiscounted cash flows. If the evaluation indicates that the carrying amount of the assets may not be recoverable, any potential impairment is measured based upon the fair value of the related asset or asset group as determined by an appropriate market appraisal or other valuation technique.

On March 20, 2023, the Company made certain leadership changes in our essential oil business resulting in a change in strategy and outlook for the business resulting in a reduced portfolio offering. This reduction in the portfolio will be impactful to our essential oil business's future revenues and profitability and as a result the Company made revisions to our internal forecasts. The Company concluded that this change was an interim triggering event for the three months ending March 31, 2023 indicating the carrying value of our essential oil business's long-lived assets including trademarks may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$16.7 million during the three months ending March 31, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations.

During the three months ended June 30, 2023, the Company had a substantial decrease in its market capitalization, primarily relating to a decrease in share price. Further, the Company continues to see reduced net revenues across its portfolio due primarily to the current macroeconomic environment reducing demand for consumer discretionary goods. Finally, during the three months ending June 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering, specifically related to its kitchen appliance products. As a result of this rationalization, along with the reduced demand for its products, the Company has made certain revisions to its internal forecasts for its Paper business and Kitchen appliance business. The Company concluded that these factors were an interim triggering event for the three months ending June 30, 2023 indicating the carrying value of our Paper and Kitchen appliance business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$22.8 million for the Paper business and Kitchen appliance business during the three months ending June 30, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations. There were no triggering events during the three months ended September 30, 2023.

For the nine months ended September 30, 2022 and 2023, total impairment loss on intangibles were approximately \$3.1 million and \$39.4 million, respectively.

Fair Value of Financial Instruments—The Company's financial instruments, including net accounts receivable, accounts payable, and accrued and other current liabilities are carried at historical cost. At September 30, 2023, the carrying amounts of these instruments approximated their fair values because of their short-term nature. The Company's credit facility is carried at amortized cost at December 31, 2022 and September 30, 2023 and the carrying amount approximates fair value as the stated interest rate approximates market rates currently available to the Company. The Company considers the inputs utilized to determine the fair value of the borrowings to be Level 2 inputs.

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The fair value of the Prefunded Warrants (as defined in the “Securities Purchase Agreement and Warrants” section of this Quarterly Report) and stock purchase warrants issued in connection with the Company’s common stock offering on March 1, 2022 were measured using the Black-Scholes model. Due to the complexity of the warrants issued, the Company uses an outside expert to assist in providing the mark-to-market fair valuation of the liabilities over the reporting periods in which the original agreement was in effect. Inputs used to determine the estimated fair value of the warrant liabilities include the fair value of the underlying stock at the valuation date, the term of the warrants, and the expected volatility of the underlying stock. The significant unobservable input used in the fair value measurement of the warrant liabilities is the estimated term of the warrants. Upon the issuance of the Prefunded Warrants and stock purchase warrants, the Company evaluated the terms of each warrant to determine the appropriate accounting and classification pursuant to FASB ASC Topic 480, *Distinguishing Liabilities from Equity* (“ASC 480”), and FASB Accounting Standards Codification Topic 815, *Derivatives and Hedging* (“ASC 815”). Based on the Company’s evaluation and due to certain terms in the warrant agreements, it concluded the Prefunded Warrants, and the stock purchase warrants should be classified as liability with subsequent remeasurement as long as such warrants continue to be classified as liabilities.

The fair value of the contingent consideration related to business combinations is estimated using a probability-adjusted discounted cash flow model. These fair value measurements are based on significant inputs not observable in the market. The key internally developed assumptions used in these models are discount rates and the probabilities assigned to the milestones to be achieved. The company remeasures the fair value of the contingent consideration at each reporting period, and any changes in fair value resulting from either the passage of time or events occurring after the acquisition date, such as changes in discount rates, or in the expectations of achieving the performance targets, are recorded within “change in fair value of contingent earn-out liabilities” on the statement of operations.

Assets and liabilities recorded at fair value on a recurring basis in the Condensed Consolidated Balance Sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and

Level 3—Unobservable inputs that are supported by little or no market data for the related assets or liabilities.

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The following table summarizes the fair value of the Company's financial assets that are measured at fair value as of December 31, 2022 and September 30, 2023 (in thousands):

| | | December 31, 2022 | | |
|---------------------------------|----|--|----------------|----------------|
| | | Fair Value Measurement Category | | |
| | | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Cash and cash equivalents | \$ | 43,574 | \$ | — |
| Restricted Cash | | 3,055 | — | — |
| Liabilities: | | | | |
| Fair value of warrant liability | | — | — | 3,473 |
| | | | | |
| | | September 30, 2023 | | |
| | | Fair Value Measurement Category | | |
| | | Level 1 | Level 2 | Level 3 |
| Assets: | | | | |
| Cash and cash equivalents | \$ | 27,955 | \$ | — |
| Restricted cash | | 2,546 | — | — |
| Liabilities: | | | | |
| Fair value of warrant liability | | — | — | 1,063 |

A summary of the activity of the Level 3 liabilities carried at fair value on a recurring basis for the Year-ended December 31, 2022 and the nine months ended September 30, 2023 is as follows (in thousands):

| | December 31, 2022 |
|---|-------------------------------|
| Warrants liability as of January 1, 2022 | \$ — |
| Change in fair value of warrants | 3,473 |
| Warrants liability as of December 31, 2022 | <u>\$ 3,473</u> |
| | |
| | September 30, 2023 |
| Warrants liability as of January 1, 2023 | \$ 3,473 |
| Change in fair value of warrants | (2,410) |
| Warrants liability as of September 30, 2023 | <u>\$ 1,063</u> |

Adopted Accounting Standards

In August 2020, the FASB issued ASU No. 2020-06, "Debt—Debt with Conversion and Other Options (Topic 470) and Derivatives and Hedging—Contracts in Entity's Own Equity (Topic 814): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity" ("ASU 2020-06"). ASU 2020-06 eliminates the number of accounting models used to account for convertible debt instruments and convertible preferred stock. The update also amends the disclosure requirements for convertible instruments and EPS in an effort to increase financial reporting transparency. ASU 2020-06 will be effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted. The new guidance was early adopted on January 1, 2022 with no material impact on the Company's Consolidated Financial Statements.

In September 2022, the FASB issued ASU 2022-04, Disclosures for Supplier Finance Arrangements. This amendment enhances the transparency of supplier finance programs. This standard is effective for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022, except for amendment on rollforward information, which is effective for fiscal years beginning after December 15, 2023. Early adoption is permitted. The new guidance was early adopted on January 1, 2023, with no impact on the Company's Consolidated Financial Statements.

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In June 2016, the FASB issued ASU 2016-13: Financial Instruments – Credit Losses (Topic 326). This ASU requires the use of an expected loss model for certain types of financial instruments and requires consideration of a broader range of reasonable and supportable information to calculate credit loss estimates. For trade receivables, loans and held-to-maturity debt securities, an estimate of lifetime expected credit losses is required. For available-for-sale debt securities, an allowance for credit losses will be required rather than a reduction to the carrying value of the asset. In July 2019, the FASB delayed the effective date for this ASU for private companies (including emerging growth companies) and will be effective for annual reporting periods beginning after December 15, 2022, with early adoption permitted. The Company adopted this standard on January 1, 2023, but it does not have a material impact on the Consolidated Financial Statements.

In December 2019, the FASB issued ASU 2019-12, Income Taxes. This ASU provides for certain updates to reduce complexity in accounting for income taxes, including the utilization of the incremental approach for intraperiod tax allocation, among others. This standard is effective for fiscal years beginning after December 15, 2021, and for interim periods beginning after December 15, 2022, with early adoption permitted. The Company adopted this standard on January 1, 2023, but it does not have a material impact on the Consolidated Financial Statements.

Recent Accounting Pronouncements

The JOBS Act permits an emerging growth company to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have elected to use this extended transition period until we are no longer an emerging growth company or until we affirmatively and irrevocably opt out of the extended transition period. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

In August 2023, the FASB finalized ASU 2023-ED100, Income Taxes (Topic 740). This ASU provides for certain updates to enhance the transparency about companies' exposure to changes in tax legislation and the global tax risk they may face. Under the guidance, companies will be required to provide a breakout of amounts paid for taxes between federal, state, and foreign taxing jurisdictions, rather than a lump sum amount. Further, the rate reconciliation will require disaggregation into eight specific categories, with these categories further disaggregated by jurisdiction and for amounts exceeding 5 percent of their domestic tax rate. The rate reconciliation will need to also disclose both dollar amounts and percentages. This standard is effective for fiscal years beginning after December 15, 2024.

3. INVENTORY

Inventory consisted of the following as of December 31, 2022 and September 30, 2023 (in thousands):

| | December 31, 2022 | September 30, 2023 |
|----------------------|------------------------------|-------------------------------|
| Inventory on-hand | \$ 34,374 | \$ 27,124 |
| Inventory in-transit | 9,292 | 4,369 |
| Inventory | <u>\$ 43,666</u> | <u>\$ 31,493</u> |

The Company's inventory on-hand is held either with Amazon or the Company's other third-party warehouses. The Company does not have any contractual right of returns with its contract manufacturers. The Company's inventory on-hand held by Amazon was approximately \$8.6 million and \$6.8 million as of December 31, 2022 and September 30, 2023, respectively.

[Table of Contents](#)**4. PREPAID EXPENSES AND OTHER CURRENT ASSETS**

Prepaid and other current assets consisted of the following as of December 31, 2022 and September 30, 2023 (in thousands):

| | December 31, 2022 | September 30, 2023 |
|-------------------------------------|------------------------------|-------------------------------|
| Prepaid inventory | \$ 1,342 | \$ 573 |
| Restricted cash | 2,926 | 2,417 |
| Prepaid insurance | 1,991 | 1,516 |
| Prepaid freight forwarder | 576 | 217 |
| Other | 1,426 | 1,240 |
| Prepaid expenses and current assets | <u>\$ 8,261</u> | <u>\$ 5,963</u> |

5. ACCRUED AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consisted of the following as of December 31, 2022 and September 30, 2023 (in thousands):

| | December 31, 2022 | September 30, 2023 |
|---|------------------------------|-------------------------------|
| Accrued compensation costs | \$ 53 | \$ 33 |
| Accrued professional fees and consultants | 461 | 317 |
| Accrued logistics costs | 609 | 1,426 |
| Product related accruals | 1,248 | 907 |
| Sales tax payable | 711 | 899 |
| Sales return reserve | 646 | 431 |
| Accrued fulfillment expense | 755 | 534 |
| Accrued insurance | 356 | 439 |
| Federal payroll taxes payable | 1,467 | 1,243 |
| Accrued interest payable | 190 | 99 |
| Warrant liability | 3,473 | 1,063 |
| All other accruals | 4,285 | 3,349 |
| Accrued and current liabilities | <u>\$ 14,254</u> | <u>\$ 10,740</u> |

The Company sponsors, through its professional employer organization provider, a 401(k) defined contribution plan covering all eligible US employees. Contributions to the 401(k) plan are discretionary. Currently, the Company does not match or make any contributions to the 401(k) plan.

6. CREDIT FACILITY, TERM LOANS AND WARRANTS**MidCap Credit Facility**

On December 22, 2021, the Company entered into a Credit and Security Agreement (the “Credit Agreement”) together with certain of its subsidiaries party thereto as borrowers, the entities party thereto as lenders, and Midcap Funding IV Trust, as administrative agent, pursuant to which, among other things, (i) the Lenders agreed to provide a three year revolving credit facility in a principal amount of up to \$40.0 million subject to a borrowing base consisting of, among other things, inventory and sales receivables (subject to certain reserves), and (ii) the Company agreed to issue to MidCap Funding XXVII Trust a warrant (the “Midcap Warrant”) to purchase up to an aggregate of 200,000 shares of common stock of the Company, par value \$0.0001 per share, in exchange for the Lenders extending loans and other extensions of credit to the Company under the Credit Agreement.

On December 22, 2021, the Company used \$27.6 million of the net proceeds from the initial loan under the Credit Agreement to repay all remaining amounts owed under those certain senior secured promissory notes issued by the Company to High Trail Investments SA LLC and High Trail Investments ON LLC in an initial principal amount of \$110.0 million, as amended (the “Terminated Notes”).

The obligations under the Credit Agreement are a senior secured obligation of the Company and rank senior to all indebtedness of the Company. Borrowings under the Credit Agreement bear interest at a rate of Term Secured Overnight Financing Rate ("Term SOFR"), which is defined as SOFR plus 0.10%, plus 5.50%. The Company will also be required to pay a commitment fee of 0.50% in respect of the undrawn portion of the commitments, which is generally based on average daily usage of the facility during the immediately preceding fiscal quarter. The Credit Agreement does not require any amortization payments.

The Credit Agreement imposes certain customary affirmative and negative covenants upon the Company including restrictions related to dividends and other foreign subsidiaries limitations. The Credit Agreement minimum liquidity covenant requires that Midcap shall not permit the credit party liquidity at any time to be less than (a) during the period commencing on February 1st through and including May 31st of each calendar year, \$12.5 million and (b) at all other times, \$15.0 million. The Credit Agreement includes events of default that are customary for these types of credit facilities, including the occurrence of a change of control. The Company is in compliance with the financial covenants contained within the Credit Agreement as of September 30, 2023. The MidCap credit facility matures in December 2024.

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The Midcap Warrant has an exercise price of \$4.70 per share, subject to adjustment for stock splits, reverse stock splits, stock dividends and similar transactions, is immediately exercisable, has a term of ten years from the date of issuance and is exercisable on a cash or cashless basis.

The Company's credit facility consisted of the following as of December 31, 2022 and September 30, 2023 (in thousands):

| | December 31, 2022 | September 30, 2023 |
|---|----------------------|-----------------------|
| MidCap Credit Facility | \$ 21,899 | \$ 14,707 |
| Less: deferred debt issuance costs | (459) | (285) |
| Less: discount associated with issuance of warrants | (387) | (240) |
| Total MidCap Credit Facility | <u>\$ 21,053</u> | <u>\$ 14,182</u> |

Interest Expense, Net

Interest expense, net consisted of the following for the three and nine months ended September 30, 2022 and 2023 (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|-----------------------------|-------------------------------------|---------------|------------------------------------|-----------------|
| | 2022 | 2023 | 2022 | 2023 |
| Interest expense | \$ 904 | \$ 487 | \$ 2,043 | \$ 1,623 |
| Interest income | — | (128) | — | (547) |
| Total interest expense, net | <u>\$ 904</u> | <u>\$ 359</u> | <u>\$ 2,043</u> | <u>\$ 1,076</u> |

Securities Purchase Agreement and Warrants

On March 1, 2022, the Company entered into Securities Purchase Agreements (the "Purchase Agreements") with certain accredited investors identified on the signature pages to the Purchase Agreements (collectively, the "Purchasers") pursuant to which, among other things, the Company issued and sold to the Purchasers, in a private placement transaction (the "2022 Private Placement"), (i) 6,436,322 shares of the Company's common stock (the "Shares"), and accompanying warrants to purchase an aggregate of 4,827,242 shares of common stock, and (ii) prefunded warrants to purchase up to an aggregate of 3,013,850 shares of common stock (the "Prefunded Warrants") and accompanying warrants to purchase an aggregate of 2,260,388 shares of common stock. The accompanying warrants to purchase common stock are referred to herein collectively as the "Common Stock Warrants", and the Common Stock Warrants and the Prefunded Warrants are referred to herein collectively as the "Warrants". Under the Purchase Agreements, each Share and accompanying Common Stock Warrant were sold together at a combined price of \$2.91, and each Prefunded Warrant and accompanying Common Stock Warrant were sold together at a combined price of \$2.9099, for gross proceeds of approximately \$27.5 million. In connection with the 2022 Private Placement, the Company entered into a registration rights agreement (the "Registration Rights Agreement") with the Purchasers, pursuant to which the Company agreed to register for resale the Shares, as well as the shares of common stock issuable upon exercise of the Warrants (the "Warrant Shares"). Under the Registration Rights Agreement, the Company agreed to file a registration statement covering the resale by the Purchasers of the Shares and Warrant Shares within 30 days following the agreement date. The Company filed such resale registration statement on March 28, 2022, and it was declared effective by the SEC on April 8, 2022.

