UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 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 March 31, 2023

OR

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

For transition period from to

Commission File Number 001-40682

Nogin, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**86-1370703**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

1775 Flight Way STE 400
Tustin, CA 92782
(949) 222-0209
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common stock, par value $0.0001 per share	NOGN	The Nasdaq Stock Market LLC
Warrants, each whole warrant exercisable for one share of common stock at an exercise price of $11.50 per share	NOGNW	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, a 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	☐	Accelerated filer	☐
Non-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 May 9, 2023, there were 11,087,202 shares of the registrant's common stock outstanding, par value $0.0001 per share.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this "Report") contains forward-looking statements. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements other than statements of historical facts contained in this Report, including statements concerning possible or assumed future actions, business strategies, events or results of operations, and any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Report are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Report and are subject to a number of important factors that could cause actual results to differ materially from those in the forward-looking statements, including the risks, uncertainties and assumptions described under the section in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the Securities and Exchange Commission (the "SEC") on March 23, 2023 titled "Risk Factors." These forward-looking statements are subject to numerous risks, including, without limitation, the following:

- the ability to maintain the listing of the shares of Common Stock and Warrants on Nasdaq;
- litigation, complaints, product liability claims and/or adverse publicity;
- privacy and data protection laws, privacy or data breaches, or the loss of data;
- the impact of changes in customer spending patterns, customer preferences, local, regional and national economic conditions, crime, weather, demographic trends and employee availability; and
- our ability to fulfill the obligations and comply with the covenants under the Indenture governing our Convertible Notes; and
- other risks and uncertainties included in this Report, including those under the section entitled "Risk Factors."

Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur, and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. As a result of these factors, we cannot assure you that the forward-looking statements in this Report will prove to be accurate. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

You should read this Report completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

Nogin, Inc. and Subsidiaries
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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

Nogin, Inc. and Subsidiaries
Unaudited Condensed Consolidated Balance Sheets
(In thousands, except share and per share data)

	March 31, 2023	December 31, 2022
ASSETS		
Current assets:		
Cash	$ 617	$ 15,385
Accounts receivable, net	1,924	1,578
Inventory	14,444	15,726
Prepaid expenses and other current assets	3,810	2,539
Total current assets	20,795	35,228
Property and equipment, net	1,476	1,595
Right-of-use asset, net (Note 19)	17,350	17,391
Goodwill	6,748	6,748
Intangible assets, net	5,439	5,493
Investment in unconsolidated affiliates	6,759	7,404
Other non-current asset	1,065	1,074
Total assets	$ 59,632	$ 74,933
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 18,457	$ 19,605
Due to clients	6,633	10,891
Related party payables	219	1,033
Loans (Note 7)	2,922	—
Promissory notes (Note 7)	4,807	—
Accrued expenses and other liabilities (Note 6)	15,028	17,826
Lease liabilities, current portion (Note 19)	4,565	4,367
Total current liabilities	52,631	53,722
Convertible notes (Note 7)	56,260	60,852
Deferred tax liabilities	368	394
Lease liabilities, net of current portion (Note 19)	14,775	15,223
Other long-term liabilities (Note 6)	17,840	17,766
Total liabilities	141,874	147,957
Commitments and contingencies (Note 19)		
STOCKHOLDERS' DEFICIT		
Common stock, $0.0001 par value, 500,000,000 shares authorized; 3,334,714 shares issued and outstanding as of March 31, 2023 and December 31, 2022	—	—
Additional paid-in capital	9,953	9,270
Accumulated deficit	(92,195)	(82,294)
Total stockholders' deficit	(82,242)	(73,024)
Total liabilities and stockholders' deficit	$ 59,632	$ 74,933

See the accompanying notes to the unaudited condensed consolidated financial statements.

Nogin, Inc. and Subsidiaries
Unaudited Condensed Consolidated Statements of Operations
(In thousands, except share and per share data)

	Three Months Ended March 31, 2023	2022
Net service revenue	$ 8,917	$ 8,533
Net product revenue	6,544	12,922
Net revenue from related parties	1,214	3,744
Total net revenue	16,675	25,199
Operating costs and expenses:		
Cost of services (1)	5,530	5,435
Cost of product revenue (1)	3,942	10,251
Sales and marketing	702	566
Research and development	963	1,577
General and administrative	17,325	17,222
Depreciation and amortization	202	201
Total operating costs and expenses	28,664	35,252
Operating loss	(11,989)	(10,053)
Interest expense	(2,014)	(652)
Change in fair value of promissory notes	(159)	—
Change in fair value of derivative instruments	847	—
Change in fair value of unconsolidated affiliates	(645)	(1,033)
Change in fair value of convertible notes	4,591	—
Other (loss) income, net	(558)	1,954
Loss before income taxes	(9,927)	(9,784)
(Benefit) Provision for income taxes	(26)	158
Net loss	$ (9,901)	$ (9,942)
Net loss per common share – basic and diluted	$ (2.11)	$ (5.02)
Weighted average shares outstanding – basic and diluted	4,688,331	1,981,097

(1) Exclusive of depreciation and amortization shown separately.

See the accompanying notes to the unaudited condensed consolidated financial statements

Nogin, Inc. and Subsidiaries
Unaudited Condensed Consolidated Statements of Stockholders' Deficit
(In thousands, except share data)

	Convertible Redeemable Preferred Stock									
	Series A		Series B		Common Stock					
	Shares	Amount	Shares	Amount	Shares	Amount	Additional Paid-in Capital	Treasury Stock	Accumulated Deficit	Total Stockholders' Deficit
Balance, December 31, 2021	2,042,483	$ 4,687	1,459,462	$ 6,502	9,129,358	$ 1	$ 4,361	$ (1,330)	$ (16,262)	$ (13,230)
Retroactive application of reverse recapitalization (1)	6,822,012	—	4,874,688	—	30,492,588	3	(3)	—	—	—
Retroactive application of reverse stock split (2)	(8,421,271)	—	(6,017,443)	—	(37,640,849)	(4)	4	—	—	—
Balance, December 31, 2021, as adjusted	443,224	4,687	316,707	6,502	1,981,097	—	4,362	(1,330)	(16,262)	(13,230)
Stock-based Compensation	—	—	—	—	—	—	58	—	—	58
Net loss	—	—	—	—	—	—	—	—	(9,942)	(9,942)
Balance, March 31, 2022	443,224	$ 4,687	316,707	$ 6,502	1,981,097	$ —	$ 4,420	$ (1,330)	$ (26,204)	$ (23,114)
Balance, December 31, 2022	—	—	—	—	3,334,714	—	9,270	—	(82,294)	(73,024)
Stock-based compensation	—	—	—	—	—	—	253	—	—	253
Fair value of equity classified warrants in common stock	—	—	—	—	—	—	430	—	—	430
Net loss	—	—	—	—	—	—	—	—	(9,901)	(9,901)
Balance, March 31, 2023	—	$ —	—	$ —	3,334,714	$ —	$ 9,953	$ —	$ (92,195)	$ (82,242)

(1)As part of the Business Combination (as disclosed in Note 1), all share information has been retrospectively adjusted using the exchange ratio stipulated by the Merger Agreement.

(2)As part of the Reverse Stock Split (as disclosed in Note 1), all share information has been retrospectively adjusted using the exchange ratio stipulated by the Reverse Stock Split.

See the accompanying notes to the unaudited condensed consolidated financial statements

Nogin, Inc. and Subsidiaries
Unaudited Condensed Consolidated Statements of Cash Flows
(In thousands)

	Three Months Ended March 31, 2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (9,901)	$ (9,942)
Adjustments to reconcile net loss to net cash used by operating activities:		
Depreciation and amortization	202	201
Amortization of debt issuance costs and discounts	482	102
Stock-based compensation	253	58
Deferred income taxes	(26)	158
Change in fair value of unconsolidated affiliates	645	1,033
Change in fair value of warrant liability	430	—
Change in fair value of promissory notes	159	—
Change in fair value of convertible notes	(4,591)	—
Change in fair value of derivatives	(847)	—
Settlement of deferred revenue	—	(1,611)
(Gain) loss on disposal of asset	(1)	—
Changes in operating assets and liabilities:		
Accounts receivable	(347)	(363)
Related party receivables	—	(525)
Inventory	1,282	4,052
Prepaid expenses and other current assets	(1,262)	(2,309)
Accounts payable	(1,148)	2,505
Due to clients	(4,258)	(277)
Related party payables	(814)	4,015
Lease assets and liabilities	(219)	—
Accrued expenses and other liabilities	(2,285)	(2,374)
Net cash used in operating activities	(22,246)	(5,277)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(21)	(101)
Proceeds from sale of property and equipment	3	—
Net cash used in investing activities	(18)	(101)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from short-term loan	3,250	—
Payment of short-term loan	(328)	—
Proceeds from promissory notes	4,649	—
Payment of debt issuance costs	(75)	—
Proceeds from line of credit	—	47,455
Repayments of line of credit	—	(43,803)
Net cash provided by financing activities	7,496	3,652
NET INCREASE (DECREASE) IN CASH AND RESTRICTED CASH	(14,768)	(1,726)
Beginning of period	15,385	4,571
End of period	$ 617	$ 2,845

	Three Months Ended March 31, 2023	2022
SUPPLEMENTAL CASH FLOW INFORMATION		
Cash paid for interest	$ 396	$ 652
Cash paid for taxes	6	1
Right-of-use assets exchanged for lease liabilities	1,120	—
SCHEDULE OF CASH AND RESTRICTED CASH		
Cash	$ 617	$ 1,345
Restricted cash	—	1,500
Total cash and restricted cash	$ 617	$ 2,845

See the accompanying notes to the unaudited condensed consolidated financial statements

Nogin, Inc. and Subsidiaries
Note to Unaudited Condensed Consolidated Financial Statements

1.DESCRIPTION OF BUSINESS

Nogin, Inc. (together with its subsidiaries, the “Company” or “Nogin”) is an e-commerce, technology platform provider that delivers Commerce-as-a-Service (“CaaS”) solutions as a headless, flexible full stack enterprise commerce platform with cloud services and optimizations along with experts for brands and retailers that provide a unique combination of customizability and sales efficiency. The Company manages clients’ front-to-back-end operations so clients can focus on their business. The Company’s business model is based on providing a comprehensive e-commerce solution to its customers on a revenue sharing basis. Unless the context otherwise requires, references in this subsection to “we,” “our,” “Nogin” and the “Company” refer to the business and operations of Legacy Nogin (as defined below) and its consolidated subsidiaries prior to the Business Combination (as defined below) and to Nogin, Inc. (formerly known as Software Acquisition Group Inc. III) and its consolidated subsidiaries following the consummation of the Business Combination.

The Company’s headquarters and principal place of business are in Tustin, California.

Reverse Stock Split

On March 18, 2023, the Company’s Board of Directors approved a one-for-twenty reverse stock split of its common stock. The reverse stock split became effective upon filing of a certificate of amendment to the Company’s second amended and restated certificate of incorporation on March 28, 2023. Upon the effectiveness of the reverse stock split, (i) every twenty shares of outstanding common stock were reclassified and combined into one share of common stock and (ii) the number of common stock for which each outstanding option and warrant to purchase common stock is exercisable was proportionately decreased and the exercise price per share of common stock of each outstanding option and warrant to purchase common stock was proportionately increased. No fractional shares were issued as a result of the reverse stock split. The total number of authorized shares of common stock and the par value per share of common stock did not change as a result of the reverse stock split. Accordingly, all share and per share amounts for all periods presented in these financial statements and notes thereto have been adjusted retroactively, where applicable, to reflect the reverse stock split and exercise price of each outstanding option and warrant as if the transaction had occurred as of the beginning of the earliest period presented.

Business Combination

On August 26, 2022 (the “Closing Date”), the Company completed its previously announced Business Combination pursuant to the Agreement and Plan of Merger (the “Merger Agreement”), dated as of February 14, 2022 (as amended on April 19, 2022 and August 26, 2022), by and among the Company (formerly known as Software Acquisition Group Inc. III (“SWAG”)), Nuevo Merger Sub, Inc., a wholly owned subsidiary of SWAG (“Merger Sub”), and Branded Online, Inc. dba Nogin (“Legacy Nogin”). Pursuant to the Merger Agreement, Merger Sub was merged with and into Legacy Nogin, with Legacy Nogin surviving the Business Combination as a wholly owned subsidiary of the Company (the “Business Combination” and, together with the other transactions contemplated by the Merger Agreement, the “Transactions”).

While Legacy Nogin became a wholly-owned subsidiary of the Company, Legacy Nogin was deemed to be the acquirer in the Business Combination for accounting purposes. Accordingly, the Business Combination was accounted for as a reverse recapitalization, in which case the condensed consolidated financial statements of the Company represent a continuation of Legacy Nogin and the issuance of common stock and cash consideration in exchange for the net assets of SWAG recognized at historical costs and no recognition of goodwill or other intangible assets. Operations prior to the Business Combination are those of Legacy Nogin and all share and per-share data included in these condensed consolidated financial statements have been retroactively adjusted to give effect to the Business Combination.

As a result of the Business Combination, equity holders of Legacy Nogin received approximately 2.7 million shares of the Company’s common stock (“Common Stock”) and cash consideration of $15.0 million, of which $10.9 million was deferred on the Closing Date (Note 9).

The treatment of the Business Combination as a reverse recapitalization was based on the stockholders of Legacy Nogin holding the majority of voting interests of the Company, Legacy Nogin’s existing management team serving primarily as the initial management team of the Company, Legacy Nogin’s appointment of the majority of the initial board of directors of the Company and Legacy Nogin’s operations comprising the ongoing operations of the Company.

In connection with the Business Combination, the Company received proceeds of approximately $58.8 million from SWAG’s trust account, net of redemptions by SWAG’s public shareholders, as well as approximately $65.5 million in proceeds from the contemporaneous issuance of convertible notes (the “Convertible Notes”). The aggregate cash raised has been used for general business purposes, the paydown of Legacy Nogin’s outstanding debt, the payment of transaction costs and the payment of the cash consideration.

The following table reconciles the elements of the Business Combination to the condensed consolidated statements of cash flows and the condensed consolidated statements of convertible redeemable preferred stock and stockholders' deficit for the three months ended March 31, 2023:

	Recapitalization
Cash - SWAG trust and cash, net of redemptions	58,841
Cash - PIPE equity financing	1,052
Less: Transaction and advisory fees paid in cash	(54,409)
Less: Cash election consideration paid in cash at the Closing Date	(4,109)
Net proceeds from Business Combination	1,375
Plus: Issuance of common stock to settle certain transaction costs	3,588
Less: non-cash items charged against additional paid-in capital	(17,510)
Less: Deferred cash election consideration (Note 9)	(9,198)
Net contributions from Business Combination and PIPE equity financing	(21,745)

The number of shares of Common Stock outstanding immediately following the consummation of the Business Combination was as follows:

	Number of Shares
SWAG Common Stock, outstanding prior to the Business Combination	1,425,492
Less: Redemption of SWAG shares	(851,080)
SWAG Common Stock	574,412
Shares issued in PIPE equity financing	25,854
Shares issued to financial advisors to settle transaction and issuance costs	20,375
Business Combination and PIPE equity financing shares	620,641
Nogin shares	2,714,073
Total shares of common stock immediately after Business Combination	3,334,714

2.SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and in accordance with the instructions to Form 10-Q and Article 8 of Regulation S-X of the Securities and Exchange Commission ("SEC"). Certain information or footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted, pursuant to the rules and regulations of the SEC for interim financial reporting. Accordingly, they do not include all the information and footnotes necessary for a complete presentation of financial position, results of operations, or cash flows. In the opinion of management, the accompanying unaudited condensed financial statements include all adjustments, consisting of a normal recurring nature, which are necessary for a fair presentation of the financial position, operating results and cash flows for the periods presented.