Upon the issuance of the Prefunded Warrants and stock purchase warrants, the Company evaluated the terms of each Warrant to determine the appropriate accounting and classification pursuant to ASC 480 and ASC 815. Based on the Company's evaluation and due to certain terms in the warrant agreements, it concluded the Prefunded Warrant and the stock purchase warrants should be classified as liabilities with subsequent remeasurement at each quarter so long as such warrants remain to be classified as liabilities. The Company recorded an initial liability on issuance of \$19.0 million from this conclusion. As of September 30, 2023, the Company has \$1.1 million as the liability related to the Warrants.

On September 29, 2022, the Company entered into securities purchase agreements (the "September Purchase Agreements") with certain accredited investors, pursuant to which, among other things, the Company agreed to sell and issue, in a registered direct offering (the "Registered Direct Offering"), an aggregate of 10,643,034 shares of its common stock and accompanying warrants to purchase an aggregate of 10,643,034 shares of its common stock. 10,526,368 of the shares and the accompanying warrants to purchase 10,526,368 shares of common stock were sold to certain accredited Purchasers that are not affiliated with the Company at a combined offering price of \$1.90 per share and accompanying warrant to purchase one share of common stock. The remaining 116,666 of the shares and the accompanying warrants to purchase 116,666 shares of common stock were sold to certain insiders of the Company, at a combined offering price of \$2.10 per share and accompanying warrant to purchase one share of common stock.

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The Registered Direct Offering closed on October 4, 2022 and the Company issued and sold an aggregate of 10,643,034 shares of common stock to the Purchasers. The gross proceeds to the Company from the Registered Direct Offering were approximately \$20.2 million, before deducting fees payable to the placement agent and other estimated offering expenses payable by the Company. The Company currently intends to use the net proceeds from the Registered Direct Offering for working capital purposes, the conduct of its business and other general corporate purposes, which may include acquisitions, investments in or licenses of complementary products, technologies or businesses.

Pursuant to the ASC 815-40, the September Purchase Agreements represent legally binding contracts that meets the definition of a firm commitment and as such the Company recorded a derivative related to the offering of common stock (“forward contract”) and associated warrants for the three months ended September 30, 2022. The Company also concluded both the forward contract and the warrants should be classified within stockholders’ equity within the Condensed Consolidated Balance Sheet as of September 30, 2022. Additionally, the Company recorded \$12.8 million derivative expense derived from the excess of the fair-value of the issuances of equity of common shares and common stock warrants over the anticipated proceeds to be received by the Company. This expense was recorded in Loss on Initial Issuance of Equity on the Consolidated Statement of Operations for the year-ended December 31, 2022.

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7. STOCK-BASED COMPENSATION

The Company has four equity plans:

2014 Amended and Restated Equity Incentive Plan

The board of directors of Aterian Group, Inc., a subsidiary of the Company (“AGI”), adopted, and AGI’s stockholders approved, the Aterian Group, Inc. 2014 Equity Incentive Plan on June 11, 2014. On March 1, 2017, AGI’s board of directors adopted, and AGI’s stockholders approved, an amendment and restatement of the 2014 Equity Incentive Plan (as amended, the “Aterian 2014 Plan”). As of September 30, 2023, 99,310 shares were reserved for awards available for future issuance under the Aterian 2014 Plan.

2018 Equity Incentive Plan

The Company’s board of directors (the “Board”) adopted the Aterian, Inc. 2018 Equity Incentive Plan (the “2018 Plan”) on October 11, 2018. The 2018 Plan was approved by its stockholders on May 24, 2019. As of September 30, 2023, 2,300,443 shares were reserved for awards available for future issuance under the 2018 Plan.

Options granted to date under the Aterian 2014 Plan and the 2018 Plan generally vest either: (i) over a four-year period with 25% of the shares underlying the options vesting on the first anniversary of the vesting commencement date with the remaining 75% of the shares vesting on a pro-rata basis over the succeeding thirty-six months, subject to continued service with the Company through each vesting date, or (ii) over a three-year period with 33 1/3% of the shares underlying the options vesting on the first anniversary of the vesting commencement date with the remaining 66 2/3% of the shares vesting on a pro-rata basis over the succeeding twenty-four months, subject to continued service with the Company through each vesting date. Options granted are generally exercisable for up to 10 years subject to continued service with the Company.

2019 Equity Plan

The Board adopted the Aterian, Inc. 2019 Equity Plan (the “2019 Equity Plan”) on March 20, 2019. The 2019 Equity Plan was approved by its stockholders on May 24, 2019. As of September 30, 2023, there were no shares were reserved for future issuance and there were no longer any awards outstanding under the 2019 Equity Plan. Shares of restricted common stock granted under the 2019 Equity Plan initially vested in substantially equal installments on the 6th, 12th, 18th and 24th monthly anniversary of the closing of the Company’s initial public offering (“IPO”). The Company and the 2019 Equity Plan participants subsequently agreed to extend the vesting date of the shares granted under the 2019 Equity Plan a number of times and the last remaining shares granted under the 2019 Equity Plan vested on March 14, 2022. Awards granted under the 2019 Equity Plan and not previously forfeited upon termination of service carried dividend and voting rights applicable to the Company’s common stock, irrespective of any vesting requirement. Under ASC Topic 718, the Company treats each award in substance as multiple awards as a result of the graded vesting and the fact that there is more than one requisite service period. Upon the prerequisite service period becoming probable, the day of the IPO, the Company recorded a cumulative catch-up expense and the remaining expense was recorded under graded vesting. In the event the service of a participant in the 2019 Equity Plan (each, a “Participant”) was terminated due to an “involuntary termination”, then all of such Participant’s unvested shares of restricted common stock were to vest on the date of such involuntary termination unless, within three business days of such termination (1) the Company’s board of directors unanimously determines that such vesting should not occur and (2) the remaining Participants holding restricted share awards covering at least 70% of the shares of restricted common stock issued and outstanding under the 2019 Equity Plan determine that such vesting should not occur. In the event of a forfeiture, voluntary or involuntary, of shares of restricted common stock granted under the 2019 Equity Plan, such shares were automatically reallocated to the remaining Participants in proportion to the number of shares of restricted common stock covered by outstanding awards that each such Participant holds.

Inducement Equity Incentive Plan

On May 27, 2022, the Compensation Committee of the Board (the “Compensation Committee”) adopted the Aterian, Inc. 2022 Inducement Equity Incentive Plan (the “Inducement Plan”). The Inducement Plan will serve to advance the interests of the Company by providing a material inducement for the best available individuals to join the Company as employees by affording such individuals an opportunity to acquire a proprietary interest in the Company.

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The Inducement Plan provides for the grant of equity-based awards in the form of stock options, stock appreciation rights, restricted stock, restricted stock units, performance units and performance shares solely to prospective employees of the Company or an affiliate of the Company provided that certain criteria are met. Awards under the Inducement Plan may only be granted to an individual, as a material inducement to such individual to enter into employment with the Company or an affiliate of the Company, who (i) has not previously been an employee or director of the Company or (ii) is rehired following a bona fide period of non-employment with the Company. The maximum number of shares available for grant under the Inducement Plan is 2,700,000 shares of the Company's common stock (subject to adjustment for recapitalizations, stock splits, reorganizations and similar transactions). The Inducement Plan is administered by the Compensation Committee and expires ten years from the date of effectiveness. As of September 30, 2023, 2,180,000 shares were reserved for future issuance under the Inducement Plan.

The Inducement Plan has not been and will not be approved by the Company's stockholders. Awards under the Inducement Plan will be made pursuant to the exemption from Nasdaq stockholder approval requirements for equity compensation provided by Nasdaq Listing Rule 5635(c)(4), which permits Nasdaq listed companies to make inducement equity awards to new employees without first obtaining stockholder approval of the award.

The following is a summary of stock option activity during the nine months ended September 30, 2023:

| | Options Outstanding | | | |
|--|----------------------|---|--|---------------------------------|
| | Number of Options | Weighted- Average Exercise Price | Weighted- Average Remaining Contractual Life (years) | Aggregate Intrinsic Value |
| Balance—January 1, 2023 | 368,596 | \$ 9.26 | 5.89 | \$ — |
| Options granted | — | \$ — | — | \$ — |
| Options exercised | — | \$ — | — | \$ — |
| Options canceled | (172,292) | \$ 9.32 | — | \$ — |
| Balance—September 30, 2023 | <u>196,304</u> | \$ 9.21 | 5.25 | \$ — |
| Exercisable as of September 30, 2023 | <u>196,304</u> | \$ 9.21 | 5.25 | \$ — |
| Vested and expected to vest as of September 30, 2023 | <u>196,304</u> | \$ 9.21 | 5.25 | \$ — |

As of September 30, 2023, all options have been fully expensed.

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A summary of restricted stock award activity within the Company's equity plans and changes for the nine months ended September 30, 2023 is as follows:

| Restricted Stock Awards | Shares | Weighted Average Grant- Date Fair Value |
|---------------------------------|---------------|--|
| Nonvested at January 1, 2023 | 4,223,023 | \$ 4.85 |
| Granted | 12,050,644 | \$ 0.52 |
| Vested | (2,666,468) | \$ 3.21 |
| Forfeited | (3,970,751) | \$ 2.23 |
| Nonvested at September 30, 2023 | 9,636,448 | \$ 0.96 |

As of September 30, 2023, the total unrecognized compensation expense related to unvested shares of restricted common stock was \$8.7 million, which the Company expects to recognize over an estimated weighted-average period of 2.4 years.

Stock-based compensation expense is allocated based on the cost center to which the award holder belongs. The following table summarizes the total stock-based compensation expense by function, including expense related to consultants, for the three and nine months ended September 30, 2022 and 2023 (in thousands):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|---|-----------------|--|-----------------|
| | 2022 | 2023 | 2022 | 2023 |
| | (in thousands) | | (in thousands) | |
| Sales and distribution expenses | \$ 999 | \$ 330 | \$ 4,228 | \$ 2,091 |
| Research and development expenses | 511 | 278 | 1,418 | 1,134 |
| General and administrative expenses | 1,433 | 624 | 6,208 | 3,546 |
| Total stock-based compensation expense | <u>\$ 2,943</u> | <u>\$ 1,232</u> | <u>\$ 11,854</u> | <u>\$ 6,771</u> |

8. NET LOSS PER SHARE

Basic net loss per share is determined by dividing net loss by the weighted-average shares of common stock outstanding during the period. Diluted net loss per share is determined by dividing net loss by diluted weighted-average shares outstanding. Diluted weighted-average shares reflect the dilutive effect, if any, of potentially dilutive shares of common stock, such as options to purchase common stock calculated using the treasury stock method and convertible notes using the "if-converted" method. In periods with reported net operating losses, all options to purchase common stock are deemed anti-dilutive such that basic net loss per share and diluted net loss per share are equal.

The Company's shares of restricted common stock are entitled to receive dividends and hold voting rights applicable to the Company's common stock, irrespective of any vesting requirement. Accordingly, although the vesting commences upon the elimination of the contingency, the shares of restricted common stock are considered a participating security and the Company is required to apply the two-class method to consider the impact of the shares of restricted common stock on the calculation of basic and diluted earnings per share. The Company is currently in a net loss position and is therefore not required to present the two-class method; however, in the event the Company is in a net income position, the two-class method must be applied by allocating all earnings during the period to shares of common stock and shares of restricted common stock.

The following table sets forth the computation of basic and diluted net loss per share (in thousands, except share and per share data):

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|------------------|--|------------------|
| | 2022 | 2023 | 2022 | 2023 |
| Net loss | \$ (116,902) | \$ (6,270) | \$ (175,987) | \$ (66,857) |
| Weighted-average number of shares used in computing net loss per share, basic and diluted | 64,648,650 | 79,022,467 | 63,397,196 | 77,801,774 |
| Net loss per share, basic and diluted | <u>\$ (1.81)</u> | <u>\$ (0.08)</u> | <u>\$ (2.78)</u> | <u>\$ (0.86)</u> |

| | | | | |
|---|------------|------------|-----------|------------|
| Anti-dilutive shares excluded from computation of net loss per share (in shares) | 13,054,457 | 26,360,485 | 9,238,156 | 22,784,728 |
|---|------------|------------|-----------|------------|

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9. COMMITMENTS AND CONTINGENCIES

Sales or Other Similar Taxes—Based on the location of the Company’s current operations, the majority of sales tax is collected and remitted either by the Company or on its behalf by e-commerce marketplaces in most states within the U.S. To date, the Company has had no actual or threatened sales and use tax claims from any state where it does not already claim nexus or any state where it sold products prior to claiming nexus. However, the Company believes that the likelihood of incurring a liability as a result of sales tax nexus being asserted by certain states where it sold products prior to claiming nexus is probable. As of each of December 31, 2022 and September 30, 2023, the Company estimates that the potential liability, including current sales tax payable is approximately \$0.7 million and \$0.9 million, respectively, which has been recorded as an accrued liability. The Company believes this is the best estimate of an amount due to taxing agencies, given that such a potential loss is an unasserted liability that would be contested and subject to negotiation between the Company and the state, or decided by a court.

Legal Proceedings—The Company is party to various actions and claims arising in the normal course of business. The Company does not believe that the final outcome of these matters will have a material adverse effect on the Company’s financial position or results of operations. In addition, the Company maintains what it believes is adequate insurance coverage to further mitigate risk. However, no assurance can be given that the final outcome of such proceedings will not materially impact the Company’s financial condition or results of operations. Further, no assurance can be given that the amount or scope of existing insurance coverage will be sufficient to cover losses arising from such matters.

Mueller Action—In October 2021, the Company received a class action notification and pre-lawsuit demand letter demanding corrective action with respect to the marketing, advertising and labeling of certain products under the Mueller brand (the “Mueller Action”). In April 2022, the parties reached an agreement in principle to resolve this potential action for \$0.5 million in cash and \$0.3 million worth of coupons, which the Company accrued \$0.8 million in the three months ended March 31, 2022, subject to court approval. The court preliminarily approved the settlement on August 3, 2023 and has scheduled a hearing for final approval for February 28, 2024. If that approval is not granted, the Company is prepared to continue the full defense of this action.

Earn-out Payment Dispute—On February 24, 2022, the Company received a notice disputing the Company’s calculation of the earn-out payment to be paid to Josef Eitan and Ran Nir pursuant to the Stock Purchase Agreement (the “PPD Stock Purchase Agreement”), dated as of May 5, 2021, by and among the Company, Truweo, LLC, Photo Paper Direct Ltd, Josef Eitan and Ran Nir. The Company is in discussions with representatives of Mr. Eitan and Mr. Nir, who believe they are entitled to the full earn-out amount (£6,902,816 or approximately \$8.8 million) under the terms of the PPD Stock Purchase Agreement, whereas the Company believes they are not. Mr. Eitan and Mr. Nir filed a motion to compel arbitration in the Southern District of New York on September 14, 2022, which was granted on May 18, 2023. The parties have engaged an independent accountant to resolve the dispute, as required by the PPD Stock Purchase Agreement and the Southern District of New York. The Company believes its calculations are accurate and intends to vigorously defend itself.

Nasdaq Listing - On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement.

The Bid Price Notice has no immediate effect on the continued listing status of our common stock on The Nasdaq Capital Market, and, therefore, our listing remains fully effective.

The Company has a compliance period of 180 calendar days from the date of the Extension Notice, or until April 22, 2024, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). If at any time before April 22, 2024, the closing bid price of our common stock closes at or above \$1.00 per share for a minimum of 10 consecutive business days, subject to Nasdaq’s discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H) to 20 consecutive business days, Nasdaq will provide written notification that the Company has achieved compliance with the minimum bid price requirement, and the matter would be resolved.