The accompanying condensed financial statements should be read in conjunction with the Company's Consolidated Financial Statements for the year ended December 31, 2022. The interim results for the three months ended March 31, 2023 are not necessarily indicative of the results to be expected for the period ending December 31, 2023, or for any future annual or interim periods.

Emerging Growth Company

The Company is an "emerging growth company," as defined in Section 2(a) of the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and it may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies.

Further, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

Liquidity and Capital Resources

Our primary requirements for short-term liquidity and capital are working capital, inventory management, capital expenditures, public company costs and general corporate needs. We expect these needs to continue as we develop and grow our business. Our future capital requirements will depend on many factors, including our levels of revenue, the expansion of sales and marketing activities, successful customer acquisitions, the results of business initiatives, the timing of new product introductions and overall economic conditions.

Prior to the Business Combination, the Company's available liquidity and operations were financed through equity contributions, a line of credit, promissory notes and cash flow from operations. Moving forward, the Company expects to fund operations through equity contributions and cash flow from operations.

Because we are in the growth stage of our business and operate in an emerging field of technology, we expect to continue to invest in research and development and expand our sales and marketing teams worldwide. We are likely to require additional capital to respond to technological advancements, competitive dynamics or technologies, customer demands, business opportunities, challenges, acquisitions or unforeseen circumstances and in either the short-term or long-term may determine to engage in equity or debt financings or enter into credit facilities for other reasons. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to grow or support our business and to respond to business challenges could be significantly limited.

The accompanying consolidated financial statements as of and for the three months ended March 31, 2023 have been prepared assuming the Company will continue as a going concern. The Company has sustained recurring losses and negative cash flows from operations and had a cash balance of $0.6 million as of March 31, 2023.

Our independent auditors, in their report on our audited financial statements for the year ended December 31, 2022, expressed substantial doubt about our ability to continue as a going concern for at least twelve months from the date that such consolidated financial statements were issued.

In March 2023, the Company did not timely make the payment of the accrued interest on the Convertible Notes due on March 1, 2023 of $2.3 million, resulting in a default. On March 26, 2023, the Company, the Notes Guarantors and the holders of the Convertible Notes (collectively, the "Holders") entered into limited waivers and consents (each, a "Waiver" and collectively, the "Waivers") pursuant to which, among other things, each Holder agreed to (i) waive the Specified Default and any payment obligation of the Company under the Indenture with respect to the March Interest Payment (as defined below), (ii) in lieu of the Interest Payments (as defined below), (a) receive a Promissory Note or Convertible Promissory Note, as applicable, and (b) amend the Warrant Agreement to reduce the exercise price of the warrants governed thereby from $11.50 to $0.01, and (iii) consent to the entry into the Supplemental Indenture (as defined below). The Supplemental Indenture, among other things, lowered the minimum amounts of liquidity the Company must maintain on a consolidated basis for each quarter in 2023 and the first quarter of 2024.

In April 2023, the Company completed a registered public offering of common stock and common warrants for aggregate gross proceeds of $22 million, before deducting placement agent fees and other offering expenses.

In addition, the Company is currently executing on various strategies to improve available cash balances, liquidity and cash generated from operations, including strategic growth plans, ongoing comprehensive cost reduction and performance improvement programs, reduced headcount and elimination of certain discretionary and general and administrative expenses, and taking steps to improve the operational efficiency of our fulfillment operations. With these strategies in place, the Company believes it will be able to continue as a going concern for at least the next twelve months.

COVID-19 Pandemic

The worldwide spread of COVID-19 and its variants have had, and continue to have a significant impact around the world. The COVID-19 pandemic has resulted in a global slowdown of economic activity which altered the demand for a broad variety of goods and services, including those provided by our clients, while also disrupting sales channels and advertising and marketing activities until economic activity normalized. Our revenue growth and results of operations have been resilient despite the headwinds created by the COVID-19 pandemic and its variants. The extent to which ongoing and future developments related to the global impact of the COVID-19 pandemic and related vaccination measures designed to curb its spread continue to impact our business, financial condition, and results of operations, all of which cannot be predicted with certainty. Many of these ongoing and future developments are beyond our control, including the speed of contagion, the development, distribution and implementation of effective preventative or treatment measures, including vaccines (and vaccination rates), the scope of governmental and other restrictions on travel, discretionary services and other activity, and the public reactions and receptiveness to these developments.

The impacts of the COVID-19 pandemic and its variants will depend on future developments, including the duration and spread of the pandemic. These developments and the impacts of the COVID-19 pandemic on the financial markets and overall economy are highly uncertain and cannot be predicted.

Use of Estimates

The 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 reported amounts of revenue and expenses during the reporting period. The Company prepared these estimates based on the most current and best available information, but actual results could differ materially from these estimates and assumptions. Significant estimates and assumptions reflected in the financial statements include, but are not limited to, the allowance for credit losses and revenue recognition, including variable consideration for estimated reserves for returns and other allowances, forecasts and other assumptions used in valuations. Management bases its estimates on historical experience and on assumptions that it believes to be reasonable under the circumstances, the results of which form the basis for making judgements about the carrying value of assets and liabilities that are not readily apparent from other sources.

Accounts Receivable, Net

The allowance for credit losses was $333 thousand as of March 31, 2023 and $425 thousand as of December 31, 2022.

Inventory

Inventory is comprised entirely of finished goods for resale. The reserve for returns was $159 thousand as of March 31, 2023 and $535 thousand as of December 31, 2022.

Concentration of Risks

Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash, restricted cash and accounts receivables. The Company maintains cash balances at financial institutions. Amounts on deposit at these institutions are secured by the Federal Deposit Insurance Corporation (“FDIC”). At various times, the Company has had bank deposits in excess of the FDIC's insurance limit. The Company has not experienced any losses in its cash accounts to date. Management believes that the Company is not exposed to any significant credit risk with respect to its cash.

The Company performs ongoing credit evaluations of its customers and generally does not require collateral. As of March 31, 2023, receivables from two customers amounted to $619 thousand (or 36% of accounts receivable) and $298 thousand (or 18% of accounts receivable), respectively. As of December 31, 2022, receivables from two customers amounted to $771 thousand (or 44% of accounts receivable) and $153 thousand (or 9% of accounts receivable), respectively.

Major Customers

For the three months ended March 31, 2023, revenue from our top three customers amounted to $2.9 million (or 17% of total revenue), $1.8 million (or 11% of total revenue), and $1.7 million (or 10% of total revenue), respectively. For the three months ended March 31, 2022, revenue from our top three customers amounted to $9.2 million (or 36% of total revenue), $3.7 million (or 15% of total revenue), and $2.0 million (or 8% of total revenue), respectively.

Major Suppliers

For the three months ended March 31, 2023, our top three vendors accounted for operating expense of $2.1 million (or 12% of total operating expense purchases), $2.0 million (or 12% of total operating expense purchases) and $1.4 million (or 8% of total operating expense purchases), respectively. For the three months ended March 31, 2022, our top three vendors accounted for operating expense of $4.8 million (or 20% of total operating expense purchases), $2.3 million (or 10% of total operating expense purchases) and $2.1 million (or 9% of total operating expense purchases), respectively.

Right-of-use Assets and Lease Liabilities

On January 1, 2022, the Company adopted Accounting Standards Update (“ASU”) 2016-02 and all subsequent amendments, collectively codified in ASC Topic 842, “Leases” (“ASC 842”), using the current period adjustment method. Accordingly, comparative period financial information was not restated for the effects of adopting ASC 842.

The significant practical expedients we adopted include the following:

- We elected the practical expedient to apply the transition approach as of the beginning of the period of adoption and not restate comparative periods;
- We elected to utilize the “package of three” expedients, as defined in ASC 842, whereby we did not reassess whether contracts existing prior to the effective date contain leases, nor did we reassess lease classification determinations nor whether initial direct costs qualify for capitalization;
- We elected the practical expedient to not capitalize any leases with initial terms of twelve months or less on our consolidated balance sheet;

- For all underlying classes of leased assets, we elected the practical expedient to not separate lease and non-lease components; and
- We elected not to use hindsight in determining the lease term for lease contracts that have historically been renewed or amended.

As of the date of adoption on January 1, 2022, the impact of ASC 842 resulted in the recognition of a right-of-use asset (“ROU asset”) and lease liability for our operating leases on our consolidated balance sheets of approximately $13.0 million and $15.1 million, respectively.

Lease liabilities were recognized based on the present value of remaining lease payments over the remaining lease term. ROU assets were recognized utilizing the lease liability as of January 1, 2022 adjusted for deferred rent recorded as under ASC 840 operating lease related balances. As the Company’s operating lease agreements do not provide a rate implicit in the lease, we discounted the remaining lease payments using an estimated incremental borrowing rate, which was based on the information available at the adoption date. Operating lease cost is recognized on a straight-line basis over the lease term. Variable lease costs such as common area costs and other operating costs are expensed as incurred. Leases with an initial term of 12 months or less are not recorded on the balance sheet. The adoption of this new guidance did not have a material net impact on the Company’s consolidated statements of operations or consolidated statements of cash flows.

Our operating leases primarily consist of office space, distribution centers and equipment used within our operations. Most of the leases have lease terms ranging from three to eight years, although the terms and conditions of our leases can vary significantly from lease to lease.

Long-lived Assets

There was no impairment of long-lived assets at March 31, 2023.

Goodwill

There was no impairment of goodwill at March 31, 2023.

Intangibles

Intangible assets include acquired technology, trade names and other intangibles. Intangible assets with finite lives are amortized using the straight-line method over the estimated economic lives of the asset, which range from five to fifteen years. Indefinite lived assets such as trade names are expected to generate cash flows indefinitely. Consequently, these assets were classified as indefinite-lived intangibles and accordingly are not amortized but reviewed for impairment annually, or sooner under certain circumstances. There was no impairment of indefinite-lived assets at March 31, 2023.

Warrants

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant’s specific terms and applicable authoritative guidance in FASB ASC 480 and ASC Topic 815, “Derivatives and Hedging” (“ASC 815”). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company’s own shares of common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding. For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded at their initial fair value on the date of issuance, and each balance sheet date thereafter until settlement. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss on the condensed statements of operations.

Income Taxes

The Company follows the asset and liability method of accounting for income taxes under ASC Topic 740, “Income Taxes” (ASC 740). Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statements carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that included the enactment date. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

ASC 740 prescribes a recognition threshold and a measurement attribute for the financial statement recognition and measurement of tax positions taken or expected to be taken in a tax return. For those benefits to be recognized, a tax position must be more likely than not to be sustained upon examination by taxing authorities. The Company recognizes accrued interest and penalties related to unrecognized tax benefits as income tax expense. There were no unrecognized tax benefits and no amounts accrued for interest and penalties as of March 31, 2023. The Company is currently not aware of any issues under review that could result in significant payments, accruals or material deviation from its position. The Company is subject to income tax examinations by major taxing authorities since its inception.

Revenue Recognition

Revenue is accounted for using FASB Accounting Standards Codification (“ASC”) Topic 606, Revenue from Contracts with Customers.

In accordance with ASC Topic 606, the Company recognizes revenue when control of the promised goods or services is transferred to the Company’s customers, in an amount that reflects the consideration it expects to be entitled to in exchange for those goods or services. The Company determines revenue recognition through the following steps:

- Identification of a contract with a customer,
- Identification of the performance obligations in the contract,
- Determination of the transaction price,
- Allocation of the transaction price to the performance obligations in the contract, and
- Recognition of revenue when or as the performance obligations are satisfied.

A performance obligation is a promise in a contract to transfer a distinct product. Performance obligations promised in a contract are identified based on the goods that will be transferred that are both capable of being distinct and are distinct in the context of the contract, whereby the transfer of the goods is separately identifiable from other promises in the contract. Performance obligations include establishing and maintaining customer online stores, providing access to the Company’s e-commerce platform, customer service support, photography services, warehousing, and fulfillment. Most of the contracts of the Company with customers contain multiple promises, which may result in multiple performance obligations, while others are combined into one performance obligation. For contracts with customers, the Company accounts for individual promises separately if they are distinct. The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis. The Company determines the standalone selling prices based on its overall pricing objectives, taking into consideration market conditions and other factors.

The Company has concluded the sale of goods and related shipping and handling on behalf of our customers are accounted for as a single performance obligation, while the expenses incurred for actual shipping charges are included in cost of sales.

The Company’s revenue is mainly commission fees derived from contractually committed gross revenue processed by customers on the Company's e-commerce platform. The Company is acting as an agent in these arrangements and customers do not have the contractual right to take possession of the Company's software. Revenue is recognized in an amount that reflects the consideration that the Company expects to ultimately receive in exchange for those promised goods, net of expected discounts for sales promotions and customary allowances.

CaaS Revenue is recognized on a net basis from maintaining e-commerce platforms and online orders, as the Company is engaged primarily in an agency relationship with its customers and earns defined amounts based on the individual contractual terms for the customer and the Company does not take possession of the customers' inventory or any credit risks relating to the products sold.

Variable consideration is included in revenue for potential product returns. The Company uses an estimate to constrain revenue for the expected variable consideration at each period end. The Company reviews and updates its estimates and related accruals of variable consideration each period based on the terms of the agreements, historical experience, and expected levels of returns. Any uncertainties in the ultimate resolution of variable consideration due to factors outside of the Company’s influence are typically resolved within a short timeframe therefore not requiring any additional constraint on the variable consideration. The estimated reserve for returns is included on the balance sheet in accrued expenses with changes to the reserve in revenue on the accompanying statement of operations. The reserve for returns as of March 31, 2023 was $0.6 million and as of December 31, 2022 was $1.4 million.

In most cases the Company acts as the merchant of record, resulting in a due to client liability (discussed below). However, in some instances, the Company may perform services without being the merchant of record in which case there is a receivable from the customer.

Payment terms and conditions are generally consistent for customers, including credit terms to customers ranging from seven days to 60 days, and the Company’s contracts do not include any significant financing component. The Company performs credit evaluations of customers and evaluates the need for allowances for potential credit losses based on historical experience, as well as current and expected general economic conditions.

Sales taxes collected from customers and remitted to governmental authorities are accounted for on a net basis and, therefore, are excluded from net revenue in the condensed consolidated statements of operations.

Commerce as a Service

As noted above, the Company's main revenue stream is CaaS revenue in which it receives commission fees derived from contractually committed gross revenue processed by customers on the Company's e-commerce platform. Consideration for online sales is collected directly from the end customer by the Company and amounts not owed to the Company are remitted to the customer. Revenue is recognized on a net basis from maintaining e-commerce platforms and online orders, as the Company is engaged in an agency relationship with its customers and earns defined amounts based on the individual contractual terms for the customer and the Company does not take possession of the customers' inventory or any credit risks relating to the products sold.

Product sales

Under certain licensee agreements, the Company is the owner of inventory and reseller of record. As a result, the Company is the principal in sales to end customers and records these revenues on a gross basis at a point in time.

Fulfillment services

Revenue for business-to-business ("B2B") fulfillment services is recognized on a gross basis either at a point in time or over a point in time. For example, inbound and outbound services are recognized when the service is complete, while monthly storage services are recognized over the service period.

Marketing services

Revenue for marketing services is recognized on a gross basis as marketing services are complete. Performance obligations include providing marketing and program management such as procurement and implementation.

Shipping services

Revenue for shipping services is recognized on a gross basis as shipments are completed and products are shipped to end customers.

Set up and implementation services

The Company provides set up and implementation services for new clients. The revenue is recognized on a gross basis at the completion of the service, with the unearned amounts received for incomplete services recorded as deferred revenue, if any.

Other services

Revenue for other services such as photography, business to customer ("B2C") fulfillment, customer service, development and web design are reimbursable costs and recognized on the gross basis, and are services rendered as part of the performance obligations to clients for which an online platform and online orders are managed. All reimbursable costs are the responsibility of the Company as the Company uses such services to fulfill its performance obligations.

Cost of services

Cost of services reflects costs directly related to providing services under the master service agreements with customers, which primarily includes service provider costs directly related to processing revenue transactions, marketing expenses and shipping and handling expenses which correspond to marketing and shipping revenues, as well as credit card merchant fees. Cost of services is exclusive of depreciation and amortization and general salaries and related expenses.

Cost of product revenue

Cost of product revenue reflects costs directly related to selling inventory acquired from select clients, which primarily includes product cost, warehousing costs, fulfillment costs, credit card merchant fees and third-party royalty costs. Cost of product revenue is exclusive of depreciation and amortization and general salaries and related expenses.

Due to Clients

Due to clients consists of amounts payable to clients pertaining to the client's last month pro rata share of revenue earned and collected by the Company, less any returns and any expenses incurred by the Company on behalf of the clients. In most cases, the Company acts as the merchant and seller of record and thus directly collects the funds from sales on the online store. As such, at the end of each month, there is an amount owed to the Company's clients net of the Company's fees, and expenses incurred on the client's behalf.

Fair Value Measurement

The Company applies the provisions of Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 820, *Fair Value Measurements and Disclosures* ("ASC 820"), which provides a single authoritative definition of fair value, sets out a framework for measuring fair value, and expands on required disclosures about fair value measurement.

The Company applies the provisions of ASC 820 to all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis.

The Company defines fair value as an exit price, representing the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability.

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- *Level 1* - Quoted prices in active markets for identical assets or liabilities.
- *Level 2* - Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- *Level 3* - Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

In determining fair value, the Company utilized valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible as well as considers counter party credit risk and nonperformance risk in its assessment of fair value.

The carrying value of the Company's short-term financial instruments, such as cash and cash equivalents, restricted cash, accounts receivable, notes payable, and accounts payable, approximate the fair value due to the immediate or short-term maturity of these instruments. The carrying value of the Company's long-term debt approximates fair value as the interest rate on the Company's secured credit facility and certain other debt has a variable component, which is reflective of the market.

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, "Financial Instruments—Credit Losses" (Topic 326). The FASB issued this update to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments and other commitments to extend credit held by a reporting entity at each reporting date. The amendments in this update replace the existing guidance of incurred loss impairment methodology with an approach that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. In November 2018, the FASB issued ASU 2018-19, "Codification Improvements to Topic 326, Financial Instruments—Credit Losses," which clarifies the scope of guidance in the ASU 2016-13. This update is effective for interim and annual periods beginning after December 15, 2022, with amendments generally applied prospectively. The Company adopted this update effective January 1, 2023, and it did not have a material impact on the Company's financial statements as a result of adoption.

In August 2020, the FASB issued Accounting Standards Update ("ASU") 2020-06 Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which improves Convertible Instruments and Contracts in an Entity's Own Equity and is expected to improve financial reporting associated with accounting for convertible instruments and contracts in an entity's own equity. The ASU simplifies accounting for convertible instruments by removing major separation models required under current U.S. GAAP. Consequently, more convertible debt instruments will be reported as a single liability instrument and more convertible preferred stock as a single equity instrument with no separate accounting for embedded conversion features. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, which will permit more equity contracts to qualify for it.

The ASU also simplifies the diluted earnings per share (EPS) calculation in certain areas. ASU 2020-06 is effective for the Company beginning January 1, 2024, with early adoption permitted as of January 1, 2021. The Company early adopted the provisions of ASU 2020-06 effective January 1, 2022 and it did not have a material impact on the Company's financial statements as a result of adoption.

Other recently issued accounting standards are not expected to have a material effect on the Company's financial statements.

3.PROPERTY AND EQUIPMENT

Property and equipment, net as of March 31, 2023 and December 31, 2022, consisted of the following (in thousands):

	March 31, 2023	December 31, 2022
Furniture and equipment	$ 2,402	$ 2,406
Leasehold improvements	572	572
Property and equipment, gross	2,974	2,978
Less accumulated depreciation	(1,498)	(1,383)
Property and equipment, net	$ 1,476	$ 1,595

Depreciation expense for property and equipment for the three months ended March 31, 2023 and 2022 was $138 thousand and $143 thousand, respectively.

4.GOODWILL AND INTANGIBLE ASSETS

In connection with the ModCloth acquisition (Note 13), the Company recorded $6.7 million of goodwill.

In connection with the Betabrand acquisition, the Company's amortization expense for capitalized software for the three months ended March 31, 2023 and 2022 was $55 thousand and $58 thousand, respectively.

As of March 31, 2023 and December 31, 2022, intangible assets consist of the following (in thousands):

		March 31, 2023		December 31, 2022
Software	$	1,166	$	1,166
Trade Name		4,617		4,617
		5,783		5,783
Less: Accumulated amortization		(344)		(290)
Intangible assets-net	$	5,439	$	5,493

As of March 31, 2023, the Company's amortization of intangibles for the next five years are as follows (in thousands):

2023 (remaining payments)	$	164
2024		219
2025		219
2026		219
2027		-
Total remaining intangible amortization	$	821

5.INVESTMENT IN UNCONSOLIDATED AFFILIATES

On April 6, 2021, the Company and Tiger Capital Group, LLC ("Tiger Capital") formed a joint venture, ModCloth Partners, LLC ("ModCloth"). The Company and Tiger Capital each contributed $1.5 million into ModCloth and the Company owned 50% of the outstanding membership units. Tiger Capital provided the financing for the inventory, while the Company entered into a Master Services Agreement ("MSA") with ModCloth to provide the e-commerce services (see Note 14). The Company accounted for its investment in ModCloth under the fair value option of accounting.

On December 1, 2022, Tiger Capital assigned its interest in ModCloth to the Company for $1.5 million, at which point ModCloth became a wholly-owned subsidiary of the Company. In addition, the Company paid the remaining balance of approximately $1 million on the inventory financing arrangement between ModCloth and Tiger Capital (Note 13).

On December 31, 2021, the Company and CFL Delaware, Inc. ("CFL") formed a joint venture, IPCO, whereby Nogin contributed certain assets acquired from the BTB (ABC), LLC ("Betabrand") acquisition and entered into a MSA with IPCO to provide certain e-commerce services, marketing, photography, customer service and merchant credit card monitor fraud services (Note 14). Also, CFL entered into a Master Supply Agreement with IPCO and agreed to procure the supply of inventory to IPCO, provide manufacturing, fulfillment, logistics and warehousing services for the inventory. The Company accounts for its investment in IPCO under the fair value option of accounting. As of March 31, 2023 and December 31, 2022, the investment balance related to IPCO was $6.8 million and $7.4 million, respectively, and was included in investment in unconsolidated affiliates on the consolidated balance sheets. For the three months ended March 31, 2022, the Company recorded a loss of $1.6 million to other expense related to the settlement of deferred revenue related to sale of finished inventory to IPCO. In addition, the Company recorded a fair value loss related to its IPCO investment of $645 thousand and $114 thousand, respectively, included in changes in fair value of unconsolidated affiliates on the consolidated statement of operations for the three months ended March 31, 2023 and March 31, 2022.

The following table presents summarized financial information for the joint venture for the three months ended March 31, 2023 and 2022, and as of March 31, 2023 and December 31, 2022 (in thousands):

	IPCO	
	For the Three Months Ended March 31, 2023	For The Three Months Ended March 31, 2022
Net revenue	$ 4,018	$ 6,507
Gross margin	2,674	1,356
Net loss	(1,397)	(561)

	IPCO	
	As of March 31, 2023	As of December 31, 2022
Current assets	$ 3,564	$ 4,254
Long term assets	5,366	5,509
Current liabilities	6,940	6,142
Long term liabilities	907	1,032

The Company's IPCO investments are Level 3 fair value measurements. The Company utilized the following valuation methods to conclude on the fair value as of March 31, 2023:

- *Discounted Cash Flow*– The key unobservable input utilized was a discount rate of 14.7% for IPCO.

- *Guideline Public Company Method* – The Company utilized a revenue multiple of 0.4x for IPCO on current period forecasted revenues. The revenue multiple was derived from public peers of the Company.

- *Guideline Transaction Method* – The Company utilized a revenue multiple of 0.45x for IPCO on current period forecasted revenues. The revenue multiple was derived from public transactions in which the target companies were similar to the Company.

The following table summarizes the changes in the IPCO investment Level 3 fair value measurement (in thousands):

	IPCO
Balance as of January 1, 2022	$ 7,133
Change in fair value	271
Balance as of December 31, 2022	7,404
Change in fair value	(645)
Balance as of March 31, 2023	$ 6,759

6.CERTAIN LIABILITY ACCOUNTS

Accrued expenses and other current liabilities as of March 31, 2023 and December 31, 2022 were as follows (in thousands):

	March 31, 2023	December 31, 2022
Business Combination consideration payable	$ 5,000	$ 5,000
Contract liability	4,054	5,058
Payroll and other employee costs	2,215	1,300
Sales tax payable	557	1,191
Accrued interest	5	1,622
Accrued transaction costs	—	840
Inventory accrual	—	503
Other accrued expenses and current liabilities	3,197	2,312
Total	$ 15,028	$ 17,826

Other long-term liabilities as of March 31, 2023 and December 31, 2022 were as follows (in thousands):

	March 31, 2023	December 31, 2022
Deferred transaction costs payable	$ 10,979	$ 10,979
Business Combination consideration payable	3,555	3,355
Deferred PIPE issuance costs payable	1,160	1,160
PIPE principal accretion	1,104	617
Legal settlement	940	621
Standby agreement derivative liability	—	847
Other long-term liabilities	102	187
Total	$ 17,840	$ 17,766

7.LONG-TERM DEBT

Convertible Notes and Indenture

On April 19, 2022, the Company, certain guarantors named therein (the "Notes Guarantors") and certain investors named therein (each, a "Subscriber" and collectively, the "Subscribers"), entered into subscription agreements (each, a "PIPE Subscription Agreement" and collectively, the "PIPE Subscription Agreements") pursuant to which the Company agreed to issue and sell to the Subscribers immediately prior to the closing of the Business Combination (i) up to an aggregate principal amount of $75.0 million of 7.00% Convertible Senior Notes due 2026 (the "Convertible Notes") at par value of the notes and (ii) up to an aggregate of 1.5 million warrants (the "PIPE Warrants") with each whole PIPE Warrant entitling the holder thereof to purchase one share of Common Stock

On August 26, 2022, immediately prior to the closing of the Business Combination (the "Closing"), the Company issued $65.5 million aggregate principal amount of Convertible Notes and, as contemplated by the PIPE Subscription Agreements, the Company, the Note Guarantors and U.S. Bank Trust Company, National Association, as trustee, entered into an Indenture governing the Convertible Notes (the "Indenture"). The Convertible Notes were offered in a private placement under the Securities Act, pursuant to the PIPE Subscription Agreements. The Convertible Notes will mature on September 1, 2026 (the "Maturity Date"), unless earlier repurchased, redeemed or converted in accordance with their terms, and will accrue interest at a rate of 7.00% per annum, payable in cash. The Convertible Notes may be converted at any time (in whole or in part) into shares of Common Stock, at the option of the holder of such Convertible Note, based on the applicable conversion rate at such time. The initial conversion price is approximately $11.50 per share of Common Stock, based on an initial conversion rate of 86.9565 shares of Common Stock per $1,000 principal amount of Convertible Notes. For conversions with a conversion date on or after the first anniversary of the closing of the Transactions and prior to the regular record date immediately preceding the Maturity Date, the conversion consideration will also include an interest make-whole payment equal to the remaining scheduled payments of interest on the Convertible Note being converted through the Maturity Date. The Company will be able to elect to make such interest make-whole payment in cash or in Common Stock, subject to certain conditions. The conversion rate is subject to adjustments set forth in the Indenture, including conversion rate resets (x) on August 27, 2023, September 26, 2023 and September 26, 2024 and (y) following the consummation of certain equity and equity-linked offerings by the Company and sales of certain equity and equity-linked securities by certain shareholders of the Company. On August 27, 2023, the conversion rate will reset to the greater of (i) the then-current conversion rate and (ii) if the Standby Capital VWAP Sale Price (as defined below) is less than or equal to $7.50, the quotient of (x) $1,000 and (y) the volume weighted average sale price of shares of Common Stock sold under the Standby Agreement (as defined below) (the "Standby Capital VWAP Sale Price"). As of March 31, 2023, the Standby Capital VWAP Sale Price was $1.76.

Each holder of a Convertible Note will have the right to cause the Post-Combination Company to repurchase for cash all or a portion of the Convertible Notes held by such holder upon the occurrence of a "Fundamental Change" (as defined in the Indenture) at a price equal to (i) on or before September 26, 2023, 100% of the original principal amount of such Convertible Note, and (ii) from and after September 26, 2023, 100% of the accreted principal amount applicable at such time pursuant to the terms of the Indenture, in each case, plus accrued and unpaid interest.

The Indenture includes restrictive covenants that, among other things, require the Company to maintain a minimum level of liquidity on a consolidated basis and limit the ability of the Company and its subsidiaries to incur indebtedness above certain thresholds or to issue preferred stock, to make certain restricted payments, to dispose of certain material assets and engage in other asset sales, subject to reinvestment rights, to pay certain advisory fees in connection to the Transactions and the transactions contemplated by the PIPE Subscription Agreements above a certain threshold, and other customary covenants with respect to the collateral securing the obligations created by the Convertible Notes and the Indenture, including the entry into security documents (in each case, subject to certain exceptions set forth in the Indenture); provided that the covenants with respect to (i) the making of restricted payments, (ii) the incurrence of indebtedness, (iii) the disposition of certain material assets and asset sales, (iv) liquidity, (v) the payment of advisory fees and (vi) the collateral securing the obligations created by the Convertible Notes and the Indenture shall terminate once less than 15% of the aggregate principal amount of the Convertible Notes are outstanding. The liquidity covenant would terminate if the

Company achieves $175 million in consolidated revenue in the preceding four fiscal quarters. Certain of the Company's subsidiaries will serve as Notes Guarantors that jointly and severally, fully and unconditionally guarantee the obligations under the Convertible Notes and the Indenture. The Indenture also requires certain future subsidiaries of the Post-Combination Company, if any, to become Notes Guarantors. This covenant will terminate once less than 15% of the aggregate principal amount of the Convertible Notes are outstanding. The Indenture also includes customary events of default and related provisions for potential acceleration of the Convertible Notes.

If the Company does not have an effective registration statement on file with the SEC within 90 days of the Closing Date, registering the underlying shares issuable upon conversion of the Convertible Notes, or fails to maintain the effectiveness of such registration statement, then additional interest would accrue on the outstanding principal of the Convertible Notes at a rate of (a) 0.25% per annum for the first 90 days commencing on the first business day following a ten business day grace period and (b) 0.50% per annum thereafter, in each case, until the Company cures the lapse of effectiveness. The Company accounts for such additional interest in accordance with ASC subtopic 825-20, *Registration Payment Arrangements* ("ASC 825-20"). ASC 825-20 specifies that the contingent obligation to make future payments under a registration payment arrangement, whether issued as a separate agreement or included as a provision of a financial instrument, should be separately recognized and accounted for as a contingency in accordance with ASC 450-20, *Loss Contingencies*. The registration statement was declared effective on November 14, 2022.

The Company elected to account for the Convertible Notes under the fair value option of accounting upon issuance of the Convertible Notes. At issuance the Company recognized the fair value of the Convertible Notes of $65.1 million with the remaining $0.4 million of proceeds received allocated to the PIPE Warrants. As of March 31, 2023 and December 31, 2022, the fair value of the Convertible Notes were $57.4 million and $62.5 million, respectively, of which $1.1 million and $1.6 million, respectively, representing accrued interest, is included in accrued expenses and other current liabilities on the consolidated balance sheets. The gain on fair value of the Convertible Notes during the three months ended March 31, 2023 was $4.6 million of which $1.1 million is included in interest expense, which is recognized based on the effective interest method.