The Company will continue to monitor the closing bid price of its Common Stock and seek to regain compliance with all applicable Nasdaq requirements within the allotted compliance periods. If the Company does not regain compliance within the allotted compliance periods, Nasdaq will provide notice that the Common Stock will be subject to delisting. The Company would then be

entitled to appeal that determination to a Nasdaq hearings panel. There can be no assurance that the Company will regain compliance with the minimum bid price requirement during the compliance period or maintain compliance with the other Nasdaq listing requirements.

Leases—The Company’s minimum lease liabilities have not changed significantly during the nine months ended September 30, 2023.

10. CONTINGENT EARN-OUT LIABILITIES

The Company reviews and reassesses the estimated fair value of contingent consideration on a quarterly basis, and the updated fair value could differ materially from the initial estimates. Adjustments to the estimated fair value related to changes in all other unobservable inputs are reported in operating income (loss).

On December 1, 2020, the Company acquired the assets of leading e-commerce business brands Mueller, Pursteam, Pohl and Schmitt, and Spiralizer (the “Smash Assets”) for total consideration of (i) \$25.0 million, (ii) 4,220,000 shares of common stock, the cost basis of which was \$6.89 (closing stock price at closing of the transaction), of which 164,000 of such shares were issued to the sellers brokers and (iii) a seller note in the amount of \$15.6 million, representing the value of certain inventory that the sellers had paid for but not yet sold as of the closing date. As part of the acquisition of the Smash Assets, the sellers of the Smash Assets are entitled to earn-out payments based on the achievement of certain contribution margin thresholds on certain products of the acquired business.

As of December 31, 2022 and September 30, 2023, there was no remaining earn-out liability related to Smash Assets.

As part of the acquisition of the Squatty Potty Assets, Squatty Potty is entitled to earn-out payments based on the achievement of certain contribution margin thresholds on certain products of the acquired business. If the earn-out consideration event occurs in the 12 months ended December 31, 2021, the maximum payment amount is \$3.9 million and if the termination of the transition service agreement is prior to the date that is nine months following the Closing Date, an additional \$3.9 million.

As of May 5, 2021, the acquisition date, the initial fair value amount of the earn-out payment with respect to the Squatty Potty Assets was appropriately \$3.5 million. As of December 31, 2022 and September 30, 2023, there was no remaining earn-out liability related to Squatty Potty.

The following table summarizes the changes in the carrying value of estimated contingent earn-out liabilities as of December 31, 2022 (in thousands):

| | December 31, 2022 | | |
|---|--------------------------|--------------------------|--------------|
| | Smash Assets | Squatty Potty | Total |
| Balance— January 1, 2022 | \$ 5,240 | \$ 3,983 | \$ 9,223 |
| Change in fair value of contingent earn-out liabilities | (5,240) | — | (5,240) |
| Payment of contingent earn-out liability | — | (3,983) | (3,983) |
| Balance— December 31, 2022 | <u>\$ —</u> | <u>\$ —</u> | <u>\$ —</u> |

There was no activity for contingent earn-out liabilities for the nine months ending September 30, 2023.

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11. GOODWILL AND INTANGIBLES

The following tables summarize the changes in the Company's goodwill as of December 31, 2022 (in thousands):

| | January 1, 2022 | Year-Ended December 31, 2022 | December 31, 2022 |
|----------|-----------------------------|---------------------------------|----------------------|
| | Gross Carrying Amount | Additions | Impairments (1) |
| | | | Net Book Value |
| Goodwill | \$ 119,941 | \$ 468 | \$ (120,409) |
| | | | \$ — |

- (1) The Company evaluated current economic conditions during 2022, including the impact of the Federal Reserve further increasing the risk-free interest rate, as well as the inflationary pressure on product and labor costs and operational impacts attributable to continued global supply chain disruptions. The Company believed that these conditions were factors in our market capitalization falling below the book value of net assets during the fiscal quarters ending March 31, 2022 and September 30, 2022. Accordingly, the Company concluded a triggering event had occurred in each of these periods and performed interim goodwill impairment analyses. As a result, the Company recorded a goodwill impairment charge of approximately \$29.0 million and \$90.9 during the three months ended March 31, 2022 and September 30, 2022, respectively. On October 4, 2022, the Company acquired Step and Go, a brand in the health and Wellness category, for \$0.7 million. As part of the purchase price allocation of the acquisition, \$0.5 million was attributed to goodwill. As our market capitalization was further reduced below net assets as of December 31, 2022, we concluded a triggering event has occurred to test goodwill, an impairment loss on goodwill of \$0.5 million was recorded for the three months ended December 31, 2022, which is included in impairment loss on goodwill in the Consolidated Statement of Operations for the year-ended December 31, 2022.

For the year-ended December 31, 2022, total goodwill impairment was approximately \$120.4 million. There is no goodwill balance as of December 31, 2022 and September 30, 2023.

The following tables summarize the changes in the Company's intangible assets as of December 31, 2022 and September 30, 2023 (in thousands):

| | January 1, 2022 | Year-Ended December 31, 2022 | December 31, 2022 | December 31, 2022 |
|-------------------------------|-----------------------------|---------------------------------|----------------------|-----------------------------|
| | Gross Carrying Amount | Additions | Impairments (1) | Accumulated Amortization |
| | | | | Net Book Value |
| Trademarks | \$ 65,910 | \$ 192 | \$ (3,087) | \$ (13,008) |
| Non-competition agreement | 111 | — | (31) | (80) |
| Transition services agreement | 23 | — | — | (23) |
| Customer relations | 5,700 | — | — | (950) |
| Other | 700 | — | — | (700) |
| Total intangibles | \$ 72,444 | \$ 192 | \$ (3,118) | \$ (14,761) |
| | | | | \$ 54,757 |

| | January 1, 2023 | Nine Months Ended September 30, 2023 | September 30, 2023 | September 30, 2023 |
|-------------------------------|-----------------------------|---|-----------------------|-----------------------------|
| | Gross Carrying Amount | Additions | Impairments (2) | Accumulated Amortization |
| | | | | Net Book Value |
| Trademarks | \$ 62,202 | \$ — | \$ (39,445) | \$ (15,064) |
| Non-competition agreement | 11 | — | — | (11) |
| Transition services agreement | 12 | — | — | (12) |
| Customer relations | 5,700 | — | — | (1,377) |
| Other | 700 | — | — | (700) |
| Total intangibles | \$ 68,625 | \$ — | \$ (39,445) | \$ (17,164) |
| | | | | \$ 12,016 |

- (1) Certain asset groups experienced a significant decrease in sales and contribution margin through September 30, 2022. This was considered an interim triggering event for the three months ended September 30, 2022. Based on the analysis of

comparing the undiscounted cash flow to the carrying value of the asset group, one group tested indicated that the assets may not be recoverable. For this asset group, the Company compared the fair value to the carrying amount of the asset group and recorded an intangible impairment charge of \$3.1 million for the year-ended December 31, 2022.

(2) On March 20, 2023, the Company made certain leadership changes in our essential oil business resulting in a change in strategy and outlook for the business which will result in a reduced portfolio offering. This reduction in the portfolio will be impactful to our essential oil business's future revenues and profitability and as a result the Company made revisions to our internal forecasts. The Company concluded that this change was an interim triggering event for the three months ending March 31, 2023 indicating the carrying value of our essential oil business's long-lived assets including trademarks may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$16.7 million in the three months ending March 31, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations.

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During the three months ended June 30, 2023, the Company had a substantial decrease in its market capitalization, primarily relating to a decrease in share price. Further, the Company continues to see reduced net revenues across its portfolio primarily due to the current macroeconomic environment reducing demand for consumer goods. Finally, during the three months ending June 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering, specifically related to its kitchen appliance products. As a result of this rationalization, along with the reduced demand for its products, the Company has made certain revisions to its internal forecasts for its Paper business and Kitchen appliance business. The Company concluded that these factors were an interim triggering event for the three months ending June 30, 2023 indicating the carrying value of our Paper and Kitchen appliance business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-lived trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$22.8 million for the Paper business and Kitchen appliance business during the three months ending June 30, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations. There were no triggering events during the three months ended September 30, 2023.

The following table sets forth the estimated aggregate amortization of the Company's intangible assets for the next five years and thereafter (amounts in thousands):

| | | |
|-------------------|----|---------------|
| Remainder of 2023 | \$ | 413 |
| 2024 | | 1,631 |
| 2025 | | 1,590 |
| 2026 | | 1,590 |
| 2027 | | 1,590 |
| 2028 | | 1,590 |
| Thereafter | | 3,612 |
| Total | \$ | <u>12,016</u> |

12. RESTRUCTURING

On May 9, 2023, the Company announced a plan to reduce expenses and re-align the organization's structure by implementing a reduction in its current workforce impacting approximately 50 employees and 15 contractors, primarily in the Philippines. The headcount reduction is part of the Company's cost-saving initiatives to navigate challenges in the industry and to better position itself for future growth opportunities. The Company incurred \$0.4 million and \$1.6 million of restructuring charges during the three and nine months ended September 30, 2023, respectively.

The accounting for the restructuring costs follows the provisions of ASC 420, "Accounting for Costs Associated with Exit or Disposal Activities," which requires the recognition of a liability once the restructuring plan is communicated to affected employees and meets the criteria of being probable and reasonably estimable. The Company recognizes a liability for employee severance, other benefits, and involuntary terminations on the communication date.

The following table provides a summary of the restructuring costs incurred:

| | Three Months Ended September 30, 2023 | Nine Months Ended September 30, 2023 |
|----------------------------|--|---|
| | <i>(in thousands)</i> | <i>(in thousands)</i> |
| Employee severance | \$ 396 | \$ 916 |
| Retention bonus settled | — | 411 |
| Contract termination costs | — | 285 |
| Other restructuring costs | 21 | 21 |
| Total restructuring costs | <u>\$ 417</u> | <u>\$ 1,633</u> |

The following table provides a summary of the Company's total restructuring reserve:

| | Employee Severance | Retention Bonus | Contract Termination Costs | Other | Total |
|------------------------------|-------------------------------|----------------------------|---|--------------|---------------|
| Balance – December 31, 2022 | \$ — | \$ — | \$ — | \$ — | \$ — |
| Charges | 915 | 411 | 285 | 21 | 1,632 |
| Usage-cash | (915) | (411) | (92) | — | (1,418) |
| Usage-non-cash | — | — | — | (21) | (21) |
| Balance – September 30, 2023 | <u>\$ —</u> | <u>\$ —</u> | <u>\$ 193</u> | <u>\$ —</u> | <u>\$ 193</u> |

As of September 30, 2023, the Company has a liability of \$0.2 million for restructuring costs, of which \$0.1 million is included in accrued expenses and other current liabilities and \$0.1 million is included in other liabilities on the consolidated balance sheet. There were no restructuring costs incurred during the year ended December 31, 2022.

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The Company will continue to assess the restructuring plan's progress and provide updates as required in future financial statements if there are material changes to the initial estimates or additional significant restructuring activities.

13. SUBSEQUENT EVENTS

On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement.

[Table of Contents](#)**Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.**

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Condensed Consolidated Financial Statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and with our audited financial statements and related notes thereto for the year ended December 31, 2022 included in our Annual Report on Form 10-K for the year ended December 31, 2022 as filed with the Securities and Exchange Commission (the “SEC”) on March 16, 2023. As discussed in the section titled “Special Note Regarding Forward-Looking Statements”, the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to these differences include, but are not limited to, those identified in the section titled “Special Note Regarding Forward Looking Statements” and those discussed in the section titled “Risk Factors” under Part II, Item 1A in this Quarterly Report on Form 10-Q.

Unless the context otherwise requires, the terms “Aterian,” the “Company,” “we,” “us” and “our” in this Quarterly Report on Form 10-Q refer to Aterian, Inc. and our consolidated subsidiaries, including Aterian Group, Inc.

Overview

We are a technology-enabled consumer products company that predominantly operates through online retail channels such as Amazon and Walmart. The Company operates its owned brands, which were either incubated or purchased, selling products in multiple categories, including home and kitchen appliances, kitchenware, cooling and air quality appliances, health and beauty products and essential oils.

Our primary brands include Squatty Potty; hOmeLabs; Aussie Health; Mueller; Pursteam; Healing Solutions; and Photo Paper Direct.

Seasonality of Business and Product Mix

Our individual product categories are typically affected by seasonal sales trends primarily resulting from the timing of the summer season for certain of our environmental appliance products and the fall and holiday season for our small kitchen appliances and accessories. With our current mix of environmental appliances, the sales of those products tend to be significantly higher in the summer season. Further, our small kitchen appliances and accessories tend to have higher sales during the fourth quarter, which includes Thanksgiving and the December holiday season. As a result, our operational results, cash flows, cash and inventory positions may fluctuate materially in any quarterly period depending on, among other things, adverse weather conditions, shifts in the timing of certain holidays and changes in our product mix.

Product mix can affect our gross profit and the variable portion of our sales and distribution expenses. We rely heavily on a global supply chain in which the cost, lead times, and delays, as well as global and geopolitical events can ultimately have a direct impact to our margins. Further, impacts on our supply chain may force us to hold more inventory which not only affects working capital but also requires us to increase our storage capacity, through our warehouse network, which of itself has a capital impact.

Financial Operations Overview

Net Revenue—We derive our revenue from the sale of consumer products, primarily in the U.S. We sell products directly to consumers through online retail channels and through wholesale channels. Direct-to-consumer sales (i.e., direct net revenue), which is currently the majority of our revenue, is done through various online retail channels. We sell on Amazon.com, Walmart.com, and our own websites, with substantially all of our sales made through Amazon.com. For all of our sales and distribution channels, revenue is recognized when control of the product is transferred to the customer (i.e., when our performance obligation is satisfied), which typically occurs at the shipment date.

Cost of Goods Sold—Cost of goods sold consists of the book value of inventory sold to customers during the reporting period and the amortization of inventory step-up from acquisitions. Book value of inventory includes the amounts we pay manufacturers for product, tariffs and duties associated with transporting product across national borders, and freight costs associated with transporting the product from our manufacturers to our warehouses, as applicable. When circumstances dictate that we use net realizable value as the basis for recording inventory, we base our estimates on expected future selling prices, less expected disposal costs.

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Expenses:

Research and Development Expenses—Research and development expenses include compensation and employee benefits for technology development employees, travel-related costs and fees paid to outside consultants related to the development of our intellectual property.

Sales and Distribution Expenses—Sales and distribution expenses consist of online advertising costs, marketing and promotional costs, sales and e-commerce platform commissions, fulfillment, including shipping and handling, and warehouse costs (i.e., sales and distribution variable expenses). Sales and distribution expenses also include employee compensation and benefits and other related fixed costs. Shipping and handling expenses are included in our consolidated statements of operations in sales and distribution expenses. This includes inbound, pick and pack costs and outbound transportation costs to ship goods to customers performed by e-commerce platforms or incurred directly by us, through our own direct fulfillment platform, which leverages AIMEE and our third-party logistics partners. Our sales and distribution expenses, specifically our logistics expenses and online advertising, will vary quarter to quarter as they are dependent on our sales volume, our product mix and whether we fulfill products ourselves, i.e., fulfillment by merchant (“FBM”), or through e-commerce platform service providers, i.e., fulfillment by Amazon (“FBA”) or fulfilled by Walmart (“WFS”). Products with less expensive fulfillment costs as a percentage of net revenue may allow for a lower gross margin, while still maintaining their targeted profitability level. Conversely, products with higher fulfillment costs will need to achieve a higher gross margin to maintain their targeted level of profitability. We are FBM One Day and Two Day Prime certified, allowing us to deliver our sales through Amazon to most customers within one or two days. We continually review the locations and capacity of our third-party warehouses to ensure we have the appropriate geographic reach, which helps to reduce the average last mile shipping zones to the end customer and as such our speed of delivery improves while our shipping costs to customers decrease, prior to the impacts on shipping providers’ rates.