The primary reason for electing the fair value option is for simplification and cost-benefit considerations of accounting for the Convertible Notes (the hybrid financial instrument) at fair value in its entirety versus bifurcation of the embedded derivatives. The fair value was determined using a binomial lattice valuation model. The significant inputs to the valuation of the Convertible Notes at fair value are Level 3 inputs since they are not directly observable. The significant assumptions used in the model are the discount rate of 15.04%, which is based on the company's credit rating, volatility of 96.85% and 41 time-nodes.

The Company did not timely make the payment of the accrued interest on the Convertible Notes due on March 1, 2023. On March 26, 2023, the Company, the Notes Guarantors and Holders entered into limited waivers and consents pursuant to which each holder agreed to (i) waive the Specified Default and any payment obligation of the Company under the Indenture with respect to the March Interest Payment, (ii) in lieu of the March Interest Payment and payment of the accrued interest on the Convertible Notes due on September 1, 2023 (collectively, the "Interest Payments"), (a) receive a Promissory Note (as defined below) and (b) amend the Warrant Agreement (as defined below) to reduce the exercise price of the warrants governed thereby from $11.50 to $0.01, and (iii) consent to the entry into the Supplemental Indenture.

The Supplemental Indenture, among other things, (i) lowered the minimum amounts of liquidity the Company must maintain on a consolidated basis for each quarter in 2023 and the first quarter of 2024, (ii) added restrictions on the Company's ability to make payments relating to certain restricted investments, (iii) decreased the maximum amount of equity interests that the Company may repurchase, redeem, acquire or retire, (iv) removed the Company's ability to issue preferred stock or incur certain unsecured indebtedness or junior lien indebtedness, (v) decreased other permitted debt baskets, (vi) decreased the threshold for a cross-default for purposes of determining an Event of Default and (vii) added a new Event of Default in the event the Company does not consummate an underwritten primary equity offering providing at least $10 million of proceeds to the Company by April 30, 2023.

On March 26, 2023, the Company, the Notes Guarantors and each holder of the Convertible Notes executed unsecured promissory notes (each, a "2023 Promissory Note" and collectively, the "2023 Promissory Notes"), with each 2023 Promissory Note having an aggregate principal amount equal to such holder's interest payments. The 2023 Promissory Notes mature on March 26, 2025 and accrue interest at seven percent (7.0%) per annum.

In addition, the 2023 Promissory Notes provide that, in the event the Company consummates the April 2023 Offering (as defined below) by April 30, 2023, the holder of each 2023 Promissory Note has the option to require the Company to repay a portion of the principal balance of the 2023 Promissory Note in an amount equal to or less than the gross proceeds to the Company from any purchases by the holder of the Company's securities in the April 2023 Offering (the "Put Option"). Each holder may exercise its Put Option within ten business days following the closing and funding of the April 2023 Offering. In addition, certain of the 2023 Promissory Notes provide such holders with the right to convert their respective promissory note (the "Convertible Promissory Notes") into unregistered securities of the Company (the "Unregistered Securities") on the same terms as the securities offered in the April 2023 Offering in the event such offering is consummated.

The Company elected to account for the 2023 Promissory Notes and Convertible Promissory Notes under the fair value option of accounting upon issuance of such notes. At issuance the Company recognized the fair value of the 2023 Promissory Notes and Convertible Promissory Notes of $4.8 million. As of March 31, 2023, the fair value of the 2023 Promissory Notes and Convertible Promissory Notes remained consistent at $4.8 million. The loss on the increase in fair value of the notes during the three months ended March 31, 2023 was $159 thousand included in the change in fair value of promissory notes on the consolidated statements of operations.

Loans

In February 2023, the Company obtained a loan for $3 million with a third-party with an annual interest rate of 39% and debt issuance cost of $75 thousand, which are to be paid from future cash receipts. The third-party has rights to future cash receipts until the loan is fully repaid. The weekly repayments began at the end of February 2023 for $130 thousand and will continue until the loan is fully repaid in October 2023. As of March 31, 2023, the outstanding balance of the loan was $2.7 million.

In February 2023, the Company obtained a loan for $250 thousand with a merchant third-party with an annual percentage rate of 20.17%, which are to be repaid from future cash receipts directly from the merchant. During the three months ended March 31, 2023, repayments of $72 thousand have been made and the loan is expected to be fully repaid in August 2023. As of March 31, 2023, the outstanding balance of the loan was $203 thousand.

The Company calculates the interest and expenses of the debt issuance cost using the effective interest rate method.

Promissory Notes

During the second quarter of 2022, the Company entered into promissory notes with various individuals (the “Promissory Notes”), including current investors, members of management and other unrelated parties in exchange for cash in an amount equal to $7.0 million (the “Promissory Notes”). The Promissory Notes were due to mature on the earlier of (a) one year from issuance or (b) the closing of the Business Combination (Note 1) and bore per annum interest at the rate of 7.75% plus the greater of 3.50% or the prime rate as published by the Wall Street Journal. The Company was required to make nine interest-only payments, followed by three principal and interest payments. In connection with the Promissory Notes, the Company issued warrants (“Promissory Note Warrants”) to purchase up to 31,024 shares of common stock of the Company at an exercise price of $0.01 per share (Note 8). Upon payment in full of the Promissory Notes, the Company was required to make an additional final payment (“Final Payment”) of $3.5 million.

The Company elected to account for the Promissory Notes under the fair value option of accounting upon issuance of each of the Promissory Notes. At issuance the Company recognized the fair value of the Promissory Notes of $6.3 million with the remaining $0.7 million of proceeds received allocated to the Promissory Note Warrants.

The Promissory Notes were repaid at the closing of the Business Combination.

8.WARRANTS AND DERIVATIVES

Convertible Note Warrants

The Company issued the PIPE Warrants in connection with the Convertible Notes issuance. There were 1,396,419 PIPE Warrants issued to purchase common stock of the Company at $11.50 per share. The PIPE Warrants are redeemable for $0.01 once the Company’s stock price reaches $18.00 per share. The PIPE Warrants are equity classified. Approximately $377 thousand of the proceeds upon issuance of the Convertible Notes was allocated to the PIPE Warrants along with an immaterial amount of issuance costs.

On March 26, 2023, the Company and Continental Stock Transfer & Trust Company (the “Warrant Agent”) entered into an Amendment to that certain Warrant Agreement, dated as of August 26, 2022, by and between the Company and the Warrant Agent (the “Warrant Agreement”). Pursuant to the Warrant Agreement Amendment, the exercise price of each warrant was reduced from $11.50 to $0.01. The Company recorded a loss related to the warrant amendment of $430 thousand in other expense in the consolidated statement of operations.

On March 28, 2023, the Company filed with the Secretary of State of the State of Delaware a Certificate of Amendment to its Second Amended and Restated Certificate of Incorporation (the “Charter Amendment”) to effect a 1-for-20 reverse stock split of the Company's common stock (the “Reverse Stock Split”). Proportionate adjustments have been made to the per share exercise price and the number of shares of the Company's common stock that may be purchased upon exercise of warrants issued by the Company.

Standby Agreement Derivative Liability

In connection with the Business Combination, Legacy Nogin acquired from SWAG a derivative liability associated with agreements entered into by SWAG prior to the Closing Date. SWAG entered into an agreement with a financial institution (the “Financial Institution”), whereby the Financial Institution purchased SWAG Class A common stock from third parties prior to the Closing Date (the “Standby Agreement”). At the Closing Date, the Company paid the Financial Institution 80% of the Financial Institution’s aggregate purchase price of such shares of SWAG Class A common stock. After the Closing Date, the Financial Institution may sell the shares purchased pursuant to the Standby Agreement and keep all the proceeds of such sales until they have recouped the remaining 20% of the aggregate purchase price of the shares purchased prior to the Closing Date. After such time, proceeds from the sale of such shares would be paid to the Company less a liquidity fee equal to 3.5% of the proceeds from such sales. If the Financial Institution has not fully recouped the aggregate purchase price of the shares purchased prior to the Closing Date by August 26, 2026, the Company would be obligated to pay the remaining amount due to the Financial Institution on such date. Any remaining unsold shares as of August 26, 2026 would be returned to the Company.

In addition, SWAG entered into a subscription agreement (the "Subscription Agreement") with the same Financial Institution whereby the Financial Institution purchased 517,079 shares of Common Stock at a purchase price of $10.17 per share at the closing of the Business Combination and paid the Company an amount equal to 20% of the purchase price. The Subscription Agreement was structured similarly to the Standby Agreement between the Company and the Financial Institution regarding the timing and amount of future payments, as well as the return of any unsold shares at maturity.

The Company concluded the Standby Agreement would be accounted for as a derivative in its entirety in accordance with ASC 815-10, and the structured payments within the Subscription Agreement was considered an embedded feature in the Subscription Agreement that met the definition of a derivative and required bifurcation from the Subscription Agreement, as it is not clearly and closely related to the Subscription Agreement and would be accounted for in accordance with ASC 815-10 (together the "Standby Agreement Derivative). The Standby Agreement Derivative was not entered into for hedging purposes. The Company accounted for the Standby Agreement Derivative acquired at fair value upon the closing of the Business Combination. The Company will continue to account for the Standby Agreement Derivative at fair value each reporting period in accordance with ASC 815-10.

The Company engaged a third-party valuation specialist to assist with the fair value assessment. The fair value as of December 31, 2022 of the Standby Agreement Derivative liability was $847 thousand and was recorded in other long-term liabilities on the condensed consolidated balance sheets. In March 2023, all shares were resold by the Financial Institution and the Company recognized a gain to fair value of derivative instruments of $847 thousand for the three months ended March 31, 2023 on the condensed consolidated statements of operations.

9.FAIR VALUE MEASUREMENTS

The Company applies the provisions of FASB Accounting Standards Codification (ASC) 820, *Fair Value Measurements and Disclosures* ("ASC 820"), which provides a single authoritative definition of fair value, sets out a framework for measuring fair value, and expands on required disclosures about fair value measurement.

The Company applies the provisions of ASC 820 to all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis.

The Company defines fair value as an exit price, representing the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability.

Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

In determining fair value, the Company utilized valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible as well as considers counter party credit risk and nonperformance risk in its assessment of fair value.

The carrying value of the Company's short-term financial instruments, such as cash, restricted cash, accounts receivable, notes payable, and accounts payable, approximate the fair value due to the immediate or short-term maturity of these instruments. As of March 31, 2023, the Company no longer has recurring measurements for warrant liability. Further, the Company has elected to apply the fair value option of accounting for its Convertible Notes and equity investments in unconsolidated affiliates. The Company is required to present the fair value of the Standby Agreement derivative liability each reporting period.

The following details the Company's recurring measurements for assets and liabilities at fair value (in thousands):

	March 31, 2023	December 31, 2022
Investment in unconsolidated affiliates (Level 3) - Note 5	6,759	7,404
Convertible Note (Level 3) - Note 7	56,260	60,852
Standby Agreement derivative liability (Level 3)- Note 8	—	847
Non-current Business Combination Cash Consideration (Level 3)	3,555	3,355

Deferred Business Combination cash consideration

In connection with the Business Combination, Legacy Nogin equity holders elected to receive $15.0 million of the merger consideration in cash. In order to meet conditions to close the Transactions, the Company paid $4.1 million of the $15.0 million cash consideration at the Closing Date. Of the $10.9 million in deferred cash consideration, $5.0 million is payable, subject to certain conditions, on February 21, 2023, and is included in accrued expenses and other current liabilities as of March 31, 2023 on the condensed consolidated balance sheets (the "Current Cash Consideration"). The remaining $5.9 million (the "Non-current Cash Consideration") is payable, subject to certain conditions, on the earlier of (a) the date on which the Company completes a primary offering of equity securities that generates gross proceeds to the Company equal to or in excess of $15.0 million and (b) November 25, 2026. In the event the conditions to paying cash consideration are not met and cash consideration remains unpaid as of November 25, 2026, the unpaid cash consideration will be settled in shares of the Company's common stock with the number of shares issued determined based on the quotient of unpaid cash consideration divided by the 10-day volume weighted average trading price of the Company's common stock on NASDAQ. The Company elected to account for the Non-current Cash Consideration of $5.9 million under the fair value option of accounting under ASC 825-10. At the Closing Date, the fair value of the Non-current Cash Consideration was $4.2 million. In connection with the reverse recapitalization, the cash consideration would be akin to a distribution of capital. As a result, the Company recorded the fair value of the distribution at the Closing Date of $13.3 million, which included the $4.1 million paid at the Closing Date, $5.0 million Current Cash Consideration and $4.2 million Non-current Cash Consideration, against accumulated deficit. As of March 31, 2023, the fair value of the Non-current Cash Consideration was $3.6 million which is included in other long-term liabilities on the condensed consolidated balance sheets. The change in fair value from the Closing Date for the three months ended March 31, 2023 of $0.2 million is included in other loss on the condensed consolidated statements of operations.

The significant inputs to the valuation of the deferred cash consideration at fair value are Level 3 inputs since they are not directly observable. The Company primarily used a discounted cash flow method to value the deferred cash consideration, based on the expected future payment discounted to present value. The significant input is the discount rate which is based on the Company's credit rating.

10.INCOME TAXES

The income tax expense for the three months ended March 31, 2023 and March 31, 2022 was a benefit of $26 thousand and an expense of $158 thousand, respectively. Income tax expense differs from the income taxes expected at the U.S. federal statutory tax rate of 21%, primarily due to state taxes and additional valuation allowance for the period ended March 31, 2023 and December 31, 2022.

11.COMMON STOCK

Holders of common stock are entitled to one vote per share and, upon liquidation or dissolution, are entitled to receive all assets available for distribution to common stockholders. The holders of common stock have no preemptive or other subscription rights, and there is no redemption or sinking fund provisions with respect to such shares.

Common stock will be subordinate to any preferred stock the Company issues in the future with respect to rights upon liquidation of the Company.

12.STOCK COMPENSATION PLAN

In 2013, Legacy Nogin adopted the 2013 Plan pursuant to which Legacy Nogin was authorized to issue stock options or nonvested shares to officers and key employees in an amount up to 132,770 shares of its common stock. In connection with the Business Combination, the Company adopted the 2022 Plan, which became effective on the Closing Date. The aggregate number of shares of the Company's common stock available for issuance under the 2022 Plan is equal to (i) 255,147 shares plus (ii) an annual increase for ten years on the first day of each calendar year beginning on January 1, 2023, equal to the lesser of (A) 15% of the aggregate number of shares of the Company's common stock outstanding on the last day of the immediately preceding calendar year and (B) such smaller amount of shares as determined by the Company's board of directors. Following the effectiveness of the 2022 Plan, the Company will not grant additional awards under the 2013 Plan.

At March 31, 2023 and December 31, 2022, there were 172,147 and 59,028 shares available respectively, for grant under the Company's stock incentive plans.

Stock Options

Stock options have been granted under the 2013 and 2022 Plans. Such options have a 10-year term and generally vest ratably over a period of four years. Summary information related to stock options outstanding as of March 31, 2023 and December 31, 2022 is as follows:

	Outstanding Stock Options
Outstanding at January 1, 2022	42,546
Granted	87,323
Exercised	(9,957)
Forfeited / Terminated	(46,171)
Outstanding at December 31, 2022	73,741
Granted	83,000
Exercised	—
Forfeited / Terminated	(4,666)
Outstanding at March 31, 2023	152,075

The weighted average exercise price of the outstanding options was $36.06 and $255.40 per share as of March 31, 2023 and December 31, 2022, respectively. There were 64,966 and 46,660 fully vested and exercisable options as of March 31, 2023 and December 31, 2022, respectively.

The Company recognized $200 thousand and $58 thousand in stock compensation expense for the three months ending March 31, 2023 and 2022, respectively. The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model. Expected volatility was computed based on the historical volatility of similar entities with publicly traded shares. The risk-free rate for the expected term of the option is based on the U.S. Treasury yield to curve in effect at the time of grant.

The Company has no history or expectations of paying dividends on its common stock.