General and Administrative Expenses—General and administrative expenses include compensation and employee benefits for executive management, finance administration, legal, and human resources, facility costs, insurance, travel, professional service fees and other general overhead costs, including the costs of being a public company.

Interest Expense, Net—Interest expense, net includes the interest cost from our credit facility and term loans, and includes amortization of deferred finance costs and debt discounts from our credit facility (the “Credit Facility”) with MidCap Funding IV Trust (“MidCap”).

Results of Operations**Comparison of the Three Months Ended September 30, 2022 and 2023**

The following table sets forth the components of our results of operations as a percentage of net revenue:

| | Three Months Ended September 30, | | Change | |
|---|---|-----------------|---------------|----------|
| | 2022 (1) | 2023 (1) | Amount | % |
| | (in thousands, except percentages) | | | |
| Net revenue | \$ 66,326 | \$ 39,668 | \$ (26,658) | (40.2)% |
| Cost of good sold | 36,135 | 20,085 | (16,050) | (44.4)% |
| Gross profit | 30,191 | 19,583 | (10,608) | (35.1)% |
| Operating expenses: | | | | |
| Sales and distribution | 33,792 | 20,921 | (12,871) | (38.1)% |
| Research and development | 1,706 | 852 | (854) | (50.1)% |
| General and administrative | 10,369 | 4,326 | (6,043) | (58.3)% |
| Impairment loss on goodwill | 90,921 | — | (90,921) | (100.0)% |
| Impairment loss on intangibles | 3,118 | — | (3,118) | (100.0)% |
| Change in fair value of contingent earn-out liabilities | (774) | — | 774 | 100.0% |
| Total operating expenses | 139,132 | 26,099 | (113,033) | (81.2)% |
| Operating loss | (108,941) | (6,516) | 102,425 | 94.0% |
| Interest expense, net | 904 | 359 | (545) | (60.3)% |
| Loss on initial issuance of equity | 12,834 | — | (12,834) | (100.0)% |
| Change in fair value of warrant liability | (5,528) | (567) | 4,961 | 89.7% |
| Other income, net | (174) | (128) | 46 | 26.4% |
| Loss before income taxes | (116,977) | (6,180) | 110,797 | 94.7% |

| | | | | |
|--------------------------------------|---------------------|-------------------|-------------------|--------------|
| Provision (benefit) for income taxes | (75) | 90 | 165 | 220.0% |
| Net loss | <u>\$ (116,902)</u> | <u>\$ (6,270)</u> | <u>\$ 110,632</u> | <u>94.6%</u> |

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(1) Amounts include stock-based compensation expense as follows:

| | Three Months Ended September 30, | | Change | |
|--|-------------------------------------|-----------------|-------------------|----------------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Sales and distribution expenses | \$ 999 | \$ 330 | \$ (669) | (67.0)% |
| Research and development expenses | 511 | 278 | (233) | (45.6)% |
| General and administrative expenses | 1,433 | 624 | (809) | (56.5)% |
| Total stock-based compensation expense | <u>\$ 2,943</u> | <u>\$ 1,232</u> | <u>\$ (1,711)</u> | <u>(58.1)%</u> |

The following table sets forth the components of our results of operations as a percentage of net revenue:

| | Three Months Ended September 30, | |
|---|-------------------------------------|----------------|
| | 2022 | 2023 |
| Net revenue | 100.0% | 100.0% |
| Cost of good sold | 54.5 | 50.6 |
| Gross profit | 45.5 | 49.4 |
| Operating expenses: | | |
| Sales and distribution | 50.9 | 52.7 |
| Research and development | 2.6 | 2.1 |
| General and administrative | 15.6 | 11.0 |
| Impairment loss on goodwill | 137.1 | — |
| Impairment loss on intangibles | 4.7 | — |
| Change in fair value of contingent earn-out liabilities | (1.2) | — |
| Total operating expenses | 209.7 | 65.8 |
| Operating loss | (164.2) | (16.4) |
| Interest expense, net | 1.4 | 0.9 |
| Gain on extinguishment of seller note | — | — |
| Loss on initial issuance of equity | 19.3 | — |
| Change in fair value of warrant liability | (8.3) | (1.4) |
| Other income, net | (0.3) | (0.3) |
| Loss before income taxes | (176.3) | (15.6) |
| Provision (benefit) for income taxes | (0.1) | 0.2 |
| Net loss | <u>(176.2)%</u> | <u>(15.8)%</u> |

Net Revenue

Revenue by Product Categories:

The following tables sets forth our net revenue disaggregated by product categories:

| | Three Months Ended September 30, | | Change | |
|-------------|-------------------------------------|------------------|--------------------|----------------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Direct | \$ 63,796 | \$ 39,526 | \$ (24,270) | (38.0)% |
| Wholesale | 2,530 | 142 | (2,388) | (94.4)% |
| Net revenue | <u>\$ 66,326</u> | <u>\$ 39,668</u> | <u>\$ (26,658)</u> | <u>(40.2)%</u> |

Net revenue decreased \$26.7 million, or 40.2%, during the three months ended September 30, 2023 to \$39.7 million, compared to \$66.3 million for the three months ended September 30, 2022. The decrease in net revenue was primarily attributable to a decrease in direct net revenue of \$24.3 million, or a 38.0% which was due primarily to softness in consumer demand given the current macroeconomic environment and due to competitive pricing pressure and other competitive dynamics on marketplaces.

Direct net revenue consists of both organic net revenue and net revenue from our M&A. For the three months ended September 30, 2023, organic revenue was \$39.5 million and revenue from our M&A businesses was \$0.1 million. For the three months ended September 30, 2022, organic revenue was \$63.8 million and no revenue from our M&A businesses was recorded.

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| | Three Months Ended September 30, | |
|--|----------------------------------|------------------|
| | 2022 | 2023 |
| | (in thousands) | |
| Heating, cooling and air quality | \$ 27,179 | \$ 15,770 |
| Kitchen appliances | 10,504 | 5,586 |
| Health and beauty | 3,661 | 3,034 |
| Personal protective equipment | 516 | — |
| Cookware, kitchen tools and gadgets | 5,128 | 2,408 |
| Home office | 3,045 | 2,116 |
| Housewares | 8,787 | 6,418 |
| Essential oils and related accessories | 6,262 | 3,935 |
| Other | 1,244 | 401 |
| Total net revenue | <u>\$ 66,326</u> | <u>\$ 39,668</u> |

Net revenue decreased \$26.7 million, or 40.2%, during the three months ended September 30, 2023 to \$39.7 million, compared to \$66.3 million for the three months ended September 30, 2022. Every category of business had a reduction in sales compared to the prior year primarily relating to softness in consumer demand due the macroeconomic environment. In addition, there was competitive pricing pressures coupled with certain key products losing their prominent positioning on Amazon due to competition. These factors resulted in a reduction of units sold and a reduction in retail sales prices for each category of business.

Cost of Goods Sold and Gross Profit

| | Three Months Ended September 30, | | Change | |
|--------------------|------------------------------------|-----------|-------------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Cost of goods sold | \$ 36,135 | \$ 20,085 | \$ (16,050) | (44.4)% |
| Gross profit | \$ 30,191 | \$ 19,583 | \$ (10,608) | (35.1)% |

Cost of goods sold decreased by \$16.1 million, from \$36.1 million for the three months ended September 30, 2022 to \$20.1 million for the three months ended September 30, 2023 primarily from reduced sales volumes. The decrease in cost of goods sold was primarily attributable to a decrease of \$12.0 million in cost of goods sold from our organic businesses and a decrease of \$4.1 million in cost of goods sold from our wholesale businesses.

Gross profit increased from 45.5% for the three months ended September 30, 2022 to 49.4% for the three months ended September 30, 2023. The increase in gross profit was due primarily to a change of product mix and a higher volume of wholesale liquidation sales of high priced excess inventory at reduced prices during the three months ending September 30, 2022 compared to the three months ending September 30, 2023.

Sales and Distribution Expenses

| | Three Months Ended September 30, | | Change | |
|---------------------------------|------------------------------------|-----------|-------------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Sales and distribution expenses | \$ 33,792 | \$ 20,921 | \$ (12,871) | (38.1)% |

Sales and distribution expenses, which included e-commerce platform commissions, online advertising and logistics expenses (i.e., variable sales and distribution expense), decreased to \$20.9 million for the three months ended September 30, 2023, from \$33.8 million for the three months ended September 30, 2022. This decrease is primarily attributable to the decrease in the volume of products sold in the three months ended September 30, 2023, as our e-commerce platform commissions, online advertising, selling and logistics expenses decreased to \$18.4 million in the three months ended September 30, 2023 as compared to \$29.4 million in the prior year period.

Our sales and distribution fixed costs (e.g., salary and office expenses) including stock-based compensation decreased to \$2.5 million for the three months ended September 30, 2023, from \$4.0 million for the three months ended September 30, 2022. This

decrease is primarily attributable to lower stock-compensation expense of \$0.7 million and lower headcount expense of \$0.8 million.

As a percentage of net revenue, sales and distribution expenses increased to 52.7% for the three months ended September 30, 2023, from 50.9% for the three months ended September 30, 2022. E-commerce platform commissions, online advertising, selling and logistics expenses included within sales and distribution expenses, as a percentage of net revenue, were 46.3% for the three months ended September 30, 2023 as compared to 44.4% for the three months ended September 30, 2022. This increase in sales and distribution expenses as a percentage of revenue is predominantly due to product mix and an increase in online advertising costs.

[Table of Contents](#)***Research and Development Expenses***

| | Three Months Ended | | Change | |
|-----------------------------------|------------------------------------|-------------|---------------|----------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Research and development expenses | \$ 1,706 | \$ 852 | \$ (854) | (50.1)% |

The decrease in research and development expenses was primarily the result of a decrease in headcount expense of \$0.6 million and a decrease in stock compensation expense of \$0.2 million.

General and Administrative Expenses

| | Three Months Ended | | Change | |
|-------------------------------------|------------------------------------|-------------|---------------|----------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| General and administrative expenses | \$ 10,369 | \$ 4,326 | \$ (6,043) | (58.3)% |

The decrease in general and administrative expenses was primarily the result of a decrease in litigation settlements of \$1.8 million, a decrease of \$1.4 million in depreciation and amortization, a decrease of \$0.8 million in stock compensation expense, a decrease of \$0.6 million in headcount expense, a decrease of \$0.5 million in inventory donations, a decrease of \$0.4 million in professional fees, and a decrease in other miscellaneous expenses of \$0.4 million.

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Impairment loss on goodwill

| | Three Months Ended September 30, | | Change | |
|-----------------------------|-------------------------------------|------|-------------|----------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Impairment loss on goodwill | \$ 90,921 | \$ — | \$ (90,921) | (100.0)% |

We evaluated current economic conditions during the third quarter of 2022, including the impact of the Federal Reserve further increasing the risk-free interest rate, as well as the inflationary pressure on product and labor costs and operational impacts attributable to continued global supply chain disruptions. We believe that these conditions were factors in our market capitalization falling below the book value of net assets as of September 30, 2022. Accordingly, we concluded a triggering event had occurred and performed interim goodwill impairment analyses and determined that our goodwill was fully impaired as of September 30, 2022. As a result, we recorded a goodwill impairment charge of approximately \$90.9 million in the three months ended September 30, 2022. There was no impairment loss on goodwill during the three months ended September 30, 2023.

Impairment loss on intangibles

| | Three Months Ended September 30, | | Change | |
|--------------------------------|-------------------------------------|------|------------|----------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Impairment loss on intangibles | \$ 3,118 | \$ — | \$ (3,118) | (100.0)% |

Certain asset groups experienced a significant decrease in sales and contribution margin through September 30, 2022. This was considered an interim triggering event for the three months ended September 30, 2022. Based on the analysis of comparing the undiscounted cash flow to the carrying value of the asset group, one group tested indicated that the assets may not be recoverable. For this asset group, we compared the fair value to the carrying amount of the asset group and recorded an intangible impairment charge of \$3.1 million in the three months ended September 30, 2022. There was no impairment loss on intangibles during the three months ended September 30, 2023.

Change in fair value of contingent earn-out liabilities

| | Three Months Ended September 30, | | Change | |
|---|-------------------------------------|------|--------|--------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Change in fair value of contingent earn-out liabilities | \$ (774) | \$ — | \$ 774 | 100.0% |

The change in fair value of contingent earn-out liabilities was related to our M&A, which includes a re-assessment of the estimated fair value of contingent consideration as part of the purchase price, primarily driven by the fluctuation in our share price since the date of each acquisition and contribution margin projections. As of December 31, 2022, we no longer have any contingent earn-out liabilities.

Interest expense, net

| | Three Months Ended September 30, | | Change | |
|-----------------------|-------------------------------------|--------|----------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Interest expense, net | \$ 904 | \$ 359 | \$ (545) | (60.3)% |

The decrease in interest expense, net of \$0.5 million is primarily relating to a decrease in interest expense of \$0.4 million and an increase in interest income of \$0.1 million compared to the prior period due to lower average borrowings.

Change in fair market value of warrant liability

| | Three Months Ended September 30, | | Change | |
|--|-------------------------------------|----------|----------|-------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Change in fair market value of warrant liability | \$ (5,528) | \$ (567) | \$ 4,961 | 89.7% |

The 2022 and 2023 activity is related to the change in fair market value of the warrant liabilities from the Prefunded Warrants and common stock warrants from our March 2022 equity raise of capital. The change in fair value of warrant liabilities primarily relates to the reduced share price compared to the prior period.

Loss on initial issuance of equity

| | Three Months Ended September 30, | | Change | |
|------------------------------------|-------------------------------------|------|-------------|----------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Loss on initial issuance of equity | \$ 12,834 | \$ — | \$ (12,834) | (100.0)% |

We recorded a charge related to the September 29, 2022 securities purchase agreement for common stock and associated warrants for the three months ended September 30, 2022 as we deemed the agreement non cancellable. The \$12.8 million expense is derived from the anticipated fair-value of the issuances of equity attributable to the expected issuance of common shares and common stock.