The following table summarizes the assumptions used in the calculation of the fair market value for awards granted during the three months ended March 31, 2023:

Valuations assumptions

Expected dividend yield	— %
Expected volatility	61 %
Expected term (years)	6
Risk-free interest rate	3.9 %

Restricted Stock Units

As of March 31, 2023, restricted stock units ("RSUs") of 506,250 shares were granted under the 2022 Plan. The RSUs are issued upon vesting. The RSUs vest over a period of 1-3 years and are expected to be settled in shares upon vesting. The weighted average exercise price of each RSU was $15.40 per share as of March 31, 2023. The Company recognized $53 thousand in stock compensation expense for the three months ending March 31, 2023. There were no RSUs granted in fiscal year 2022.

13.ACQUISITION

Prior to December 1, 2022, the Company owned a 50% equity interest in a joint venture, ModCloth Partners, LLC. (“ModCloth”), which was accounted for under the fair value option of accounting. On December 1, 2022, the Company acquired the remaining 50% equity interest in ModCloth (the “ModCloth Acquisition”) from Tiger Capital Group, LLC (“Tiger Capital”), pursuant to Tiger Capital’s exercise of their put option to require the Company to purchase all of Tiger Capital’s equity interest for $1.5 million in cash. As a result of the ModCloth Acquisition, ModCloth is now a wholly owned consolidated subsidiary of the Company.

Total purchase consideration in connection with the ModCloth Acquisition was $6.9 million, including $1.5 million in cash and $5.4 million for the settlement of a preexisting relationship. Under the terms of the ModCloth Tiger Assignment (“Equity Assignment Agreement”), control of ModCloth transferred to the Company on December 1, 2022 (the “Acquisition Date”). Cash consideration was funded with cash previously recorded as restricted cash in our consolidated balance sheets as of December 31, 2022. We did not incur material fees and expenses in connection with the ModCloth Acquisition.

Prior to the closing of the ModCloth Acquisition, the Company accounted for the existing 50% equity interest in ModCloth using the fair value option of accounting. As of September 30, 2022 the Company's investment in ModCloth had a fair value and carrying value of $4.5 million. The Company accounted for the acquisition of the remaining 50% equity interest in ModCloth as a step acquisition, which required remeasurement of the Company's existing 50% ownership interest in ModCloth to fair value as of December 1, 2022. The Company utilized weighted discounted cash flow, guideline public company and comparable market transaction valuation approaches to determine the fair value of the existing equity interest. This resulted in a fair value of $1.92 million and the recognition of a loss of $2.58 million, which was included in Change in fair value of unconsolidated affiliates on the consolidated statements of operations.

The ModCloth Acquisition was accounted for as a business combination by applying the acquisition method of accounting pursuant to ASC Topic 805, "Business Combinations".

The following table summarizes the purchase price consideration in connection with the ModCloth Acquisition as of December 1, 2022 (amounts in thousands):

Total cash consideration	$	1,500
Settlement of pre-existing relationship (a)		5,415
Total consideration		6,915
Fair value of previously held equity interest		1,920
Total		8,835

(a) Effective settlement of pre-existing accounts receivable of $5.4 million for services provided to ModCloth under the Company's Master Services Agreement with ModCloth and additional operational funding provided by the Company to ModCloth. The $5.4 million accounts receivable balance as of the acquisition date was based on the Company's estimate of the amount that will ultimately be collected from ModCloth.

The following table summarizes the preliminary fair values of the assets acquired, liabilities assumed and resulting goodwill in the ModCloth Acquisition as of December 1, 2022 (amounts in thousands):

		As of December 1, 2022
Acquired assets		
Cash	$	3
Accounts receivable, net		25
Inventory		4,787
Prepaid expenses and other current assets		30
Property and equipment, net		108
Right-of-use asset, net		895
Other non-current asset		80
Intangible assets, net		4,610
Goodwill		6,748
Total acquired assets	**$**	**17,286**
Liabilities assumed		
Accounts payable	$	5,544
Accrued expenses and other liabilities		2,908
Total liabilities assumed	**$**	**8,452**

The fair value of ModCloth's identifiable intangible assets and useful lives are as follows (amounts in thousands, except years):

		Fair Value	Useful Life (Years)
Trade name		4,610	10
Total identifiable intangible assets	**$**	**4,610**	

Fair value measurement methodology used to estimate the fair value of the trade name is based on the relief from royalty method, which estimates the value of the trade names based on the hypothetical royalty payments that are saved by owning the asset. Some of the more significant assumptions inherent in the development of intangible asset fair values, from the perspective of a market participant, include, but are not limited to (i) the amount and timing of projected future cash flows (including revenue and expenses), (ii) the discount rate selected to measure the risks inherent in the future cash flows, and (iii) the assessment of the asset's life cycle.

The goodwill of $6.7 million represents future economic benefits expected to arise from synergies from combining operations and commercial organizations to increase market presence and the extension of existing customer relationships. The goodwill recorded is not deductible for income tax purposes.

14.RELATED PARTY TRANSACTIONS

The Company provides services to its joint venture, IPCO, under Master Services agreements ("MSA"), which were entered into on December 31, 2021.

Sales under the MSA to IPCO were $1.2 million for the three months ended March 31, 2023 and March 31, 2022. In addition, the Company sold inventory to IPCO for $0.6 million during the first quarter of 2022, and such amount is included in net revenue to related parties in the consolidated statement of operations. As of March 31, 2023 and December 31, 2022, the Company had payables to IPCO of $0.2 million and $1.0 million, respectively, which were included in related party payables on the consolidated balance sheets.

Prior to December 1, 2022, the Company owned a 50% equity interest in a joint venture, ModCloth Partners, LLC. ("ModCloth"), which was accounted for under the fair value option of accounting. On December 1, 2022, the Company acquired the remaining 50% equity interest in ModCloth (the "ModCloth Acquisition") from Tiger Capital Group, LLC ("Tiger Capital"), pursuant to Tiger Capital's exercise of their put option to require the Company to purchase all of Tiger Capital's equity interest for $1.5 million in cash. As a result of the ModCloth Acquisition, ModCloth is now a wholly owned consolidated subsidiary of the Company, and the results of ModCloth are consolidated into the results of the company post-assignment. Sales under the MSA to ModCloth prior to the assignment were $2.0 million for the three months ended March 31, 2022.

The Company's chief executive officer and his immediate family member (together, the "PIPE Related Parties") were investors in the PIPE issuance of Convertible Notes (Note 7) for total proceeds of $1.5 million. In addition to the $1.5 million in Convertible Notes, the PIPE Related Parties also received 32,142 equity classified Convertible Note Warrants (Note 8). As of March 31, 2023, the fair value of the Convertible Notes with the PIPE Related Parties was $1.3 million, which is included in Convertible Notes on the consolidated balance sheets. The terms of the Convertible Notes with the PIPE Related Parties are consistent with the rest of the holders of the Convertible Note.

In March 2023, in lieu of the missed Interest Payments, the PIPE Related Parties received the 2023 Promissory Notes (Note 7) totaling $106 thousand. As of March 31, 2023, the fair value of the 2023 Promissory Notes with the PIPE Related Parties were $106 thousand, which is included in Promissory Notes on the condensed consolidated balance sheets. The terms of the 2023 Promissory Notes with the PIPE Related Parties are consistent with the rest of the holders of the Convertible Note.

15.REVENUE

Disaggregation of Revenue

The Company has five major streams of revenue. CaaS service revenue, product revenue and shipping revenue are considered transferred to customers at the point of sale. Marketing and other revenue (other than B2C fulfillment services for rental space) are considered transferred to customers when services are performed. Thus, these revenues streams are recognized at a point in time. B2C fulfillment services for rental space is recognized over time.

The following table presents a disaggregation of the Company's revenues by revenue source for the three months ended March 31, 2023 and 2022 (in thousands):

	Three Months Ended March 31,	
	2023	2022
Commerce-as-a-Service Revenue	$ 3,733	$ 5,201
Product sales revenue	6,544	12,922
Marketing revenue	2,658	3,670
Shipping revenue	1,867	1,881
Other revenue	1,873	1,525
Total revenue	$ 16,675	$ 25,199

16.SEGMENT REPORTING

The Company conducts business domestically and our revenue is managed on a consolidated basis. Our Chief Executive Officer, Jonathan S. Huberman, who is our Chief Operating Decision Maker, reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. There are no segment managers who are held accountable for operations, operating results, and plans for levels, components, or types of products or services below the consolidated unit level. Accordingly, the Company is considered to be a single reportable segment.

All of the Company's long-lived assets and external customers are located within the United States.

17.EARNINGS PER SHARE

Basic and diluted net income (loss) per share are computed using the two-class method as required when there are participating securities. The shares of the Company's redeemable convertible preferred stock were participating securities as the holders of the redeemable convertible preferred stock were entitled to participate with any dividends payable in common stock. In periods of net income, net income is attributed to common stockholders and participating securities based on their participating rights. Net losses are not allocated to the participating securities as the participating securities do not have a contractual obligation to share in any losses. The following table presents the Company's basic and diluted net income (loss) per share:

	Three Months Ended March 31,	
(In thousands, except share and per share amounts)	**2023**	**2022**
Numerator: Basic EPS		
Net loss	$ (9,901)	$ (9,942)
Net loss attributable to common stockholders-basic	$ (9,901)	$ (9,942)
Denominator: Basic EPS		
Weighted average shares of common stock outstanding-basic	4,688,331	1,981,097
Net loss per share attributable to common stock-basic	$ (2.11)	$ (5.02)

	Three Months Ended March 31,	
(In thousands, except share and per share amounts)	**2023**	**2022**
Numerator: Diluted EPS		
Net loss attributable to common stockholders-diluted	$ (9,901)	$ (9,942)
Denominator: Diluted EPS		
Adjusted weighted average shares of common stock outstanding-basic	4,688,331	1,981,097
Dilutive potential shares of common stock:		
Options to purchase shares of common stock	—	—
Warrants to purchase shares of common stock	—	—
Weighted average shares of common stock outstanding-diluted	4,688,331	1,981,097
Net loss per share attributable to common stock-diluted	$ (2.11)	$ (5.02)

The Company's potentially dilutive securities below, have been excluded from the computation of diluted net loss per share as they would be anti-dilutive.

Weighted-average number of potentially anti-dilutive shares excluded from calculation of dilutive earnings per share

	Three Months Ended March 31,	
	2023	**2022**
Series A convertible, redeemable preferred shares	—	443,224
Series B convertible, redeemable preferred shares	—	316,707
Stock-based compensation awards	370,075	60,663
Legacy Nogin Warrants	28,639	31,652
PIPE Warrants	24,294	—
SWAG Warrants	372,070	—
Shares Underlying Convertible Notes	99,089	—

18.MEZZANINE EQUITY AND SHAREHOLDERS' DEFICIT

There were no significant changes in the Company's mezzanine equity and shareholders' deficit during the three months ended March 31, 2023.

Common Stock

Subsequent to the Business Combination, the Company is authorized to issue up to 500 million shares of common stock with a par value of $0.0001 per share. Each share of common stock entitles the shareholder to one vote.

Preferred Stock

As part of the Business Combination, all of the convertible preferred stock of Legacy Nogin, (including both the Series A preferred stock and Series B preferred stock) were converted into approximately 15.2 million shares of the Company's Common Stock. As a result of the conversion of the Series A preferred stock and Series B preferred stock, the Company reclassified the amounts previously recorded in mezzanine equity to additional paid-in capital.

Subsequent to the Business Combination, the Company is authorized to issue 50 million shares of preferred stock with a par value of $0.0001 per share. There were no shares of preferred stock issued and outstanding as of March 31, 2023.

19.OPERATING LEASES

The Company has entered into lease agreements for offices and warehouses located in California and Pennsylvania.

On January 1, 2022, the Company adopted Accounting Standards Update ("ASU") 2016-02 and all subsequent amendments, collectively codified in ASC Topic 842, "Leases" ("ASC 842"), using the modified retrospective transition method. Accordingly, comparative period financial information was not restated for the effects of adopting ASC 842.

As of the date of adoption on January 1, 2022, the impact of ASC 842 resulted in the recognition of a right-of-use asset ("ROU asset") and lease liability for our operating leases on our consolidated balance sheets of approximately $13.0 million and $15.1 million, respectively.

Lease liabilities were recognized based on the present value of remaining lease payments over the remaining lease term. ROU assets were recognized utilizing the lease liability as of January 1, 2022 adjusted for certain ASC 840 operating lease related balances. As the Company's operating lease agreements do not provide a rate implicit in the lease, we discounted the remaining lease payments using an estimated incremental borrowing rate, which was based on the information available at the adoption date. Operating lease cost is recognized on a straight-line basis over the lease term. Variable lease costs such as common area costs and other operating costs are expensed as incurred. Leases with an initial term of 12 months or less are not recorded on the balance sheet. The adoption of this new guidance did not have a material net impact on the Company's consolidated statements of operations or consolidated statements of cash flows.

Our operating leases primarily consist of office space, distribution centers and equipment used within our operations. Most of the leases have lease terms ranging from three to eight years, although the terms and conditions of our leases can vary significantly from lease to lease.

The following schedule represents the components of the Company's operating lease assets and liabilities as of March 31, 2023 (in thousands):

Leases	Classification		March 31, 2023
Assets			
Operating	*Operating lease right-of-use assets*	$	17,350
Liabilities			
Operating lease liabilities (current)	*Operating lease liabilities, current*	$	4,565
Operating lease liabilities (non-current)	*Operating lease liabilities, non-current*		14,775

The following schedule represents the components of lease expense for the fiscal year ended March 31, 2023 (in thousands):

		March 31, 2023
Lease Costs:		
Operating lease costs	$	1,501
Variable lease costs		317
Short-term lease costs		—
Sublease income		—
Total lease costs	$	1,818

As of March 31, 2023, the Company's maturity of operating lease liabilities for the next five years and thereafter are as follows (in thousands):

		Operating Leases
2023 (remaining payments)	$	4,127
2024		5,214
2025		5,310
2026		3,453
2027		2,222
Thereafter		899
Total lease payments		21,225
Less: imputed interest		(2,708)
Total operating lease payments	$	18,517

Other operating leases information:

Cash paid for amounts included in the measurement of lease liabilities	$	1,711
Right-of-use assets obtained in exchange for new lease liabilities	$	1,120
Weighted-average remaining term (in years)		4.1
Weighted-average discount rate		6.9 %

In accordance with ASC 840, the following is a schedule by years of future minimum lease payments required under the operating leases that have initial or noncancelable lease terms in excess of one year as of March 31, 2022.

As of March 31, 2022:		
2022 (remaining payments)	$	2,250
2023		1,272
2024		873
2025		900
2026		927
Thereafter		1,853
Total minimum lease payments	$	8,075

In July 2018, the Company assumed the operating lease for office space of the entity with which an asset purchase agreement was executed. The monthly lease payment was $75 thousand and expires in May 2023. The future minimum lease payments are included in the table above. The Company subleased the office space to a third-party in December 2018 for approximately $87 thousand per month. The sublease agreement will expire in May 2023. Future rental income is as follows: approximately $1.0 million per year during 2022 and approximately $435 thousand in 2023 until the expiration of the lease.

Rent expense for the three months ended March 31, 2022 was approximately $1.4 million, and is included in general and administrative expenses in the condensed consolidated statements of operations.

20.SUBSEQUENT EVENTS

The Company evaluated subsequent events and transactions that occurred after the balance sheet date up to the date that the condensed consolidated financial statements were issued.

On April 4, 2023, the Company entered into Securities Purchase Agreements (the "Purchase Agreements") with certain investors (the "Investors"), pursuant to which the Company agreed to sell, issue, and deliver to Investors, in a registered public offering (the "Offering") (i) 7,333,334 shares of Common Stock and (ii) warrants to purchase 7,333,334 shares of Common Stock (the "Common Warrants") (collectively, the "April 2023 Offering"). Under the terms of the Purchase Agreements, the Company agreed to sell its Common Stock and accompanying Common Warrants at a combined offering price of $3.00 per share of Common Stock and accompanying Common Warrant. On April 6, 2023, the Company consummated the April 2023 Offering and received gross proceeds of approximately $22 million in connection with the offering before deducting placement agent fees and other offering expenses.