[Table of Contents](#)**Comparison of the Nine Months Ended September 30, 2022 and 2023**

The following table sets forth the components of our results of operations as a percentage of net revenue:

| | Nine Months Ended September 30, | | Change | |
|---|--|--------------------|-------------------|--------------|
| | 2022 (1) | 2023 (1) | Amount | % |
| | (in thousands, except percentages) | | | |
| Net revenue | \$ 166,268 | \$ 109,811 | \$ (56,457) | (34.0)% |
| Cost of good sold | 81,118 | 56,236 | (24,882) | (30.7)% |
| Gross profit | 85,150 | 53,575 | (31,575) | (37.1)% |
| Operating expenses: | | | | |
| Sales and distribution | 88,632 | 61,704 | (26,928) | (30.4)% |
| Research and development | 4,582 | 3,808 | (774) | (16.9)% |
| General and administrative | 29,481 | 16,566 | (12,915) | (43.8)% |
| Impairment loss on goodwill | 119,941 | — | (119,941) | (100.0)% |
| Impairment loss on intangibles | 3,118 | 39,445 | 36,327 | 1,165.1% |
| Change in fair value of contingent earn-out liabilities | (5,240) | — | 5,240 | 100.0% |
| Total operating expenses | 240,514 | 121,523 | (118,991) | (49.5)% |
| Operating loss | (155,364) | (67,948) | 87,416 | 56.3% |
| Interest expense, net | 2,043 | 1,076 | (967) | (47.3)% |
| Gain on extinguishment of seller note | (2,012) | — | 2,012 | 100.0% |
| Loss on initial issuance of equity | 18,669 | — | (18,669) | (100.0)% |
| Change in fair value of warrant liability | 2,365 | (2,410) | (4,775) | (201.9)% |
| Other income (expense), net | (199) | 101 | 300 | 150.8% |
| Loss before income taxes | (176,230) | (66,715) | 109,515 | 62.1% |
| Provision (benefit) for income taxes | (243) | 142 | 385 | 158.4% |
| Net loss | <u>\$ (175,987)</u> | <u>\$ (66,857)</u> | <u>\$ 109,130</u> | <u>62.0%</u> |

(1) Amounts include stock-based compensation expense as follows:

| | Nine Months Ended September 30, | | Change | |
|--|--|-----------------|-------------------|----------------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Sales and distribution expenses | \$ 4,228 | \$ 2,091 | \$ (2,137) | (50.5)% |
| Research and development expenses | 1,418 | 1,134 | (284) | (20.0)% |
| General and administrative expenses | 6,208 | 3,546 | (2,662) | (42.9)% |
| Total stock-based compensation expense | <u>\$ 11,854</u> | <u>\$ 6,771</u> | <u>\$ (5,083)</u> | <u>(42.9)%</u> |

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The following table sets forth the components of our results of operations as a percentage of net revenue:

| | Nine Months Ended September 30, | |
|---|--|-------------|
| | 2022 | 2023 |
| Net revenue | 100.0% | 100.0% |
| Cost of good sold | 48.8 | 51.2 |
| Gross profit | 51.2 | 48.8 |
| Operating expenses: | | |
| Sales and distribution | 53.3 | 56.2 |
| Research and development | 2.8 | 3.5 |
| General and administrative | 17.7 | 15.1 |
| Impairment loss on goodwill | 72.1 | — |
| Impairment loss on intangibles | 1.9 | 35.9 |
| Change in fair value of contingent earn-out liabilities | (3.2) | — |
| Total operating expenses | 144.6 | 110.7 |
| Operating loss | (93.4) | (61.9) |
| Interest expense, net | 1.2 | 1.0 |
| Gain on extinguishment of seller note | (1.2) | — |
| Loss on initial issuance of equity | 11.2 | — |
| Change in fair value of warrant liability | 1.4 | (2.2) |
| Other income, net | (0.1) | 0.1 |
| Loss before income taxes | (106.0) | (60.8) |
| Provision (benefit) for income taxes | (0.1) | 0.1 |
| Net loss | (105.9)% | (60.9)% |

Net Revenue

Revenue by Product Categories:

The following tables sets forth our net revenue disaggregated by product categories:

| | Nine Months Ended | | Change | |
|-------------|------------------------------------|-------------|---------------|----------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Direct | \$ 161,853 | \$ 107,357 | \$ (54,496) | (33.7)% |
| Wholesale | 4,415 | 2,454 | (1,961) | (44.4)% |
| Net revenue | \$ 166,268 | \$ 109,811 | \$ (56,457) | (34.0)% |

Net revenue decreased \$56.5 million, or 34.0%, during the nine months ended September 30, 2023 to \$109.8 million, compared to \$166.3 million for the nine months ended September 30, 2022. The decrease in net revenue was primarily attributable to a decrease in direct net revenue of \$54.5 million, or a 33.7% which was due to softness in consumer demand due the current macroeconomic environment and due to competitive pricing pressure and other competitive dynamics on marketplaces, partially offset by liquidation of higher priced excess inventory during the nine months ended September 30, 2023.

Direct net revenue consists of both organic net revenue and net revenue from our M&A. For the nine months ended September 30, 2023, organic revenue was \$107.2 million and revenue from our M&A businesses was \$0.2 million. For the nine months ended September 30, 2022, organic revenue was \$149.6 million and revenue from our M&A businesses was \$11.5 million.

| | Nine Months Ended September 30, | |
|-------------------------------------|--|-------------|
| | 2022 | 2023 |
| | (in thousands) | |
| Heating, cooling and air quality | \$ 56,835 | \$ 29,512 |
| Kitchen appliances | 27,438 | 18,234 |
| Health and beauty | 12,452 | 11,725 |
| Personal protective equipment | 1,565 | 549 |
| Cookware, kitchen tools and gadgets | 14,229 | 8,315 |

| | | |
|--|-------------------|-------------------|
| Home office | 10,077 | 7,410 |
| Housewares | 23,478 | 19,558 |
| Essential oils and related accessories | 17,102 | 12,787 |
| Other | 3,092 | 1,721 |
| Total net revenue | <u>\$ 166,268</u> | <u>\$ 109,811</u> |

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Net revenue decreased \$56.5 million, or 34.0%, during the nine months ended September 30, 2023 to \$109.8 million, compared to \$166.3 million for the nine months ended September 30, 2022. Every category of business had a reduction in sales compared to the prior year primarily relating to softness in consumer demand due the macroeconomic environment. In addition, there were competitive pricing pressures coupled with certain key products losing their prominent positioning on Amazon due to competition, specifically in the heating, cooling, air quality and kitchen appliance businesses. These factors resulted in a reduction of units sold and a reduction in retail sales prices generally for each category of business.

Cost of Goods Sold and Gross Profit

| | Nine Months Ended September 30, | | Change | |
|--------------------|------------------------------------|-----------|-------------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Cost of goods sold | \$ 81,118 | \$ 56,236 | \$ (24,882) | (30.7)% |
| Gross profit | \$ 85,150 | \$ 53,575 | \$ (31,575) | (37.1)% |

Cost of goods sold decreased by \$24.9 million, from \$81.1 million for the nine months ended September 30, 2022 to \$56.2 million for the nine months ended September 30, 2023 primarily from reduced sales volumes. The decrease in cost of goods sold was primarily attributable to a decrease of \$20.7 million in cost of goods sold from our organic businesses, a decrease of \$3.8 million from our M&A businesses, and a decrease of \$0.4 million in cost of goods sold from our wholesale businesses.

Gross profit decreased from 51.2% for the nine months ended September 30, 2022 to 48.8% for the nine months ended September 30, 2023. The decrease in gross profit was due primarily to a change of product mix, competitive pricing pressure resulting in reduced retail sales prices, and liquidation of high priced excess inventory at reduced prices.

Sales and Distribution Expenses

| | Nine Months Ended September 30, | | Change | |
|---------------------------------|------------------------------------|-----------|-------------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Sales and distribution expenses | \$ 88,632 | \$ 61,704 | \$ (26,928) | (30.4)% |

Sales and distribution expenses, which included e-commerce platform commissions, online advertising and logistics expenses (i.e., variable sales and distribution expense), decreased to \$61.7 million for the nine months ended September 30, 2023, from \$88.6 million for the nine months ended September 30, 2022. This decrease is primarily attributable to the decrease in the volume of products sold in the nine months ended September 30, 2023, as our e-commerce platform commissions, online advertising, selling and logistics expenses decreased to \$51.6 million in the nine months ended September 30, 2023 as compared to \$74.9 million in the prior year period.

Our sales and distribution fixed costs (e.g., salary and office expenses) including stock-based compensation decreased to \$10.1 million for the nine months ended September 30, 2023, from \$13.7 million for the nine months ended September 30, 2022. This decrease is primarily attributable to lower stock-compensation expense of \$2.1 million and lower salary expense of \$1.1 million, partially offset by an increase in restructuring costs of \$0.6 million.

As a percentage of net revenue, sales and distribution expenses increased to 56.2% for the nine months ended September 30, 2023, from 53.3% for the nine months ended September 30, 2022. E-commerce platform commissions, online advertising, selling and logistics expenses included within sales and distribution expenses, as a percentage of net revenue, were 47.0% for the nine months ended September 30, 2023 as compared to 45.1% for the nine months ended September 30, 2022. This increase in sales and distribution expenses as a percentage of revenue is predominantly due to product mix, an increase in provider fulfillment fees, and an increase in online advertising costs.

[Table of Contents](#)**Research and Development Expenses**

| | Nine Months Ended September 30, | | Change | |
|-----------------------------------|------------------------------------|----------|----------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Research and development expenses | \$ 4,582 | \$ 3,808 | \$ (774) | (16.9)% |

The decrease in research and development expenses was primarily the result of a decrease in headcount expense of \$1.0 million and a decrease in stock compensation expense of \$0.3 million, partially offset by an increase in restructuring expense of \$0.5 million.

General and Administrative Expenses

| | Nine Months Ended September 30, | | Change | |
|-------------------------------------|------------------------------------|-----------|-------------|---------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| General and administrative expenses | \$ 29,481 | \$ 16,566 | \$ (12,915) | (43.8)% |

The decrease in general and administrative expenses was primarily the result of a decrease in stock compensation expense of \$2.7 million, a decrease of \$2.6 million relating to litigation settlements, a decrease of \$2.3 million in professional fees, a decrease of \$2.2 million in depreciation and amortization, a decrease in other miscellaneous expenses of \$1.4 million, a decrease of \$0.8 in headcount expense, and a decrease of \$0.6 million in inventory donations, partially offset by an increase in restructuring expense of \$0.4 million. (see Note 9 of our Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q for additional details)

Impairment loss on goodwill

| | Nine Months Ended September 30, | | Change | |
|-----------------------------|------------------------------------|------|--------------|----------|
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Impairment loss on goodwill | \$ 119,941 | \$ — | \$ (119,941) | (100.0)% |

We evaluated current economic conditions during the third quarter of 2022, including the impact of the Federal Reserve further increasing the risk-free interest rate, as well as the inflationary pressure on product and labor costs and operational impacts attributable to continued global supply chain disruptions. We believe that these conditions were factors in our market capitalization falling below the book value of net assets as of September 30, 2022. Accordingly, we concluded a triggering event had occurred and performed interim goodwill impairment analyses and determined that our goodwill was fully impaired as of September 30, 2022. As a result, we recorded a goodwill impairment charge of approximately \$90.9 million in the three months ended September 30, 2022. We also had a triggering event during the three months ended March 31, 2022 and recorded an impairment charge of \$29.0 million. For the nine months ended September 30, 2022, total goodwill impairment was approximately \$119.9 million. Further, we wrote-off the remainder of our goodwill during the three months ended September 30, 2022 as our market capitalization continued to decline and the inflationary pressure on product and labor costs and operational impacts attributable to continued global supply chain disruptions. There is no goodwill recorded as of December 31, 2022 and September 30, 2023.

[Table of Contents](#)**Impairment loss on intangibles**

| | Nine Months Ended | | Change | |
|--------------------------------|------------------------------------|-----------|-----------|----------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Impairment loss on intangibles | \$ 3,118 | \$ 39,445 | \$ 36,327 | 1,165.1% |

Certain asset groups experienced a significant decrease in sales and contribution margin through September 30, 2022. This was considered an interim triggering event for the nine months ended September 30, 2022. Based on the analysis of comparing the undiscounted cash flow to the carrying value of the asset group, one group tested indicated that the assets may not be recoverable. For this asset group, we compared the fair value to the carrying amount of the asset group and recorded an intangible impairment charge of \$3.1 million in the nine months ended September 30, 2022.

On March 20, 2023, the Company made certain leadership changes in our essential oil business resulting in a change in strategy and outlook for the business and reduced portfolio offering. This reduction in the portfolio will be impactful to our essential oil business's future revenues and profitability and as a result the Company made revisions to our internal forecasts. The Company concluded that this change was an interim triggering event for the three months ending March 31, 2023 indicating the carrying value of our essential oil business's long-lived assets including trademarks may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$16.7 million in the three months ending March 31, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations.

During the three months ended June 30, 2023, the Company had a substantial decrease in its market capitalization, primarily relating to a decrease in share price. Further, the Company continues to see reduced net revenues across its portfolio due to the current macroeconomic environment reducing demand for consumer goods. Finally, during the three months ending June 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering, specifically related to its kitchen appliance products. As a result of this rationalization, along with the reduced demand for its products, the Company has made certain revisions to its internal forecasts for its Paper business and Kitchen appliance business. The Company concluded that these factors were an interim triggering event for the three months ending June 30, 2023 indicating the carrying value of our Paper and Kitchen appliance business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$22.8 million for the Paper business and Kitchen appliance business during the three months ending June 30, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations. There were no triggering events during the three months ended September 30, 2023.

Change in fair value of contingent earn-out liabilities

| | Nine Months Ended | | Change | |
|---|------------------------------------|------|----------|--------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Change in fair value of contingent earn-out liabilities | \$ (5,240) | \$ — | \$ 5,240 | 100.0% |

The change in fair value of contingent earn-out liabilities was related to our M&A, which includes a re-assessment of the estimated fair value of contingent consideration as part of the purchase price, primarily driven by the fluctuation in our share price since the date of each acquisition and contribution margin projections. As of December 31, 2022, we no longer have any contingent earn-out liabilities.

Interest expense, net

| | Nine Months Ended | | Change | |
|-----------------------|------------------------------------|----------|----------|---------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Interest expense, net | \$ 2,043 | \$ 1,076 | \$ (967) | (47.3)% |

The decrease in interest expense, net of \$1.0 million is primarily relating to a decrease in interest expense of \$0.4 million and an increase in interest income of \$0.6 million compared to the prior period due to lower average borrowings.

Gain on extinguishment of seller note

| | Nine Months Ended | | Change | |
|---------------------------------------|------------------------------------|------|----------|----------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Gain on extinguishment of seller note | \$ (2,012) | \$ — | \$ 2,012 | (100.0)% |

The gain on extinguishment of seller note in the nine months ended September 30, 2022 was attributable to the settlement of the Truweo seller note, which resulted in a \$2.0 million in gain on extinguishment of seller note upon the extinguishment of the debt.

[Table of Contents](#)**Loss on initial issuance of equity**

| | Nine Months Ended | | Change | |
|------------------------------------|------------------------------------|------|-------------|----------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Loss on initial issuance of equity | \$ 18,669 | \$ — | \$ (18,669) | (100.0)% |

The loss on initial issuance of equity is attributable to the issuance of common shares and initial valuation of the prefunded warrants and common stock warrants from our March 2022 equity raise of \$5.8 million in March 2022. Further, in September 2022, we recorded a charge related to the September 29, 2022 securities purchase agreement for common stock and associated warrants for the three months ended September 30, 2022 as we deemed the agreement non cancellable. The \$12.8 million expense is derived from the anticipated fair-value of the issuances of equity attributable to the expected issuance of common shares and common stock warrants versus the anticipated proceeds to be received by us. We closed and issued the common stock and associated warrants on October 4, 2022.

Change in fair market value of warrant liability

| | Nine Months Ended | | Change | |
|--|------------------------------------|------------|------------|----------|
| | September 30, | | | |
| | 2022 | 2023 | Amount | % |
| | (in thousands, except percentages) | | | |
| Change in fair market value of warrant liability | \$ 2,365 | \$ (2,410) | \$ (4,775) | (201.9)% |

The 2022 and 2023 activity is related to the change in fair market value of the warrant liabilities from the prefunded warrants and common stock warrants from our March 2022 equity raise of capital. The change in fair value of warrant liabilities for the nine months ended September 30, 2023 primarily relates to the reduced share price compared to the prior period.

Liquidity and Capital Resources**Cash Flows for the Nine Months Ended September 30, 2022 and 2023**

The following table provides information regarding our cash flows for the nine months ended September 30, 2022 and 2023:

| | Nine Months Ended September 30, | |
|--|---------------------------------|--------------------|
| | 2022 | 2023 |
| | (in thousands) | |
| Cash used by operating activities | \$ (19,541) | \$ (8,458) |
| Cash used in investing activities | (29) | (205) |
| Cash provided (used) by financing activities | 11,231 | (7,507) |
| Effect of exchange rate on cash | (936) | 42 |
| Net change in and restricted cash for the period | <u>\$ (9,275)</u> | <u>\$ (16,128)</u> |

Net Cash Used in Operating Activities

Net cash used in operating activities was \$19.5 million for the nine months ended September 30, 2022, resulting from our net cash losses from operations of \$20.8 million and cash usage from working capital of \$1.3 million primarily from the build-up of inventory.

Net cash used in operating activities was \$8.5 million for the nine months ended September 30, 2023, resulting primarily from our net cash losses from operations of \$19.3 million, inflow from working capital of \$10.8 million from changes in accounts receivable, purchases of inventory and payments of accounts payable. The reduction of gross inventory of \$12.0 million from December 31, 2022 to September 30, 2023 primarily relates to the liquidation of high priced excess inventory and a reduction of purchases for the period.