In April 2023, the 2023 Promissory Notes and Convertible Promissory Notes (Note 7) were repaid in full.

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 the unaudited consolidated financial statements and the related notes of Nogin, Inc. and its subsidiaries included elsewhere in this Report. Some of the information contained in this discussion and analysis contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth in the section captioned "Risk Factors" in our Annual Report on Form 10-K filed with the SEC on March 23, 2023 and elsewhere in this Report, actual results may differ materially from those anticipated in these forward-looking statements.

Unless the context otherwise requires, references in this subsection to "we," "our," "Nogin" and the "Company" refer to the business and operations of Branded Online, Inc. dba Nogin and its consolidated subsidiaries prior to the Business Combination and to Nogin, Inc. (formerly known as Software Acquisition Group Inc. III) and its consolidated subsidiaries following the consummation of the Business Combination (as defined below).

Company Overview

Nogin is an e-commerce, technology platform provider in the apparel and ancillary industry's multichannel retailing, business-to-consumer and business-to-business domains. Nogin's CaaS platform delivers full-stack enterprise-level capabilities to our clients enabling them to compete with large retailers. As clients grow their brand, they require additional capabilities beyond a simple online storefront. We provide the technology for these growing brands to manage complexities related to customer management, order optimization, returns, and fulfillment. The platform's tools provide clients with capabilities around website development, photography, content management, customer service, marketing, warehousing, and fulfillment. The Company's business model is based on providing a total e-commerce software solution to its partners on a revenue-sharing basis. The Company's platform is used by online businesses whose needs are too complex for low-cost SaaS e-commerce platforms, yet require more flexibility and economic viability than provided by enterprise solutions.

Our platform helps brands develop relationships directly with their customers leading to accelerated revenue growth, improved customer engagement, and reduced costs related to re-platforming and third-party integrations.

Recent Developments

The Business Combination

On February 14, 2022, the Company entered into the Merger Agreement with Merger Sub and Legacy Nogin, pursuant to which Merger Sub would merge with and into Legacy Nogin, with Legacy Nogin surviving the merger as a wholly owned subsidiary of the Company.

On April 19, 2022, the Company, the Notes Guarantors and the Subscribers entered into the PIPE Subscription Agreements pursuant to which the Company agreed to issue and sell to the Subscribers immediately prior to the closing of the Business Combination (i) up to an aggregate principal amount of $75.0 million of Convertible Notes at the par value of the notes and (ii) up to an aggregate of 1.5 million PIPE Warrants with each whole PIPE Warrant entitling the holder thereof to purchase one share of common stock.

On August 26, 2022, the Company and the "Equity Subscriber" entered into the Equity PIPE Subscription Agreement pursuant to which the Company agreed to issue and sell to the Equity Subscriber, immediately prior to the closing of the Business Combination, 517,079 PIPE Shares at a price per PIPE Share equal to $10.17.

On August 26, 2022, immediately prior to the Closing, the Company issued (i) 517,079 shares of common stock to the Equity Subscriber in accordance with the terms of the Equity PIPE Subscription Agreement, (ii) $65.5 million aggregate principal amount of Convertible Notes to the Subscribers in accordance with the terms of the PIPE Subscription Agreements and (iii) 1,396,419 PIPE Warrants to the Subscribers in accordance with the terms of the PIPE Subscription Agreements.

On August 26, 2022, pursuant to the Merger Agreement, Merger Sub merged with and into Legacy Nogin, with Legacy Nogin surviving the merger as a wholly owned subsidiary of the Company.

In connection with Closing, we changed our name to Nogin, Inc. While we are the legal acquirer of Legacy Nogin in the Business Combination, Legacy Nogin is deemed to be the accounting acquirer, and the historical financial statements of Legacy Nogin became the historical financial statements of the Company upon the closing of the Transactions.

Updates to Management and Board of Directors

On January 27, 2023, Jan-Christopher Nugent, Co-Chief Executive Officer and Chairman of the Board, resigned as the Company's Co-Chief Executive Officer and as a member and Chairman of the Board, effective as of January 27, 2023. Jonathan S. Huberman, the

Company’s other Co-Chief Executive Officer, began serving as the sole Chief Executive Officer of the Company and as Chairman of the Board as of the Resignation Effective Date.

On February 13, 2023, the Board, upon the recommendation of the Nominating Committee, appointed Andrew Pancer to fill the vacancy on the Board created by the resignation of Jan-Christopher Nugent. Mr. Pancer will serve as a Class I director of the Board for a term ending at the 2023 annual meeting of stockholders of the Company, with such appointment effective as of February 13, 2023. In approving the appointment, the Board concluded that Mr. Pancer satisfies the independence requirements of the Nasdaq Stock Market and the Company’s Corporate Governance Guidelines and the Securities and Exchange Commission rules regarding audit committee membership. Mr. Pancer was appointed to serve as a member of the Nominating Committee and as a member of the Audit Committee of the Board. In connection with Mr. Pancer’s appointment as a Class I director, the Board reassigned Hussain Baig from Class I to Class III in order to maintain the three classes of the Board as nearly equal in number as possible as prescribed by the Charter.

On February 13, 2023, Deborah Weinswig, a Class I director of the Board and chair of the Nominating Committee, resigned from the Board, effective as of February 13, 2023. In connection with Ms. Weinswig’s resignation, the Board reassigned Geoffrey Van Haeren from Class II to Class I in order to maintain the three classes of the Board as nearly equal in number as possible as prescribed by the Company’s Charter.

Waiver of Missed Interest Payment

The Company did not timely make payment of the accrued interest on the Convertible Notes on March 1, 2023 (the “March Interest Payment”) as required pursuant to Section 2.05 of the Indenture (the “Specified Default”).

On March 26, 2023, the Company, the Notes Guarantors and Holders entered into limited waivers and consents pursuant to which each holder agreed to (i) waive the Specified Default and any payment obligation of the Company under the Indenture with respect to the March Interest Payment, (ii) in lieu of the Interest Payments, (a) receive a Promissory Note (as defined below) and (b) amend the Warrant Agreement (as defined below) to reduce the exercise price of the warrants governed thereby from $11.50 to $0.01, and (iii) consent to the entry into the Supplemental Indenture.

On March 26, 2023, the Company, the Notes Guarantors, the Trustee and the Collateral Agent entered into the Supplemental Indenture (the “Supplemental Indenture”) to the Indenture, amending certain terms of the Indenture consented to by the holders of all of the aggregate principal amount of the outstanding Convertible Notes.

The Supplemental Indenture, among other things, (i) lowered the minimum amounts of liquidity the Company must maintain on a consolidated basis for each quarter in 2023 and the first quarter of 2024, (ii) added restrictions on the Company's ability to make payments relating to certain restricted investments, (iii) decreased the maximum amount of equity interests that the Company may repurchase, redeem, acquire or retire, (iv) removed the Company's ability to issue preferred stock or incur certain unsecured indebtedness or junior lien indebtedness, (v) decreased other permitted debt baskets, (vi) decreased the threshold for a cross-default for purposes of determining an Event of Default and (vii) added a new Event of Default in the event the Company does not consummate an underwritten primary equity offering providing at least $10 million of proceeds to the Company by April 30, 2023. On April 6, 2023, the Company completed the April 2023 Offering.

On March 26, 2023, the Company, the Notes Guarantors and each holder of the Convertible Notes executed unsecured promissory notes (each, a “2023 Promissory Note” and collectively, the “2023 Promissory Notes”), with each 2023 Promissory Note having an aggregate principal amount equal to such holder's interest payments. The 2023 Promissory Notes mature on March 26, 2025 and accrue interest at seven percent (7.0%) per annum.

In addition, the 2023 Promissory Notes provided that, in the event the Company consummated the April 2023 Offering by April 30, 2023, the holder of each 2023 Promissory Note had the option to require the Company to repay a portion of the principal balance of the Promissory Note in an amount equal to or less than the gross proceeds to the Company from any purchases by the Holder of the Company's securities in the April 2023 Offering (the “Put Option”). Each holder had the right to exercise its Put Option within ten business days following the closing and funding of the April 2023 Offering. In addition, certain of the 2023 Promissory Notes provided such holders with the right to convert the 2023 Promissory Note (the “Convertible Promissory Notes”) into unregistered securities of the Company (the “Unregistered Securities”) on the same terms as the securities offered in the April 2023 Offering in the event such offering takes place. The 2023 Promissory Notes and Convertible Promissory Notes were repaid in full in April 2023.

On March 26, 2023, the Company and Continental Stock Transfer & Trust Company (the “Warrant Agent”) entered into an Amendment to that certain Warrant Agreement, dated as of August 26, 2022, by and between the Company and the Warrant Agent. Pursuant to the Warrant Agreement Amendment, the exercise price of each warrant was reduced from $11.50 to $0.01.

Reverse Stock Split

On February 27, 2023, our stockholders approved a reverse stock split of our common stock at a ratio in the range of 1-for-10 to 1-for-20, such ratio to be determined by the Board or a committee of the Board, and included in a public announcement. On March 28, 2023, we effected a 1-for-20 reverse stock split (the "Reverse Stock Split").

Registered Equity Offering

On April 6, 2023, the Company closed its public offering of 7,333,334 shares of common stock and 7,333,334 common warrants to purchase 7,333,334 shares of common stock at a combined price of $3.00 per share and common warrant for aggregate gross proceeds of approximately $22 million, before deducting placement agent fees and other offering expenses.

Impact of COVID-19 pandemic

The worldwide spread of COVID-19 and its variants had resulted in a global slowdown of economic activity which altered demand for a broad variety of goods and services, including those provided by our clients, while also disrupting sales channels and advertising and marketing activities until economic activity normalized. Our historical revenue growth and results of operations have been resilient despite the headwinds created by the COVID-19 pandemic and its variants. The extent to which ongoing and future developments related to the global impact of the COVID-19 pandemic and related vaccination measures designed to curb its spread continue to impact our business, financial condition, and results of operations, all of which cannot be predicted with certainty. Many of these ongoing and future developments are beyond our control, including the speed of contagion, the development, distribution and implementation of effective preventative or treatment measures, including vaccines (and vaccination rates), the scope of governmental and other restrictions on travel, discretionary services and other activity, and the public reactions and receptiveness to these developments. See the section entitled "*Risk Factors*" for further discussion of the adverse impacts of the COVID-19 pandemic and its variants on our business.

At the onset of COVID-19, the Company anticipated an impact on the business, its financial conditions and results of operations. The Company applied for and was granted a Paycheck Protection Plan ("PPP") loan. In addition, the Company had taken a number of actions to mitigate the impacts of the COVID-19 pandemic and its variants on its business. The Company witnessed a large shift in consumer spending from retail stores to online stores, and as a result, there were no significant declines in the periods presented. However, the impacts of the COVID-19 pandemic and its variants will depend on future developments, including the duration and spread of the pandemic. These developments and the impacts of the COVID-19 pandemic on the financial markets and overall economy are highly uncertain and cannot be predicted.

Components of Our Results of Operations

Revenue

The Company's sources of revenue are summarized as follows:

- ***Product revenue***
  - Under certain licensee agreements, the Company is the owner of inventory and reseller of record. As a result, the Company is the principal in sales to end customers and records these revenues on a gross basis at a point in time.
- ***Service revenue***
  - ***Commerce as a Service***—The Company's main revenue stream is "Commerce as a Service" revenue in which it receives commission fees derived from contractually committed gross revenue processed by customers on the Company's e-commerce platform. Consideration for online sales is collected directly from the end customer by the Company and amounts not owed to the Company are remitted to the customer. Revenue is recognized on a net basis from maintaining e-commerce platforms and online orders, as the Company is engaged in an agency relationship with its customers and earns defined amounts based on the individual contractual terms for the customer and the Company does not take possession of the customers' inventories or any credit risks relating to the products sold.
  - ***Fulfillment service revenue***—Revenue for business-to-business ("B2B") fulfillment services is recognized on a gross basis either at a point in time or over a point in time. For example, inbound and outbound services are recognized when the service is complete, while monthly storage services are recognized over the service period.
  - ***Marketing service revenue—***Revenue for marketing services is recognized on a gross basis as marketing services are completed. Performance obligations include providing marketing and program management such as procurement and implementation.
  - ***Shipping service revenue—***Revenue for shipping services is recognized on a gross basis as shipments are completed and products are shipped to end customers.

o***Other service revenue—***Revenue for other services such as photography, business to customer ("B2C") fulfillment, customer service, development and web design are reimbursable costs and recognized on the gross basis, and are services rendered as part of the performance obligations to clients for which an online platform and online orders are managed. All reimbursable costs are the responsibility of the Company as the Company uses such services to fulfill its performance obligations.

o***Set up and implementation service revenue—***The Company provides set up and implementation services for new clients. The revenue is recognized on a gross basis at the completion of the service, with the unearned amounts received for incomplete services recorded as deferred revenue, if any.

The Company recognizes revenue when control of the promised goods or services is transferred to the Company's customers, in an amount that reflects the consideration it expects to be entitled to in exchange for those goods or services. The Company determines revenue recognition through the following steps:

•Identification of a contract with a customer;

•Identification of the performance obligations in the contract;

•Determination of the transaction price;

•Allocation of the transaction price to the performance obligations in the contract;

•Recognition of revenue when or as the performance obligations are satisfied.

A performance obligation is a promise in a contract to transfer a distinct product. Performance obligations promised in a contract are identified based on the goods that will be transferred that are both capable of being distinct and are distinct in the context of the contract, whereby the transfer of the goods is separately identifiable from other promises in the contract. Performance obligations include establishing and maintaining customer online stores, providing access to the Company's e-commerce platform, customer service support, photography services, warehousing, and fulfillment. Most of the contracts of the Company with customers contain multiple promises, which may result in multiple performance obligations, while others are combined into one performance obligation. For contracts with customers, the Company accounts for individual promises separately if they are distinct. The transaction price is allocated to the separate performance obligations on a relative standalone selling price basis. The Company determines the standalone selling prices based on its overall pricing objectives, taking into consideration market conditions and other factors.

The Company has concluded the sale of goods and related shipping and handling on behalf of our customers are accounted for as a single performance obligation, while the expenses incurred for actual shipping charges are included in cost of sales.

The Company's revenue is mainly commission fees derived from contractually committed gross revenue processed by customers on the Company's e-commerce platform. The Company is acting as an agent in these arrangements and customers do not have the contractual right to take possession of the Company's software. Revenue is recognized in an amount that reflects the consideration that the Company expects to ultimately receive in exchange for those promised goods, net of expected discounts for sales promotions and customary allowances.

CaaS Revenue is recognized on a net basis from maintaining e-commerce platforms and online orders, as the Company is engaged primarily in an agency relationship with its customers and earns defined amounts based on the individual contractual terms for the customer and the Company does not take possession of the customers' inventory or any credit risks related to the products sold.

Variable consideration is included in revenue for potential product returns. The Company uses an estimate to constrain revenue for the expected variable consideration at each period end. The Company reviews and updates its estimates and related accruals of variable consideration each period based on the terms of the agreements, historical experience, and expected levels of returns. Any uncertainties in the ultimate resolution of variable consideration due to factors outside of the Company's influence are typically resolved within a short timeframe therefore not requiring any additional constraint on the variable consideration. The estimated reserve for returns is included on the balance sheet in accrued expenses with changes to the reserve in revenue on the accompanying statement of operations.

In most cases the Company acts as the merchant of record, resulting in a due to client liability (discussed below). However, in some instances, the Company may perform services without being the merchant of record in which case there is a receivable from the customer.

Payment terms and conditions are generally consistent for customers, including credit terms to customers ranging from seven days to 60 days, and the Company's contracts do not include any significant financing component. The Company performs credit evaluations of customers and evaluates the need for allowances for potential credit losses based on historical experience, as well as current and expected general economic conditions.