Net Cash Used in Investing Activities

For the nine months ended September 30, 2022, net cash used in investing activities was less than \$0.1 million.

For the nine months ended September 30, 2023, net cash used in investing activities was \$0.2 million primarily related to the remaining payment for the purchase of Step and Go assets which was acquired during the three months ending December 31, 2022.

Net Cash Provided (Used) by Financing Activities

For the nine months ended September 30, 2022, cash provided by financing activities of \$11.2 million was primarily from proceeds from an equity offering of \$27.0 million and borrowings from the Credit Facility of \$107.7 million offset by \$2.9 million of repayments of notes issued to certain sellers in connection with our M&A activity, repayments of the Credit Facility of \$116.9 million, and payment of the Squatty Potty assets of \$4.0 million.

For the nine months ended September 30, 2023, cash used by financing activities of \$7.5 million primarily from the net repayments for our MidCap credit facility of \$7.2 million, repayment of note payable to Smash of \$0.5 million and net proceeds of insurance financing of \$0.2 million.

[Table of Contents](#)***Liquidity and Going Concern***

As an emerging growth company in the early commercialization stage of its lifecycle, we are subject to inherent risks and uncertainties associated with the development of our enterprise. In this regard, substantially all of our efforts to date have been devoted to the development and sale of our products in the marketplace, which includes our investment in organic growth at the expense of short-term profitability, our investment in incremental growth through mergers & acquisitions (“M&A Strategy”), our recruitment of management and technical staff, and raising capital to fund the development of our enterprise. As a result of these efforts, we have incurred significant losses and negative cash flows from operations since our inception and expect to continue to incur such losses and negative cash flows for the foreseeable future until such time that we reach a level of profitability to sustain our operations. We have also experienced declining revenues due to macroeconomic factors, including increased interest rates and reduced consumer discretionary spending, and other factors, and we intend to focus our efforts on a more limited number of products. In addition, our recent financial performance has been adversely impacted by inflationary pressures and reduced consumer spending.

In order to execute our growth strategy, we have historically relied on outside capital through the issuance of equity, debt, and borrowings under financing arrangements (collectively “outside capital”) to fund our cost structure and we expect to continue to rely on outside capital for the foreseeable future, specifically for our M&A Strategy. While we believe we will eventually reach a level of profitability to sustain our operations, there can be no assurance we will be able to achieve such profitability or do so in a manner that does not require our continued reliance on outside capital. Moreover, while we have historically been successful in raising outside capital, there can be no assurance we will be able to continue to obtain outside capital in the future or do so on terms that are acceptable to us.

As of the date the accompanying Condensed Consolidated Financial Statements were issued (the “issuance date”), we evaluated the significance of the following adverse financial conditions in accordance with Accounting Standard Codification 205-40, Going Concern:

- Since our inception, we have incurred significant losses and used cash flows from operations to fund our enterprise. In this regard, during the nine months ended September 30, 2023, we incurred a net loss of \$66.9 million and used net cash flows in our operations of \$8.5 million. In addition, as of September 30, 2023, we had unrestricted cash and cash equivalents of \$28.0 million available to fund our operations and an accumulated deficit of \$692.1 million. Our revenue of \$109.8 million for the nine months ended September 30, 2023 declined from \$166.3 million for the nine months ended September 30, 2022.
- We are required to remain in compliance with certain financial covenants required by the MidCap Credit facility. The Credit Agreement imposes certain customary affirmative and negative covenants upon the Company including restrictions related to dividends and other foreign subsidiaries' limitations. The Credit Agreement minimum liquidity covenant requires that Midcap shall not permit the credit party liquidity at any time to be less than (a) during the period commencing on February 1st through and including May 31st of each calendar year, \$12.5 million and (b) at all other times, \$15.0 million. The Credit Agreement includes events of default that are customary for these types of credit facilities, including the occurrence of a change of control. We were in compliance with these financial covenants as of December 31, 2022, and expect to remain in compliance through at least September 30, 2024. However, with our short history of forecasting our business during the ongoing COVID-19 global pandemic, the current global inflation and related global supply chain disruptions, we can provide no assurances that we will remain in compliance with our financial covenants. Further, absent our ability to generate cash inflows from our operations or secure additional outside capital, we may be unable to remain in compliance with these financial covenants. In the event we are unable to remain in compliance with these financial covenants (or other non-financial covenants required by the MidCap Credit Facility), and we are unable to secure a waiver or forbearance, MidCap may, at its discretion, exercise any and all of its existing rights and remedies, which may include, among others, accelerating repayment of the outstanding borrowings and/or asserting its rights in the assets securing the loan.
- As of the issuance date, we have no firm commitments to secure additional outside capital from lenders or investors. While we are continually exploring additional outside capital, specifically to fund our M&A strategy, there can be no assurance we will be able to obtain capital or do so on terms that are acceptable to us. Accordingly, absent our ability to generate cash inflows from our operations and/or secure additional outside capital in the near term, we may be unable to meet our obligations as they become due over the next twelve months beyond the issuance date.
- We plan to continue to closely monitor our operating forecast, pursue our M&A strategy, pursue additional sources of outside capital on terms that are acceptable to us, and secure a waiver or forbearance from MidCap if we are unable to remain in compliance with one or more of the covenants required by the MidCap Credit Facility. If some or all of our plans prove unsuccessful, we may need to implement short-term changes to our operating plan, such as delaying expenditures, reducing investments in new products and M&A, delaying the development of our software, or reducing our sale and distribution

infrastructure. We may also need to seek long-term strategic alternatives, such as a significant curtailment of our operations, a sale of certain of our assets, a divestiture of certain product lines, a sale of the entire enterprise to strategic or financial investors, and/or allow our enterprise to become insolvent.

These uncertainties raise substantial doubt about our ability to continue as a going concern. The accompanying Condensed Consolidated Financial Statements have been prepared on the basis that we will continue to operate as a going concern, which contemplates that we will be able to realize assets and settle liabilities and commitments in the normal course of business for the foreseeable future. Accordingly, the accompanying Condensed Consolidated Financial Statements do not include any adjustments that may result from the outcome of these uncertainties.

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On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement.

The Bid Price Notice has no immediate effect on the continued listing status of our common stock on The Nasdaq Capital Market, and, therefore, our listing remains fully effective.

If at any time before April 22, 2024, the closing bid price of our common stock closes at or above \$1.00 per share for a minimum of 10 consecutive business days, subject to Nasdaq's discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H) to 20 consecutive business days, Nasdaq will provide written notification that the Company has achieved compliance with the minimum bid price requirement, and the matter would be resolved.

The Company will continue to monitor the closing bid price of its Common Stock and seek to regain compliance with all applicable Nasdaq requirements within the allotted compliance period. If the Company does not regain compliance within the allotted compliance period, Nasdaq will provide notice that the Common Stock will be subject to delisting. The Company would then be entitled to appeal that determination to a Nasdaq hearings panel. There can be no assurance that the Company will regain compliance with the minimum bid price requirement during the compliance period, or maintain compliance with the other Nasdaq listing requirements.

In the future, if our common stock remains below the continued listing standard of \$1.00 per share or otherwise fails to satisfy any of the Nasdaq continued listing requirements, and if we are unable to cure such deficiency during any subsequent cure period, our common stock could be delisted from the Nasdaq. If our common stock ultimately were to be delisted for any reason, we could face a number of significant material adverse consequences, including limited availability of market quotations for our common stock; limited news and analyst coverage; decreased ability to obtain additional financing or failure to comply with the covenants with our current lenders; limited liquidity for our stockholders due to thin trading; and the potential loss of confidence by investors, employees and other third parties who we do business with.

Further, we may decide to effect a reverse split of our common stock which could impact the market price for our stock, limit our ability to raise capital or otherwise limit our ability to execute acquisition transactions and there is no assurance that the market price or trading volume for our common stock will not further decline after announcing or effecting such split.

On May 9, 2023, the Company announced a plan to reduce expenses by implementing a reduction in its current workforce impacting approximately 50 employees and 15 contractors, primarily in the Philippines. The Company recognized restructuring charges of \$0.4 million and \$1.6 million for the three and nine months ended September 30, 2023, respectively.

MidCap Credit Facility —On December 22, 2021, we entered into a Credit Facility with MidCap, pursuant to which, among other things, (i) the lenders party thereto as lenders (the "Lenders") agreed to provide a revolving credit facility in a principal amount of up to \$40.0 million subject to a borrowing base consisting of, among other things, inventory and sales receivables (subject to certain reserves), and (ii) we agreed to issue to MidCap Funding XXVII Trust a warrant to purchase up to an aggregate of 200,000 shares of our common stock, in exchange for the Lenders extending loans and other extensions of credit to us under the Credit Facility.

The credit facility contains a financial covenant that requires us to maintain a minimum unrestricted cash balance of (a) \$12.5 million during the period from February 1st through and including May 31st of each calendar year, and (b) \$15.0 million at all other times. At its election, we may elect to comply with an alternative financial covenant that would require us to maintain a minimum borrowing availability under the credit facility of \$10.0 million at all times. We currently do not anticipate electing the alternative financial covenant over the next twelve months and are in compliance with the minimum liquidity covenant as of the date these Condensed Consolidated Financial Statements were issued. The MidCap credit facility matures in December 2024.

The outstanding balance on the MidCap credit facility as of December 31, 2022 and September 30, 2023 was \$21.1 million and \$14.2 million, respectively. The Company had \$0.6 million of availability on the Midcap credit facility as of September 30, 2023. We are in compliance with the financial covenants contained within the Credit Agreement as of September 30, 2023.

Non-GAAP Financial Measures

We believe that our financial statements and the other financial data included in this Quarterly Report have been prepared in a manner that complies, in all material respects, with generally accepted accounting principles in the U.S. (“GAAP”). However, for the reasons discussed below, we have presented certain non-GAAP measures herein.

We have presented the following non-GAAP measures to assist investors in understanding our core net operating results on an ongoing basis: (i) Contribution margin; (ii) Contribution margin as a percentage of net revenue; (iii) EBITDA (iv) Adjusted EBITDA; and (v) Adjusted EBITDA as a percentage of net revenue. These non-GAAP financial measures may also assist investors in making comparisons of our core operating results with those of other companies.

As used herein, Contribution margin represents gross profit less e-commerce platform commissions, online advertising, selling and logistics expenses (included in sales and distribution expenses). As used herein, Contribution margin as a percentage of net revenue represents Contribution margin divided by net revenue. As used herein, EBITDA represents net loss plus depreciation and amortization, interest expense, net and provision for income taxes. As used herein, Adjusted EBITDA represents EBITDA plus stock-based compensation expense, changes in fair-market value of earn-outs, profit and loss impacts from the issuance of common stock and/or warrants, changes in fair-market value of warrant liability, litigation settlements, impairment on goodwill and intangibles, gain from extinguishment of seller note, restructuring expenses, and other expenses, net. As used herein, Adjusted EBITDA as a percentage of net revenue represents Adjusted EBITDA divided by net revenue. Contribution margin, EBITDA and Adjusted EBITDA do not represent and should not be considered as alternatives to loss from operations or net loss, as determined under GAAP.

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We present Contribution margin and Contribution margin as a percentage of net revenue, as we believe each of these measures provides an additional metric to evaluate our operations and, when considered with both our GAAP results and the reconciliation to gross profit, provides useful supplemental information for investors. Specifically, Contribution margin and Contribution margin as a Non-GAAP Financial Measure percentage of net revenue are two of our key metrics in running our business. All product decisions made by us, from the approval of launching a new product and to the liquidation of a product at the end of its life cycle, are measured primarily from Contribution margin and/or Contribution margin as a percentage of net revenue. Further, we believe these measures provide improved transparency to our stockholders to determine the performance of our products prior to fixed costs as opposed to referencing gross profit alone.

In the reconciliation to calculate contribution margin, we add e-commerce platform commissions, online advertising, selling and logistics expenses (“sales and distribution variable expense”) to gross profit to inform users of our financial statements of what our product profitability is at each period prior to fixed costs (such as sales and distribution expenses such as salaries as well as research and development expenses and general administrative expenses). By excluding these fixed costs, we believe this allows users of our financial statements to understand our products performance and allows them to measure our products performance over time.

We present EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue because we believe each of these measures provides an additional metric to evaluate our operations and, when considered with both our GAAP results and the reconciliation to net loss, provide useful supplemental information for investors. We use these measures with financial measures prepared in accordance with GAAP, such as sales and gross margins, to assess our historical and prospective operating performance, to provide meaningful comparisons of operating performance across periods, to enhance our understanding of our operating performance and to compare our performance to that of our peers and competitors. We believe EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue are useful to investors in assessing the operating performance of our business without the effect of non-cash items.

Contribution margin, Contribution margin as a percentage of net revenue, EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue should not be considered in isolation or as alternatives to net loss, loss from operations or any other measure of financial performance calculated and prescribed in accordance with GAAP. Neither EBITDA, Adjusted EBITDA or Adjusted EBITDA as a percentage of net revenue should be considered a measure of discretionary cash available to us to invest in the growth of our business. Our Contribution margin, Contribution margin as a percentage of net revenue, EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue may not be comparable to similar titled measures in other organizations because other organizations may not calculate Contribution margin, Contribution margin as a percentage of net revenue, EBITDA, Adjusted EBITDA or Adjusted EBITDA as a percentage of net revenue in the same manner as we do. Our presentation of Contribution margin and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by the expenses that are excluded from such terms or by unusual or non-recurring items.

We recognize that EBITDA, Adjusted EBITDA and Adjusted EBITDA as a percentage of net revenue, have limitations as analytical financial measures. For example, neither EBITDA nor Adjusted EBITDA reflects:

- our capital expenditures or future requirements for capital expenditures or mergers and acquisitions;
- the interest expense or the cash requirements necessary to service interest expense or principal payments, associated with indebtedness;
- depreciation and amortization, which are non-cash charges, although the assets being depreciated and amortized will likely have to be replaced in the future, or any cash requirements for the replacement of assets;
- changes in cash requirements for our working capital needs; or
- changes in fair value of contingent earn-out liabilities, warrant liabilities, and amortization of inventory step-up from acquisitions (included in cost of goods sold).

Additionally, Adjusted EBITDA excludes non-cash stock-based compensation expense, which is and is expected to remain a key element of our overall long-term incentive compensation package.

We also recognize that Contribution margin and Contribution margin as a percentage of net revenue have limitations as analytical financial measures. For example, Contribution margin does not reflect:

- general and administrative expense necessary to operate our business; •research and development expenses necessary for the development, operation and support of our software platform;

- the fixed costs portion of our sales and distribution expenses including stock-based compensation expense; or
- changes in fair value of contingent earn-out liabilities, warrant liabilities, and amortization of inventory step-up from acquisitions (included in cost of goods sold).

[Table of Contents](#)*Contribution Margin*

The following table provides a reconciliation of Contribution margin to gross profit and Contribution margin as a percentage of net revenue to gross profit as a percentage of net revenue, which are the most directly comparable financial measures presented in accordance with GAAP:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|-----------------|--|-----------------|
| | 2022 | 2023 | 2022 | 2023 |
| | (in thousands, except percentages) | | | |
| Gross Profit | \$ 30,191 | \$ 19,583 | \$ 85,150 | \$ 53,575 |
| Less: | | | | |
| E-commerce platform commissions, online advertising, selling and logistics expenses | (29,448) | (18,379) | (74,927) | (51,572) |
| Contribution margin | <u>\$ 743</u> | <u>\$ 1,204</u> | <u>\$ 10,223</u> | <u>\$ 2,003</u> |
| Gross Profit as a percentage of net revenue | 45.5% | 49.4% | 51.2% | 48.8% |
| Contribution margin as a percentage of net revenue | 1.1% | 3.0% | 6.1% | 1.8% |

Adjusted EBITDA

The following table provides a reconciliation of EBITDA and Adjusted EBITDA to net loss, which is the most directly comparable financial measure presented in accordance with GAAP:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|---|-------------------|--|--------------------|
| | 2022 | 2023 | 2022 | 2023 |
| | (in thousands, except percentages) | | | |
| Net loss | \$ (116,902) | \$ (6,270) | \$ (175,987) | \$ (66,857) |
| Add: | | | | |
| Provision (benefit) for income taxes | (75) | 90 | (243) | 142 |
| Interest expense, net | 904 | 359 | 2,043 | 1,076 |
| Depreciation and amortization | 1,869 | 452 | 5,763 | 3,416 |
| EBITDA | <u>(114,204)</u> | <u>(5,369)</u> | <u>(168,424)</u> | <u>(62,223)</u> |
| Other (income) expense, net | (174) | (128) | (199) | 101 |
| Change in fair value of contingent earn-out liabilities | (774) | — | (5,240) | — |
| Impairment loss on goodwill | 90,921 | — | 119,941 | — |
| Impairment loss on intangibles | 3,118 | — | 3,118 | 39,445 |
| Gain on extinguishment of seller note | — | — | (2,012) | — |
| Change in fair market value of warrant liability | (5,528) | (567) | 2,365 | (2,410) |
| Loss on original issuance of equity | 12,834 | — | 18,669 | — |
| Litigation reserve | 1,800 | — | 2,600 | — |
| Restructuring expense ⁽¹⁾ | — | 417 | — | 1,633 |
| Stock-based compensation expense | 2,943 | 1,232 | 11,854 | 6,771 |
| Adjusted EBITDA | <u>\$ (9,064)</u> | <u>\$ (4,415)</u> | <u>\$ (17,328)</u> | <u>\$ (16,683)</u> |
| Net loss as a percentage of net revenue | (176.3)% | (15.8)% | (105.8)% | (60.9)% |
| Adjusted EBITDA as a percentage of net revenue | (13.7)% | (11.1)% | (10.4)% | (15.2)% |

- (1) Restructuring expenses include non-recurring employee severance, contract termination costs and a settlement of a retention bonus relating to the Company reorganization executed during the three and nine months ending September 30, 2023.

[Table of Contents](#)**Critical Accounting Policies and Use of Estimates**

Our management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these Condensed Consolidated Financial Statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and the related disclosures. We base our estimates on historical experience and on other assumptions that we believe to be reasonable under the circumstances. These estimates and assumptions form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are described in more detail in the notes to our financial statements appearing elsewhere in this Quarterly Report, we believe the following accounting policies used in the preparation of our financial statements require the most significant judgments and estimates.

There have been no material changes to our critical accounting policies as compared to the critical accounting policies and significant judgments and estimates as disclosed in our Annual Report on Form 10-K for fiscal year ended December 31, 2022, as filed with the SEC on March 16, 2023 (our "Annual Report"). For additional information, please refer to Note 2 of our Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

Intangible asset valuation—We review long-lived assets for impairment when performance expectations, events, or changes in circumstances indicate that the asset's carrying value may not be recoverable. The evaluation is performed at the lowest level of identifiable cash flows by comparing the carrying value of the asset group to the undiscounted cash flows. If the evaluation indicates that the carrying amount of the assets may not be recoverable, any potential impairment is measured based upon the fair value of the related asset or asset group as determined by an appropriate market appraisal or other valuation technique.

On March 20, 2023, the Company made certain leadership changes in our essential oil business resulting in a change in strategy and outlook for the business which will result in a reduced portfolio offering. This reduction in the portfolio will be impactful to our essential oil business's future revenues and profitability and as a result the Company made revisions to our internal forecasts. The Company concluded that this change was an interim triggering event for the three months ending March 31, 2023 indicating the carrying value of our essential oil business's long-lived assets including trademarks may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$16.7 million in the three months ending March 31, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations.

During the three months ended June 30, 2023, the Company had a substantial decrease in its market capitalization, primarily relating to a decrease in share price. Further, the Company continues to see reduced net revenues across its portfolio due to the current macroeconomic environment reducing demand for consumer goods. Finally, during the three months ending June 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering, specifically related to its kitchen appliance products. As a result of this rationalization, along with the reduced demand for its products, the Company has made certain revisions to its internal forecasts for its Paper business and Kitchen appliance business. The Company concluded that these factors were an interim triggering event for the three months ending June 30, 2023 indicating the carrying value of our Paper and Kitchen appliance business's long-lived assets, including trademarks, may not be recoverable. Accordingly, the Company performed an interim impairment test of the trademark and assessed the recoverability of the related intangible assets by using level 3 inputs and comparing the carrying value of an asset group to the net undiscounted cash flow expected to be generated. The recoverability test indicated that certain definite-live trademark intangible assets were impaired. The Company concluded the carrying value of the trademark exceeded its estimated fair value which was determined utilizing the relief-from-royalty method to determine discounted projected future cash flows which resulted in an impairment charge. The Company recorded an intangible impairment charge of \$22.8 million for the Paper business and Kitchen appliance business during the three months ending June 30, 2023 within impairment loss on intangibles on the condensed consolidated statement of operations. There were no triggering events during the three months ended September 30, 2023.

For the nine months ended September 30, 2022 and 2023, total impairment loss on intangibles were approximately \$3.1 million and \$39.4 million, respectively.

We will continue to closely monitor actual results versus expectations as well as whether and to what extent any significant changes in current events or conditions result in corresponding changes to our expectations about future estimated cash flows. If our adjusted expectations of the operating results do not materialize, we may be required to record intangible impairment charges, which may be material.

While we believe our conclusions regarding the estimates of recoverability of our asset groupings are appropriate, these estimates are subject to uncertainty and by nature include judgments and estimates regarding various factors. These factors include the rate and extent of growth in the markets that our asset groups serve, the realization of future sales price and volume increases, fluctuations in exchange rates, fluctuations in price and availability of key raw materials, fluctuations in discount rate, and future operating efficiencies.

[Table of Contents](#)**Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

Not applicable.

Item 4. Controls and Procedures.**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Co-Chief Executive Officers and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this Quarterly Report on Form 10-Q.

Based on the evaluation of our disclosure controls and procedures as of September 30, 2023, our Co-Chief Executive Officers and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2023.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the three months ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures and internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

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PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

The information set forth under the headings “Shareholder Derivative Actions Related to the Securities Class Action”, “Earn-out Payment Dispute” and “Mueller Action” in Note 9 of our Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q is incorporated herein by reference.

We are party to various actions and claims arising in the normal course of business. We do not believe that the final outcome of these matters will have a material adverse effect on our financial position or results of operations. In addition, we maintain what we believe is adequate insurance coverage to further mitigate risk. However, no assurance can be given that the final outcome of such proceedings will not materially impact our financial condition or results of operations. Further, no assurance can be given that the amount or scope of existing insurance coverage will be sufficient to cover losses arising from such matters.

Item 1A. Risk Factors.

You should carefully consider the factors discussed in Part I, Item 1A. “Risk Factors” in our Annual Report and this Quarterly Report on Form 10-Q, which could materially affect our business, financial condition, cash flows or future results. The risks described in our Annual Report and this Quarterly Report on Form 10-Q are not the only risks facing our company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results. Except as presented below, there have been no material changes from the risk factors associated with our business previously disclosed in our Annual Report.

[Table of Contents](#)**Item 1A. Risk Factors.****Risks Relating to Our Business**

We have historically operated at a loss and we may never achieve or sustain profitability or positive cash flows. Further we and our independent registered public accounting firm have expressed substantial doubt about our ability to continue as a going concern.

We have historically operated at a loss and experienced losses after tax of \$176.0 million and \$66.9 million for the nine months ended September 30, 2022 and 2023, respectively. In addition, our costs may increase in future periods, which could negatively affect our future operating results and ability to achieve and sustain profitability. For example, we may need to continue to expend substantial financial and other resources on the ideation, sourcing and development of products, our technology infrastructure, research and development, including the development of new features for our AIMEE software platform, sales and marketing, international expansion and general administration, including expenses related to being a public company. We have had to rely on a combination of cash flow from operations and new capital in order to sustain our business. Despite the fact that we have raised significant capital, there can be no assurance that we will ever achieve profitability. Even if we do, there can be no assurance that we will be able to maintain or increase profitability on a quarterly or annual basis. Failure to achieve or sustain profitability could have a material adverse effect on our business.

Our growth strategy has resulted in operating losses and negative cash flows from operations that raised substantial doubt about our ability to continue as a going concern. Our independent registered public accounting firm included an explanatory paragraph in its report on our financial statements as of and for the year-ended December 31, 2022, that raised substantial doubt about our ability to continue as a going concern. If we are unable to continue as a going concern or maintain our financial covenants with our lenders, we may have to make significant changes to our operating plan, such as delay expenditures, reduce investments in new products, delay the development of our software, reduce our sale and distribution infrastructure, or significantly reduce our business. Further, if we are unable to continue as a going concern, we may be forced to liquidate our assets and the values we receive for our assets in liquidation or dissolution could be significantly lower than the values reflected in our financial statements.

A significant majority of our revenue results from sales of products on Amazon's U.S. Marketplace and any change, limitation, or restriction on our ability to operate on Amazon's platform could have a material adverse impact on our business, operating results and financial condition.

A substantial percentage of our revenue is from sales of products on Amazon's U.S. marketplace and we are subject to Amazon's terms of service ("ToS") and various other Amazon seller policies that apply to third parties who sell products on Amazon's marketplace. Amazon has the right to terminate or suspend our ability to sell on its platform at any time and for any reason. Amazon may also take other actions against us such as suspending or terminating our seller accounts or product listings and withholding payments owed to us indefinitely. From time to time in the past, we have experienced such adverse actions for products we have launched and products we have acquired and we can provide no assurance that we will be able to comply with Amazon's ToS. Further, in the event any of our seller accounts or product listings are suspended, or our product listings are required to be changed, for noncompliance or any other reason, our reinstatement efforts may take significant time and attention or could fail, which could have a material adverse effect on our business, operating results and financial condition. In addition, Amazon has made, and we expect will continue to make, changes to its platform that could require us to change the manner in which we operate, limit our ability to successfully market existing products and to launch new products or increase our costs to operate. Such changes and the efforts required to maintain compliance therewith could have an adverse effect on our business, operating results and financial condition. Examples of past changes from Amazon have included platform fee increases (i.e., storage, advertising, fulfillment and selling commissions), inventory warehouse limitations, restrictions on certain marketing activities and changes to listing requirements that limit the variations of products that can be included in a single listing. Any change, limitation or restriction on our ability to sell on Amazon's platform, even if temporary, could have a material impact on our business, operating results and financial condition. We also rely on services provided by Amazon's fulfillment platform, including its Prime badge program, in which Amazon guarantees expedited shipping of products we sell to the consumer, an important factor in the consumer's buying decision. Further, Amazon allows us to fulfill from our own third-party warehouses directly to customers under the same Prime badge guarantee. Amazon may at any time decide to discontinue allowing us to fulfill sales of our products directly from our warehouse network or limit our ability to advertise on our product listings that such products will receive expedited shipping under its Prime badge program. Any such inability or limitation, could have a material impact on our business, results of operations, and financial condition.

[Table of Contents](#)***We may be unable to attract, retain or motivate key personnel which could harm our business.***

Our future success depends on our continuing ability to attract, motivate and retain well qualified employees. Competition for well-qualified employees in all aspects of our business is intense globally. The loss of one or more of our key personnel or our inability to promptly identify a suitable successor to a key role, including through a succession plan, could have an adverse effect on our business. We have experienced higher than normal levels of turnover on our software development team and further departures could impact our ability to use AIMEE in our operations which could have a material impact on our business. Each of our executive officers, key technical personnel and other employees could terminate their employment relationship with us at any time. Moreover, we rely on stock-based compensation as a method to attract, retain and motivate our employees. If our common stock continues to be volatile or depressed, we may be unable to attract, retain and motivate employees, and if this occurs, it could have a material adverse effect on our business, operating results and financial condition. We do not currently maintain key person life insurance policies on any member of our senior management team or any other key employees.

We face intense competition and if we are unable to compete effectively, our market share and revenue could be diminished which may delay or otherwise hinder our efforts to achieve or maintain profitability.

We cannot assure you that our products will continue to compete favorably or that we will be successful in the face of increasing competition and from new products and enhancements introduced by existing competitors or new companies entering the markets in which we operate. We sell our products primarily on marketplaces and primarily on Amazon in the U.S. Unlike traditional brick and mortar retailers, the consumer who is shopping on marketplaces has a significant number of competing products to select from as there are limited barriers to entry. In addition, the Internet facilitates competitive entry and comparison shopping, which enhances the ability of new and existing businesses to compete against us. A number of our current and potential competitors have greater resources, longer histories, and/or greater brand recognition. As a result, they may be able to secure better terms from vendors and devote more resources to technology, infrastructure, fulfillment, and marketing than we may be able to. In addition, some of our competitors aggressively discount their products in order to gain market share, which has resulted in pricing pressures, reduced profit margins and lost market share. Further, social proof for products sold on marketplaces in the form of product ratings and reviews is highly important to our success. In certain instances we have been unable to maintain such social proof, and we may be unable to maintain such social proof in the future, or competitors may be able to attain better social proof for their products which could have a material impact on our operating results.

For certain significant products in our portfolio such as air conditioners and most of our dehumidifiers, we compete directly with our contract manufacturer who sells its own competing private label products on the marketplaces we sell and who has a lower cost structure and significantly better R&D capabilities. For other certain products, due to our inventory long position and other factors we continued to sell our older versions of SKUs rather than order newer versions with innovations that some of our competitors are currently selling, which has had and may continue to have a material impact on our business. In the interim we have lost and may continue to lose market share for such SKUs. As a result of competition, our product offerings, whether in new or existing markets, may not be successful, we may fail to gain or may lose business, and we may be required to increase our marketing spending or lower prices, either of which could materially impact our operating results.

We rely on our technology platform, AIMEE, to compete effectively in the markets we operate, but the effectiveness of AIMEE and our other technology requires significant investments which we may be unable or unwilling to make or which may be unsuccessful. In recent months, we have had a reduction in the number of members of our research and development team and in recent years numerous platforms that provide services that are comparable to AIMEE have been released. These platforms have teams solely dedicated to their products which enables them to maintain their products at high functionality. Together, the reduction in our development team and the speed with which these alternative products have come to market has caused our management team to consider evaluating the reduction of our reliance on AIMEE in exchange for third party providers that we believe may better serve certain of our business needs. Such consideration will be based on a number of factors. Regardless of the outcome of these alternative considerations, this could divert management's attention and otherwise disrupt our operations and adversely affect our operating results and financial condition.

We have recently undergone a management change and are evaluating various aspects of our business including but not limited to reducing the number of products we sell, each of which, individually or in the aggregate, could have a material impact on our results of operations, financial condition, and business.

During the three months ending September 30, 2023, the Company implemented a strategy of rationalizing certain less profitable products and reducing its product offering. Further, on July 26, 2023, Yaniv Sarig resigned as CEO of Aterian, and Arturo Rodriguez and Joseph Risico were promoted to Co-CEOs of Aterian. As a result of this change in leadership, we are considering a number of strategic initiatives that could impact most aspects of how we currently do business including a further rationalization of our product portfolio to improve our operations and potential future profitability. This reduction in our product portfolio will lead to

a decline in revenue in upcoming quarters. Executing on any of these decisions may be complex and entail a number of potential risks, including but not limited to uncertainties, disruptions and challenges in our business and business model, a decline in revenues and profitability, market share erosion, inventory write-offs and other restructuring related charges, impacts to our relationships with our various vendors and could potentially impact employee morale. Further, pursuing or completing any such SKU reduction or other strategic initiative could divert management's attention, and otherwise disrupt our operations and technology platform which could adversely affect our operating results and financial condition.

[Table of Contents](#)**Risks Relating to the Ownership of our Common Stock**

There is no guarantee of a continuing public market for you to resell our common stock.