Sales taxes collected from customers and remitted to governmental authorities are accounted for on a net basis and, therefore, are excluded from net revenue in the condensed consolidated statements of operations.

Operating Expenses

We classify our operating expenses into the following categories:

•*Cost of services.* Cost of services reflects costs directly related to providing services under the master service agreements with customers, which primarily includes service provider costs directly related to processing revenue transactions, marketing expenses and shipping and handling expenses which correspond to marketing and shipping revenues, as well as credit card merchant fees. Cost of services is exclusive of depreciation and amortization and general salaries and related expenses.

•*Cost of product revenue.* Cost of product revenue reflects costs directly related to selling inventory acquired from select clients, which primarily includes product cost, warehousing costs, fulfillment costs, credit card merchant fees and third-party royalty costs. Cost of product revenue is exclusive of depreciation and amortization and general salaries and related expenses.

•*Sales and marketing.* Sales and marketing expense consists primarily of salaries associated with selling across all our revenue streams.

•*Research and development.* Research and development expense consists primarily of salaries and contractors' costs associated with research and development of the Company's technology platform.

•*General, and administrative.* General and administrative expense consists primarily of lease expense, materials and equipment, dues and subscriptions, professional services, and acquisition costs incurred.

•*Depreciation and amortization*. Depreciation and amortization expenses are primarily attributable to our capital investment and consist of fixed asset depreciation and amortization of intangibles considered to have finite lives.

Interest Expense

Interest expense primarily consists of interest incurred under our Convertible Notes.

Change in Fair Value of Unconsolidated Affiliates

Change in fair value of unconsolidated affiliates represents the fair value adjustments associated with the Company's joint venture investments for which the Company elected to use the fair value option of accounting.

Other Income (Expense)

Other income (expense) is mainly related to change in fair value of deferred cash consideration, change in fair value of warrant, debt issuance cost expensed under the fair value option, offset by sublease rental income derived from the sublease of property by the Company as well as gain from settlement of deferred revenue.

Provision (Benefit) for Income Taxes

The provision (benefit) for income taxes consist primarily of U.S. federal, state, and foreign income taxes. Deferred tax assets and liabilities are recognized with respect to the tax consequences attributable to differences between the financial statement carrying values and tax basis of assets and liabilities. Deferred tax assets and liabilities are measured using tax rates expected to apply to taxable income in the years in which these temporary differences are expected to be recovered or settled. A valuation allowance is established, when necessary, to reduce deferred tax assets if it is more likely than not that some portion or all the deferred tax assets will not be realized.

Realization of our deferred tax assets is dependent primarily on the generation of future taxable income. In considering the need for a valuation allowance, we consider our historical, as well as future, projected taxable income along with other objectively verifiable evidence. Objectively verifiable evidence includes our realization of tax attributes, assessment of tax credits and utilization of net operating loss carryforwards during the year.

Results of Operations

The following tables set forth our consolidated results of operations and our consolidated results of operations as a percentage of revenue for the periods presented (in thousands):

	Three Months Ended March 31, 2023	Three Months Ended March 31, 2022
Net service revenue	$ 8,917	$ 8,533
Net product revenue	6,544	12,922
Net revenue from related parties	1,214	3,744
Total net revenue	16,675	25,199
Operating costs and expenses:		
Cost of services (1)	5,530	5,435
Cost of product revenue (1)	3,942	10,251
Sales and marketing	702	566
Research and development	963	1,577
General and administrative	17,325	17,222
Depreciation and amortization	202	201
Total operating costs and expenses	28,664	35,252
Operating loss	(11,989)	(10,053)
Interest expense	(2,014)	(652)
Change in fair value of promissory notes	(159)	—
Change in fair value of derivative instruments	847	—
Change in fair value of unconsolidated affiliates	(645)	(1,033)
Change in fair value of convertible notes	4,591	—
Other (loss) income, net	(558)	1,954
Loss before income taxes	(9,927)	(9,784)
(Benefit) Provision for income taxes	(26)	158
Net loss	$ (9,901)	$ (9,942)

(as a percentage of total revenue*)	Three Months Ended March 31, 2023	Three Months Ended March 31, 2022
Net service revenue	53.5 %	33.9 %
Net product revenue	39.2 %	51.3 %
Net revenue from related parties	7.3 %	14.9 %
Total net revenue	100.0 %	100.0 %
Operating costs and expenses:		
Cost of services (1)	33.2 %	21.6 %
Cost of product revenue (1)	23.6 %	40.7 %
Sales and marketing	4.2 %	2.2 %
Research and development	5.8 %	6.3 %
General and administrative	103.9 %	68.3 %
Depreciation and amortization	1.2 %	0.8 %
Total operating costs and expenses	171.9 %	139.9 %
Operating loss	-71.9 %	-39.9 %
Interest expense	-12.1 %	-2.6 %
Change in fair value of promissory notes	-1.0 %	0.0 %
Change in fair value of derivative instruments	5.1 %	0.0 %
Change in fair value of unconsolidated affiliates	-3.9 %	-4.1 %
Change in fair value of convertible notes	27.5 %	0.0 %
Other (loss) income, net	-3.3 %	7.8 %
Loss before income taxes	-59.5 %	-38.8 %
(Benefit) Provision for income taxes	-0.2 %	0.6 %
Net loss	-59.4 %	-39.5 %

* Percentages may not sum due to rounding
(1) Exclusive of depreciation and amortization shown separately.

Comparison of the Three Months Ended March 31, 2023 and 2022

Net service revenue

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Net service revenue	$ 8,917	$ 8,533	$ 384	4.5 %
Percent of total revenue	53.5 %	33.9 %		

Net service revenue increased by $0.4 million, or 4.5%, to $8.9 million for the three months ended March 31, 2023 as compared to $8.5 million for the three months ended March 31, 2022. The Company historically recognizes net revenue as a percentage of service sales. The increase is primarily due to an increase in B2B volume. Net service revenue as a percentage of total revenue was 53.5% for the three months ended March 31, 2023 compared to 33.9% for the three months ended March 31, 2022.

Net product revenue

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Net product revenue	$ 6,544	$ 12,922	$ (6,378)	(49.4)%
Percent of total revenue	39.2 %	51.3 %		

Net product revenue decreased by $6.4 million, or 49.4%, to $6.5 million for the three months ended March 31, 2023 as compared to $12.9 million for the three months ended March 31, 2022. The decrease in product revenue is primarily due to a push in the prior fiscal quarter to liquidate inventory, which caused lower margins. In the current fiscal year, the Company is not liquidating inventory and is focusing on stabilizing margins. Net product revenue as a percentage of total revenue was 39.2% for the three months ended March 31, 2023 compared to 51.3% for the three months ended March 31, 2022.

Net revenue from related parties

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Net revenue from related parties	$ 1,214	$ 3,744	$ (2,530)	(67.6)%
Percent of total revenue	7.3 %	14.9 %		

Net revenue from related parties decreased by $2.5 million, or 67.6%, to $1.2 million for the three months ended March 31, 2023 as compared to $3.7 million for the three months ended March 31, 2022. The Company provides services to its joint ventures under Master Services agreements that are classified as related party revenue. On December 1, 2022, the Company acquired the remaining 50% equity interest in ModCloth; as a result ModCloth became a wholly owned consolidated subsidiary of the Company, and the results of ModCloth are consolidated into the results of the Company. As such, the decrease in revenue from related parties is due to ModCloth's revenue being recorded in product revenue starting in the first quarter of 2023, as compared to being recorded in revenue from related parties in the same quarter last year. Net service revenue from related parties as a percentage of total revenue was 7.3% for the three months ended March 31, 2023 compared to 14.9% for the three months ended March 31, 2022.

Cost of services

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Cost of services	$ 5,530	$ 5,435	$ 95	1.7 %
Percent of total revenue	33.2 %	21.6 %		

Cost of services slightly increased by $95 thousand, or 1.7%, to $5.5 million for the three months ended March 31, 2023 as compared to $5.4 million for the three months ended March 31, 2022. The increase in cost of services is in line with the increase in service revenue for the same period. Cost of services as a percentage of total revenue was 33.2% for the three months ended March 31, 2023 compared to 21.6% for the three months ended March 31, 2022.

Cost of product revenue

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Cost of product revenue	$ 3,942	$ 10,251	$ (6,309)	(61.5)%
Percent of total revenue	23.6 %	40.7 %		

Cost of product revenue decreased by $6.3 million, or 61.5%, to $3.9 million for the three months ended March 31, 2023 as compared to $10.3 million for the three months ended March 31, 2022. The decrease is in line with the decrease in product revenue. Cost of product revenue as a percentage of total revenue was 23.6% for the three months ended March 31, 2023 compared to 40.7% for the three months ended March 31, 2022.

Sales and Marketing

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Sales and marketing	$ 702	$ 566	$ 136	24.0 %
Percent of total revenue	4.2 %	2.2 %		

Sales and marketing expense increased by $136 thousand, or 24.0%, to $702 thousand for the three months ended March 31, 2023 as compared to $566 thousand for the three months ended March 31, 2022. The increase in sales and marketing expense was primarily due to rebuilding of the sales team to support the Company's growth initiatives.

Research and development

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Research and development	$ 963	$ 1,577	$ (614)	(38.9)%
Percent of total revenue	5.8 %	6.3 %		

Research and development expense decreased by $0.6 million, or 38.9%, to $1.0 million for the three months ended March 31, 2023 as compared to $1.6 million for the three months ended March 31, 2022. The decrease in research and development expense was primarily due to rebalancing of the technology team.

General and administrative

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
General and administrative	$ 17,325	$ 17,222	$ 103	0.6 %
Percent of total revenue	103.9 %	68.3 %		

General and administrative expense slightly increased by $103 thousand, or 0.69%, to $17.3 million for the three months ended March 31, 2023 as compared to $17.2 million for the three months ended March 31, 2022. General and administrative expenses increased as a percentage of revenue from 68.3% for the three months ended March 31, 2022 to 103.9% for the three months ended March 31, 2023, which was primarily due to severance expense of $1.6 million, increase in directors and officer insurance of $0.4 million, increase in stock compensation expense of $0.2 million and director fees of $0.1 million in the current fiscal period compared to the prior period.

Depreciation and amortization

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Depreciation and amortization	$ 202	$ 201	$ 1	0.5 %
Percent of total revenue	1.2 %	0.8 %		

Depreciation and amortization expense remained relatively flat at $0.2 million for the three months ended March 31, 2023 and March 31, 2022.

Interest expense

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Interest expense	$ 2,014	$ 652	$ 1,362	208.9 %
Percent of total revenue	12.1 %	2.6 %		

Interest expense increased by $1.4 million, or 208.9%, to $2.0 million for the three months ended March 31, 2023 as compared to $0.7 million for the three months ended March 31, 2022. The increase in interest expense was primarily due to interest on the Company's Convertible notes in the first quarter of 2023, as compared to interest on the notes payable in the first quarter of 2022. The notes payable were fully repaid at closing of the Business Combination.

Change in fair value of promissory notes

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Change in fair value of promissory notes	$ 159	$ —	$ 159	100.0 %
Percent of total revenue	1.0 %	— %		

Change in fair value of promissory notes was $159 thousand for the three months ended March 31, 2023. The Company recognized a loss of $159 thousand for the three months ended March 31, 2023 that were related to the 2023 Promissory Notes and Convertible Promissory Notes in connection with the amendments to the Convertible Notes. The Company engaged a third party specialist to assist with the valuation of such notes.

Change in fair value of derivatives

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Change in fair value of derivatives	$ (847)	$ —	$ (847)	100.0%
Percent of total revenue	(5.1)%	— %		

Change in fair value of derivatives notes was a loss of $847 thousand for the three months ended March 31, 2023. The Company recognized a change in fair value of derivatives notes in connection with the Standby Agreement. All shares from such agreement were resold as of March 31, 2023.

Change in fair value of unconsolidated affiliate

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Change in fair value of unconsolidated affiliates	$ 645	$ 1,033	$ (388)	(37.6)%
Percent of total revenue	3.9 %	4.1 %		

Change in fair value of unconsolidated affiliates decreased by $0.4 million, or 37.6%, to a loss of $0.6 million for the three months ended March 31, 2023 as compared to a loss of $1.0 million for the three months ended March 31, 2022. The decrease in the first quarter of 2022 is attributable to the Company's investment in ModCloth, which was formed in April 2021, and IPCO, which was formed in December 2021. The decrease in the first quarter of 2023 is attributable to the Company's investment in IPCO. The Company elected to apply the fair value option of accounting to the joint ventures. The Company engaged a third-party valuation specialist to assist with the fair value assessment. As a result, the Company recorded a fair value adjustment for the investment in connection with its 50% interest during the three months ended March 31, 2023 and March 31, 2022.

Change in fair value of convertible notes

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Change in fair value of convertible notes	$ (4,591)	$ —	$ (4,591)	100.0 %
Percent of total revenue	(27.5)%	— %		

Change in fair value of the Convertible Notes was a gain of $4.6 million for the three months ended March 31, 2023. The change is attributable to fair value of the Convertible Notes, which the Company engaged a third-party valuation specialist to assist with the fair value assessment.

Other (loss) income

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
Other (loss) income	$ (558)	$ 1,954	$ (2,512)	(128.6)%
Percent of total revenue	(3.3)%	7.8 %		

Other (loss) income decreased by $2.5 million, or 128.6%, to a loss of $0.6 million for the three months ended March 31, 2023. as compared to a gain of $2.0 million for the three months ended March 31, 2022. The loss in the first quarter of 2023 is primarily related to the warrant fair value adjustment in connection with the Warrant Agreement Amendment. The gain in the first quarter of 2022 was primarily related to the settlement of deferred revenue of $1.6 million related to sale of finished inventory to IPCO.

Provision for income tax

	Three Months Ended March 31,			
	2023	2022	$ Change	% Change
	(in thousands, except percentages)			
(Benefit) Provision for income tax	$ (26)	$ 158	$ (184)	(116.5)%
Percent of total revenue	(0.2)%	0.6 %		

The provision for income tax increased $184 thousand, or 116.5%, to a benefit of $26 thousand during the three months ended March 31, 2023 as compared to an expense of $158 thousand for the three months ended March 31, 2022. The increase was primarily due to a full valuation allowance for differences related to GAAP and tax income related to the Company's joint ventures due to election of accounting for the joint ventures using the equity method fair value option.

Non-GAAP Financial Measures

We prepare and present our consolidated financial statements in accordance with U.S. GAAP. However, management believes that Adjusted EBITDA, a non-GAAP financial measure, provides investors with additional useful information in evaluating our performance, as these measures are regularly used by security analysts, institutional investors and other interested parties in analyzing operating performance and prospects. This non-GAAP measure is not intended to be a substitute for any U.S. GAAP financial measure and, as calculated, may not be comparable to other similarly titled measures of performance of other companies in other industries or within the same industry.

We calculate and define Adjusted EBITDA as net loss, adjusted to exclude: (1) interest expense, (2) income tax expense, (3) depreciation and amortization, (4) severance pay and (5) stock based compensation.

Adjusted EBITDA is a financial measure that is not required by or presented in accordance with U.S. GAAP. We believe that Adjusted EBITDA, when taken together with our financial results presented in accordance with U.S. GAAP, provides meaningful supplemental information regarding our operating performance and facilitates internal comparisons of our historical operating performance on a more consistent basis by excluding certain items that may not be indicative of our business, results of operations, or outlook. In particular, we believe that the use of Adjusted EBITDA is helpful to our investors as it is a measure used by management in assessing the health of our business and evaluating our operating performance, as well as for internal planning and forecasting purposes.