On April 24, 2023, we received a letter from the Listing Qualifications Staff of The Nasdaq Stock Market LLC indicating that, based upon the closing bid price of our common stock for the last 30 consecutive business days, the Company is not currently in compliance with the requirement to maintain a minimum bid price of \$1.00 per share for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2). The Bid Price Notice provided a compliance period of 180 calendar days from the date of the Bid Price Notice, or until October 23, 2023, to regain compliance with the minimum closing bid requirement, pursuant to Nasdaq Listing Rule 5810(c)(3)(A). Following a request we made on October 13, 2023, on October 24, 2023, we received a letter from Nasdaq granting the Company an additional 180 days, or until April 22, 2024, to regain compliance with the minimum closing bid requirement.

The Bid Price Notice has no immediate effect on the continued listing status of our common stock on The Nasdaq Capital Market, and, therefore, our listing remains fully effective.

If at any time before April 22, 2024, the closing bid price of our common stock closes at or above \$1.00 per share for a minimum of 10 consecutive business days, subject to Nasdaq's discretion to extend this period pursuant to Nasdaq Listing Rule 5810(c)(3)(H) to 20 consecutive business days, Nasdaq will provide written notification that the Company has achieved compliance with the minimum bid price requirement, and the matter would be resolved.

The Company will continue to monitor the closing bid price of its Common Stock and seek to regain compliance with all applicable Nasdaq requirements within the allotted compliance period. If the Company does not regain compliance within the allotted compliance period, Nasdaq will provide notice that the Common Stock will be subject to delisting. The Company would then be entitled to appeal that determination to a Nasdaq hearings panel. There can be no assurance that the Company will regain compliance with the minimum bid price requirement during the compliance period, or maintain compliance with the other Nasdaq listing requirements.

In the future, if our common stock remains below the continued listing standard of \$1.00 per share or otherwise fails to satisfy any of the Nasdaq continued listing requirements, and if we are unable to cure such deficiency during any subsequent cure period, our common stock could be delisted from the Nasdaq. If our common stock ultimately were to be delisted for any reason, we could face a number of significant material adverse consequences, including limited availability of market quotations for our common stock; limited news and analyst coverage; decreased ability to obtain additional financing or failure to comply with the covenants with our current lenders; limited liquidity for our stockholders due to thin trading; and the potential loss of confidence by investors, employees and other third parties who we do business with.

Further, we may decide to effect a reverse split of our common stock which could impact the market price for our stock, limit our ability to raise capital or otherwise limit our ability to execute acquisition transactions and there is no assurance that the market price or trading volume for our common stock will not further decline after announcing or effecting such split.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Rule 10b-5(1) Trading Plans. During the three months ended September 30, 2023, no director or officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408(a) of Regulation S-K.

[Table of Contents](#)**6. Exhibits.**

| Exhibit Number | Description | Incorporated by Reference | | | |
|-------------------|---|---------------------------|----------------|----------------|---------|
| | | Form | File Number | Filing Date | Exhibit |
| 10.1*# | Amendment to Joseph A. Risico Employment Agreement | | | | |
| 10.2*# | Amendment to Arturo Rodriguez Employment Agreement | | | | |
| 31.1* | Certifications of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934. | | | | |
| 31.2* | Certifications of the Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934. | | | | |
| 31.3* | Certifications of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934. | | | | |
| 32.1** | Certifications of the Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | |
| 101.INS | Inline XBRL Instance Document | | | | |
| 101.SCH | Inline XBRL Taxonomy Extension Schema Document | | | | |
| 101.CAL | Inline XBRL Taxonomy Extension Calculation Linkbase Document | | | | |
| 101.DEF | Inline XBRL Taxonomy Extension Definition Linkbase Document | | | | |
| 101.LAB | Inline XBRL Taxonomy Extension Label Linkbase Document | | | | |
| 101.PRE | Inline XBRL Taxonomy Extension Presentation Linkbase Document | | | | |
| 104 | Cover Page Interactive Data File (embedded within the Inline XBRL) | | | | |

* Filed herewith.

** Furnished herewith.

Indicates management contract or compensatory plan or arrangement.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

ATERIAN, INC.

Date: November 8, 2023

By: /s/ Joseph A. Risico
Joseph A. Risico
Co-Chief Executive Officer
(Co-Principal Executive Officer)

Date: November 8, 2023

By: /s/ Arturo Rodriguez
Arturo Rodriguez
Co-Chief Executive Officer and Chief Financial
Officer
(Co-Principal Executive and Financial Officer)

EXHIBIT 4

TO: CLASS ACTION SETTLEMENT ADMINISTRATOR AT MUELLER SETTLEMENT
ADMINISTRATOR, P.O. BOX 173096, MILWAUKEE, WI 53217

FROM: Marlene Janco
320 Fort Duquesne Blvd. 8A Gateway Towers
Pittsburgh PA. 15222
Marlene.janco@gmail.com 412.418.8827

DATE

RE: MUELLER Class Action Settlement

SEP 01 2023

In follow up to the notice sent regarding the "Mueller Class Action Settlement" and the "other options" section of the notice below, please accept this letter as indication that I wish to remain part of the settlement but feel that the way the total awarded funds are being distributed should not be a set amount and rather should be distributed evenly amongst us after the attorney allotment plus \$1,500 allotment to the class action representative.

Regards

Marlene Janco
320 Fort Duquesne Blvd. 8A Gateway Towers
Pittsburgh PA. 15222
Marlene.janco@gmail.com
412.418.8827

Section from your notice

"WHAT ARE MY OTHER OPTIONS?" If you do not want to be legally bound by the Settlement, you may opt out of the Settlement by sending a request for exclusion to the Class Action Settlement Administrator by NO LATER THAN JANUARY 30, 2024. If you opt out, you will not receive any money from the Settlement. If you stay in the Settlement, you may object to the Settlement by writing to the Court explaining why you do not like the Settlement by NO LATER THAN JANUARY 30, 2024. You will be bound by the Settlement if your objection is rejected. If you do nothing (i.e., submit no Claim Form or opt out), you will not receive any benefits from the Settlement, but will nevertheless be bound by any judgment approving the Settlement and will give up any right to sue Defendant or related parties as described in the Settlement."

marlene.janco@gmail.com

From: Amazon.com <no-reply@amazon.com>
Sent: Thursday, August 24, 2023 1:58 PM
To: marlene.janco@gmail.com
Subject: Notice of Class Action and Proposed Settlement

Greetings,

Amazon is emailing you because our records indicate that you may have purchased certain Mueller-branded products through the Amazon.com store. YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT. Amazon is not a party to or otherwise involved in the class action lawsuit and is providing this notice only as a courtesy.

THIS NOTICE IS ONLY A SUMMARY. Details of the settlement are available at www.MuellerSettlement.com or by writing to or calling the Class Action Settlement Administrator at the address or toll-free number below.

WHAT IS THIS CASE ABOUT? In the lawsuit entitled Stacy Dorcas v. Aterian, Inc., Case No. CIVSB2222117, Superior Court for the State of California, County of San Bernardino, plaintiff Stacy Dorcas ("Plaintiff" or "Class Representative"), on behalf of herself and a proposed class, alleges that Defendant falsely and deceptively labeled and advertised the Covered Products with an image of the Austrian flag and the name "Austria" (together, the "Austrian Representations"), which led reasonable consumers into believing that the Covered Products were made in Austria and paying more for the Covered Products as a result of those alleged statements, when the Covered Products were not made in Austria. A list of the Covered Products is available on the settlement website www.MuellerSettlement.com. The Court has not ruled on the merits of the claims or Aterian's defenses.

WHO IS A CLASS MEMBER? All Persons who purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period are Class Members. ("Settlement Class Members").

WHAT ARE THE TERMS OF THE SETTLEMENT? Aterian has agreed to pay \$800,000 (\$500,000 in cash ("Cash Fund"), and \$300,000 in the form of Vouchers ("Voucher Fund")) into a non-reversionary Settlement Fund, as described in the Settlement. The Settlement Fund will be used to pay Settlement Class Members who send in a valid Claim Form, after attorneys' fees and costs, notice and settlement administration costs, and an incentive award to the Class Representative have been deducted.

Settlement Class Members can elect to receive a \$7.50 cash payment per Covered Product purchased during the Class Period for up to two (2) Covered Products or, in lieu of a cash payment, Settlement Class Members can elect to receive a \$15.00 Voucher per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro rata increase or decrease as discussed). Class Counsel will ask the Court to approve payment of up to \$200,000 in attorneys' fees, to be paid from the Settlement Fund. Class Counsel also will ask the Court to approve reasonable costs and expenses spent prosecuting the case and a payment of \$1,500 to Stacy Dorcas for her services as Class Representative, to be paid from the Settlement Fund.

HOW DO I MAKE A CLAIM? To receive a Settlement Award, you must submit a signed and completed Claim Form online to the Class Action Settlement Administrator by NO LATER THAN JANUARY 30, 2024. or by mail to the Class Action Settlement Administrator postmarked NO LATER THAN JANUARY 30, 2024. The Claim Form is available for online submission and download at www.MuellerSettlement.com.

WHAT ARE MY OTHER OPTIONS? If you do not want to be legally bound by the Settlement, you may opt out of the Settlement by sending a request for exclusion to the Class Action Settlement Administrator by NO LATER THAN JANUARY

30, 2024. If you opt out, you will not receive any money from the Settlement. If you stay in the Settlement, you may object to the Settlement by writing to the Court explaining why you do not like the Settlement by NO LATER THAN JANUARY 30, 2024. You will be bound by the Settlement if your objection is rejected. If you do nothing (i.e., submit no Claim Form or opt out), you will not receive any benefits from the Settlement, but will nevertheless be bound by any judgment approving the Settlement and will give up any right to sue Defendant or related parties as described in the Settlement.

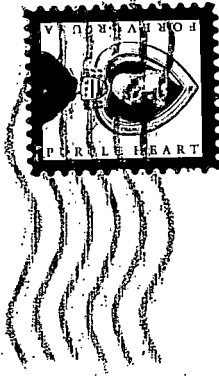
FINAL APPROVAL HEARING. The Court will hold a hearing in this case to consider whether to approve the Settlement on FEBRUARY 29, 2024, at 9:00 a.m., at the Superior Court for the State of California, County of San Bernardino, San Bernardino Justice Center; 247 West Third Street; San Bernardino, CA 92415, Department S26. The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should be advised to check the settlement website to confirm that the date has not been changed and whether the hearing may be held virtually due to COVID-19.

THIS NOTICE IS ONLY A SUMMARY. MORE INFORMATION IS AVAILABLE AT WWW.MUELLERSETTLEMENT.COM, OR FROM THE CLASS ACTION SETTLEMENT ADMINISTRATOR AT MUELLER SETTLEMENT ADMINISTRATOR, P.O. BOX 173096, MILWAUKEE, WI 53217 OR 877-933-2881 (TOLL-FREE), OR BY VISITING THE COURT IN-PERSON.

PLEASE DO NOT RESPOND TO THIS EMAIL DIRECTLY OR TELEPHONE THE COURT.



Marlene Janco
320 Fort Duquesne Blvd. Apt. 8A
Pittsburgh, PA 15222-1104



Class Action Settlement Administrator
Pitts Adminstrator at Walter Selfmark
P.O. Box 173096
M. W. Kee WI 53217

53217-811396

EXHIBIT 5

MUELLER
FARUQI & FARUQI, LLP
TIME REPORT

| PROFESSIONAL* | HOURS | RATE | LODESTAR |
|-----------------------|---------------|-------|---------------------|
| TIMOTHY PETER (P) | 142.20 | \$800 | \$113,760.00 |
| LISA OMOTO (P) | 70.50 | \$675 | \$47,587.50 |
| NINA VARINDANI (P) | 21.00 | \$650 | \$13,650.00 |
| BENJAMIN HEIKALI (P) | 9.80 | \$645 | \$6,321.00 |
| RUHANDY GLEZAKOS (A) | 13.00 | \$575 | \$7,475.00 |
| JOSHUA NASSIR (A) | 86.30 | \$550 | \$47,465.00 |
| KYLE CONWAY (A) | 96.40 | \$475 | \$45,790.00 |
| ZACHARY CRANE (A) | 2.30 | \$425 | \$977.50 |
| DEREK BEHNKE (PL) | 8.80 | \$425 | \$3,740.00 |
| MORDEHAI PERETZ (PL) | 40.90 | \$400 | \$16,360.00 |
| MATTHEW GONZALES (PL) | 1.30 | \$375 | \$487.50 |
| TOTALS | 492.50 | | \$303,613.50 |

*(P) - Partner; (SC) - Senior Counsel
(OC) - Of Counsel; (A) - Associate
(PL) - Paralegal

EXHIBIT 6

| MUELLER's Expense Log | | | | |
|--|--------|---------|--------------------|---|
| | | | \$1,713.54 | Total Filing Fees/Process Server Fees |
| | | | \$17,950.00 | Total Mediation Expenses |
| | | | \$7,500.00 | Total Professional Expenses |
| | | | \$0.00 | Total Research Expenses |
| | | | \$0.00 | Total Court Reporting Expenses |
| | | | \$0.00 | Total Catering/Meals/Travel Expenses (Local) |
| | | | \$1,242.60 | Total Catering/Meals/Travel Expenses (External) |
| | | | \$73.79 | Total Offices Expenses |
| | | | \$0.00 | Total IT Related Expenses |
| | | | \$0.00 | Total Production Copy Expenses |
| | | | \$0.00 | Total Telephone/Fax Expenses |
| | | | \$0.00 | Total Postage/FedEx Expenses |
| | | | \$28,479.93 | Total Expenses |
| Filing Fees/Process Server Fees | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| 2022.12.09 | CA | Mueller | \$454.83 | Turbo Court - E-Filing of complaint |
| 2022.12.29 | CA | Mueller | \$1,000.00 | E-Filing case fee San Bernardino Court check# 22944 |
| 2023.01.31 | CA | Mueller | \$155.00 | PacTrack Inv# PLA31697 check# 23133 |
| 2023.07.06 | NY | Mueller | \$31.06 | E-Filing Stipulation Extending Page Limit |
| 2023.07.07 | NY | Mueller | \$72.65 | E-Filing Notice of Motion |
| | | | \$1,713.54 | Total Filing Fees/Process Server Fees |
| Mediation Expenses | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| 2022.03.24 | NY | Mueller | \$17,950.00 | Signature Solution, Wire transfer to First Republic Bank |
| | | | \$17,950.00 | Total Mediaton Expenses |
| Professional Expenses | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| 2023.05.19 | CA | Mueller | \$7,500.00 | Amazon direct notice services payment to Davis Wright Tremaine LLP Inv# SUB1013962 check# 23922 |
| | | | \$7,500.00 | Total Professional Expenses (Expert) |
| Research (LexisNexis/Bloomberg) | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| | | | \$0.00 | Total Research (LexisNexis/Bloomberg) Expenses |
| Court Reporting Expenses | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| | | | \$0.00 | Total Court Reporting Expenses |
| Catering/Meals/Travel Expenses (Local) | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| | | | \$0.00 | Total Catering/Meals/Travel Expenses (Local) |
| Catering/Meals/Travel Expenses (External) | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| 2022.04.13 | PA | Mueller | \$1,242.60 | Kimpton Hotel Palomar stay (TP) |
| | | | \$1,242.60 | Total Catering/Meals/Travel Expenses (External) |
| Office Expenses | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| 2021.09.08 | NY | Mueller | \$29.97 | Purchase of covered product |
| 2021.09.30 | NY | Mueller | \$18.82 | Background investigation fees (Lexis Accurant) |
| 2021.10.01 | NY | Mueller | \$25.00 | Background investigation fees (TransUnion Risk and Alternative) |
| | | | \$73.79 | Total Office Expenses |
| IT Related Expenses | | | | |
| DATE | OFFICE | MATTER | AMOUNT | DESCRIPTION |
| | | | \$0.00 | Total IT Related Expenses |