Adjusted EBITDA is presented for supplemental informational purposes only, has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with U.S. GAAP. Some of the limitations of Adjusted EBITDA include that (1) it does not reflect capital commitments to be paid in the future, (2) although depreciation and amortization are non-cash charges, the underlying assets may need to be replaced and adjusted EBITDA does not reflect these capital expenditures, (3) it does not reflect tax payments that may represent a reduction in cash available to us and (4) does not include certain non-recurring cash expenses that we do not believe are representative of our business on a steady-state basis. In addition, our use of Adjusted EBITDA may not be comparable to similarly titled measures of other companies because they may not calculate Adjusted EBITDA in the same manner, limiting its usefulness as a comparative measure. Because of these limitations, when evaluating our performance, you should consider Adjusted EBITDA alongside other financial measures, including our net loss and other results stated in accordance with U.S. GAAP.

The following table presents a reconciliation of net loss, the most directly comparable financial measure stated in accordance with U.S. GAAP, to Adjusted EBITDA, for each of the periods presented (in thousands):

	For the Three Months Ended March 31, 2023	For the Three Months Ended March 31, 2022
Net Loss	$ (9,901)	$ (9,942)
Interest expense	2,014	652
(Benefit) Provision for income taxes	(26)	158
Depreciation and amortization	202	201
Severance pay	1,593	12
Stock based compensation	253	58
Adjusted EBITDA	$ (5,865)	$ (8,861)

Liquidity and Capital Resources

Our primary requirements for short-term liquidity and capital are working capital, inventory management, capital expenditures, public company costs and general corporate needs. We expect these needs to continue as we develop and grow our business. Our future capital requirements will depend on many factors, including our levels of revenue, the expansion of sales and marketing activities, successful customer acquisitions, the results of business initiatives, the timing of new product introductions and overall economic conditions.

Prior to the Business Combination, the Company's available liquidity and operations were financed through equity contributions, a line of credit, promissory notes and cash flow from operations. Moving forward, the Company expects to fund operations through equity contributions and cash flow from operations.

Because we are in the growth stage of our business and operate in an emerging field of technology, we expect to continue to invest in research and development and expand our sales and marketing teams worldwide. We are likely to require additional capital to respond to technological advancements, competitive dynamics or technologies, customer demands, business opportunities, challenges, acquisitions or unforeseen circumstances and in either the short-term or long-term may determine to engage in equity or debt financings or enter into credit facilities for other reasons. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to grow or support our business and to respond to business challenges could be significantly limited.

The accompanying consolidated financial statements as of and for the three months ended March 31, 2023 have been prepared assuming the Company will continue as a going concern. The Company has sustained recurring losses and negative cash flows from operations and had a cash balance of $0.6 million as of March 31, 2023.

Our independent auditors, in their report on our audited financial statements for the year ended December 31, 2022, expressed substantial doubt about our ability to continue as a going concern for at least twelve months from the date that such consolidated financial statements were issued.

In March 2023, the Company did not timely make the payment of the accrued interest on the Convertible Notes due on March 1, 2023 of $2.3 million, resulting in a default. On March 26, 2023, the Company, the Notes Guarantors and Holders entered into the Waivers pursuant to which, among other things, each Holder agreed to (i) waive the Specified Default and any payment obligation of the Company under the Indenture with respect to the March Interest Payment, (ii) in lieu of the Interest Payments, (a) receive a Promissory Note or Convertible Promissory Note, as applicable, and (b) amend the Warrant Agreement to reduce the exercise price of the warrants governed thereby from $11.50 to $0.01, and (iii) consent to the entry into the Supplemental Indenture. The Supplemental Indenture, among other things, lowered the minimum amounts of liquidity the Company must maintain on a consolidated basis for each quarter in 2023 and the first quarter of 2024.

In April 2023, the Company completed a registered public offering of common stock and common warrants for aggregate gross proceeds of $22 million, before deducting placement agent fees and other offering expenses.

In addition, the Company is currently executing on various strategies to improve available cash balances, liquidity and cash generated from operations, including strategic growth plans, ongoing comprehensive cost reduction and performance improvement programs, reduced headcount and elimination of certain discretionary and general and administrative expenses, and taking steps to improve the operational efficiency of our fulfillment operations. With these strategies in place, the Company believes it will be able to continue as a going concern for at least the next twelve months.

Indebtedness

Convertible Notes and Indenture

On April 19, 2022, the Company, the Notes Guarantors and the Subscribers entered into the PIPE Subscription Agreements pursuant to which the Company agreed to issue and sell to the Subscribers immediately prior to the closing of the Business Combination (i) up to an aggregate principal amount of $75.0 million of Convertible Notes at the par value of the notes and (ii) up to an aggregate of 1.5 million PIPE Warrants with each whole PIPE Warrant entitling the holder thereof to purchase one share of Common Stock.

On August 26, 2022, immediately prior to the Closing, the Company issued $65.5 million aggregate principal amount of Convertible Notes and, as contemplated by the PIPE Subscription Agreements, the Company, the Note Guarantors and U.S. Bank Trust Company, National Association, as trustee, entered into the Indenture. The Convertible Notes were offered in a private placement under the Securities Act, pursuant to the PIPE Subscription Agreements. The Convertible Notes will mature on September 1, 2026, unless earlier repurchased, redeemed or converted in accordance with their terms, and will accrue interest at a rate of 7.00% per annum, payable in cash. The Convertible Notes may be converted at any time (in whole or in part) into shares of Common Stock, at the option of the holder of such Convertible Note, based on the applicable conversion rate at such time. The initial conversion price is approximately $11.50 per share of Common Stock, based on an initial conversion rate of 86.9565 shares of Common Stock per $1,000 principal amount of Convertible Notes. For conversions with a conversion date on or after the first anniversary of the closing of the Transactions and prior to the regular record date immediately preceding the Maturity Date, the conversion consideration will also include an interest make-whole payment equal to the remaining scheduled payments of interest on the Convertible Note being converted through the Maturity Date. The Company will be able to elect to make such interest make-whole payment in cash or in Common Stock, subject to certain conditions. The conversion rate is subject to adjustments set forth in the Indenture, including conversion rate resets (x) on August 27, 2023, September 26, 2023 and September 26, 2024 and (y) following the consummation of certain equity and equity-linked offerings by the Company and sales of certain equity and equity-linked securities by certain shareholders of the Company. Each holder of a Convertible Note will have the right to cause the Post-Combination Company to repurchase for cash all or a portion of the Convertible Notes held by such holder upon the occurrence of a “Fundamental Change” (as defined in the Indenture) at a price equal to (i) on or before September 26, 2023, 100% of the original principal amount of such Convertible Note, and (ii) from and after September 26, 2023, 100% of the accreted principal amount applicable at such time pursuant to the terms of the Indenture, in each case, plus accrued and unpaid interest.

The Indenture includes restrictive covenants that, among other things, require the Company to maintain a minimum level of liquidity on a consolidated basis and limit the ability of the Company and its subsidiaries to incur indebtedness above certain thresholds or to issue preferred stock, to make certain restricted payments, to dispose of certain material assets and engage in other asset sales, subject to reinvestment rights, to pay certain advisory fees in connection to the Transactions and the transactions contemplated by the PIPE Subscription Agreements above a certain threshold, and other customary covenants with respect to the collateral securing the obligations created by the Convertible Notes and the Indenture, including the entry into security documents (in each case, subject to certain exceptions set forth in the Indenture); provided that the covenants with respect to (i) the making of restricted payments, (ii) the incurrence of indebtedness, (iii) the disposition of certain material assets and asset sales, (iv) liquidity, (v) the payment of advisory fees and (vi) the collateral securing the obligations created by the Convertible Notes and the Indenture shall terminate once less than 15% of the aggregate principal amount of the Convertible Notes are outstanding. The liquidity covenant would terminate if the Company achieves $175 million in consolidated revenue in the preceding four fiscal quarters. Certain of the Company’s subsidiaries will serve as Notes Guarantors that jointly and severally, fully and unconditionally guarantee the obligations under the Convertible Notes and the Indenture. The Indenture also requires certain future subsidiaries of the Post-Combination Company, if any, to become Notes Guarantors. This covenant will terminate once less than 15% of the aggregate principal amount of the Convertible Notes are outstanding. The Indenture also includes customary events of default and related provisions for potential acceleration of the Convertible Notes.

The Company did not timely make the payment of the accrued interest on the Convertible Notes due on March 1, 2023, resulting in a default. Such default for thirty (30) consecutive days of the payment on interest due constitutes an Event of Default (as defined in the Indenture).

On March 26, 2023, the Company, the Notes Guarantors and Holders entered into limited waivers and consents pursuant to which each holder agreed to (i) waive the Specified Default and any payment obligation of the Company under the Indenture with respect to the March Interest Payment, (ii) in lieu of the Interest Payments, (a) receive a Promissory Note (as defined below) and (b) amend the Warrant Agreement (as defined below) to reduce the exercise price of the warrants governed thereby from $11.50 to $0.01, and (iii) consent to the entry into the Supplemental Indenture.

The Supplemental Indenture, among other things, (i) lowered the minimum amounts of liquidity the Company must maintain on a consolidated basis for each quarter in 2023 and the first quarter of 2024, (ii) added restrictions on the Company's ability to make payments relating to certain restricted investments, (iii) decreased the maximum amount of equity interests that the Company may repurchase, redeem, acquire or retire, (iv) removed the Company's ability to issue preferred stock or incur certain unsecured indebtedness or junior lien indebtedness, (v) decreased other permitted debt baskets, (vi) decreased the threshold for a cross-default for purposes of determining an Event of Default and (vii) added a new Event of Default in the event the Company does not consummate an underwritten primary equity offering providing at least $10 million of proceeds to the Company by April 30, 2023.

On March 26, 2023, the Company, the Notes Guarantors and each holder of the Convertible Notes executed unsecured promissory notes, with each 2023 Promissory Note having an aggregate principal amount equal to such holder's interest payments. The 2023 Promissory Notes mature on March 26, 2025 and accrue interest at seven percent per annum (7.0%).

In addition, the 2023 Promissory Notes provide that, in the event the Company consummates the April 2023 Offering by April 30, 2023, the holder of each 2023 Promissory Note has the option to require the Company to prepay a portion of the principal balance of the 2023 Promissory Note in an amount equal to or less than the gross proceeds to the Company from any purchases by the Holder of the Company's securities in the April 2023 Offering. Each holder may exercise its Put Option within ten business days following the closing and funding of the April 2023 Offering. In addition, certain of the 2023 Promissory Notes provide such holders with the right to convert the Promissory Note into unregistered securities of the Company on the same terms as the securities offered in the April 2023 Offering in the event such offering takes place.

Notes Payable

On August 11, 2021, the Company entered into a loan and security agreement (the “Note Agreement”) with a financial institution that provided for a borrowing commitment of $15 million in the form of promissory notes. In August 2021, the Company borrowed $10 million under the first tranche (“First Tranche Notes”). The Note Agreement had a commitment for additional second tranche borrowings of $5 million through June 30, 2022 (“Second Tranche Notes”). In October 2021 the Company borrowed the remaining $5 million committed under the Note Agreement. The borrowings under the Note Agreement were secured by substantially all assets of the Company.

The First Tranche Notes and Second Tranche Notes were due to mature on September 1, 2026 and November 1, 2026, respectively, and bore interest at a rate per annum of 6.25% plus the greater of 3.25% or the prime rate as published by the Wall Street Journal. The Company was required to make interest-only payments on the first of each month beginning October 1, 2021 and December 1, 2021, respectively. Beginning October 1, 2023 and December 1, 2023, respectively, the Company would have been required to make principal payments of $278 thousand and $139 thousand, respectively, plus accrued interest on the first of each month through maturity. Upon payment in full of the First Tranche Notes and Second Tranche Notes, the Company was required to pay exit fees of $600 thousand and $300 thousand, respectively.

In December 2021, the Company borrowed an additional $1 million from the same financial institution, which was repaid in full on December 31, 2021. In addition, the Company borrowed an additional $5 million (“Third Tranche Notes”) that bore interest at a rate per annum of 6.25% plus the greater of 3.25% or the prime rate as published by the Wall Street Journal. The Company was required to make interest-only payments on the first of each month beginning February 1, 2022, with the full principal amount due on July 1, 2023. Upon payment in full, the Company is required to pay exit fees of $50 thousand.

In connection with the Note Agreement, the Company issued warrants to purchase up to 33,357 shares of common stock of the Company (the “Legacy Liability Warrants”) at an exercise price of $0.01 per share (Note 8). On the date of issuance, the Company recorded the fair value of the Legacy Liability Warrants as a discount to the First Tranche Notes which was being amortized into interest expense over the term of the First Tranche Notes using the effective interest method. The issuance costs were deferred over the repayment term of the debt. Deferred issuance costs relate to the Company’s debt instruments, the short-term and long-term portions are reflected as a deduction from the carrying amount of the related debt.

In addition, the Company issued additional notes payable in July 2022 for proceeds of $3.0 million. Such notes payable matured on the earlier of (a) December 31, 2022 or (b) the close of the Business Combination. The amount due at maturity was $4.5 million. The Company elected to account for the additional notes payable under the fair value option of accounting.

The notes payable were repaid at the closing of the Business Combination.

Promissory Notes

During the second quarter of 2022, the Company entered into promissory notes with various individuals (the “Promissory Notes”), including current investors, members of management and other unrelated parties in exchange for cash in an amount equal to $7.0 million (the “Promissory Notes”). The Promissory Notes were due to mature on the earlier of (a) one year from issuance or (b) the closing of the Business Combination (Note 1) and bore per annum interest at the rate of 7.75% plus the greater of 3.50% or the prime rate as published by the Wall Street Journal. The Company was required to make nine interest-only payments, followed by three principal and interest payments. In connection with the Promissory Notes, the Company issued warrants (“Promissory Note Warrants”) to purchase up to 31,024 shares of common stock of the Company at an exercise price of $0.01 per share (Note 8). Upon payment in full of the Promissory Notes, the Company was required to make an additional final payment (“Final Payment”) of $3.5 million.

The Company elected to account for the Promissory Notes under the fair value option of accounting upon issuance of each of the Promissory Notes. At issuance the Company recognized the fair value of the Promissory Notes of $6.3 million with the remaining $0.7 million of proceeds received allocated to the Promissory Note Warrants.

The Promissory Notes were repaid at the closing of the Business Combination.

Cash Flows

The following table summarizes our cash flows for the periods presented:

	For the Three Months Ended March 31,	
	2023	**2022**
Cash flow used in operating activities	$ (22,246)	$ (5,277)
Cash flow used in investing activities	(18)	(101)
Cash flow provided by financing activities	7,496	3,652

Operating Activities

Our cash flows from operating activities are primarily driven by the activities associated with our CaaS revenue stream, offset by the cash cost of operations, and are significantly influenced by the timing of and fluctuations in receipts from buyers and related payments to our clients. We typically receive cash from the end users of products sold prior to remitting back to our clients. Our collection and payment cycles can vary from period to period. In addition, seasonality may impact cash flows from operating activities on a sequential quarterly basis during the year.

During the three months ended March 31, 2023, net cash used in operating activities increased by $17.0 million to $22.3 million, compared to net cash used in operating activities of $5.3 million during the three months ended March 31, 2022. The primary driver of the change was the timing of payment for clients and vendors.

Investing Activities

Our primary investing activities have consisted of purchases of property and equipment and software.

During the three months ended March 31, 2023, net cash used in investing activities decreased by $83 thousand to $18 thousand compared to net cash used in investing activities of $101 thousand during the three months ended March 31, 2022. The primary driver of the decrease was cash used in the prior year in equipment purchases.

Financing Activities

Our financing activities consisted primarily of borrowings and repayments of debt as well as activity related to the Business Combination.

During the three months ended March 31, 2023, net cash provided by financing activities increased by $3.8 million to $7.5 million, compared to net cash provided by financing activities of $3.7 million for the three months ended March 31, 2022. The change was primarily driven by the proceeds from the Loans.

Off-Balance Sheet Arrangements

We do not have any relationships with other entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities that have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We did not have any other off-balance sheet arrangements as of March 31, 2023.

Critical Accounting Policies and Estimates

Management’s Discussion and Analysis of Our Financial Condition and Results of Operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. (“GAAP”). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, and expenses as well as the disclosure of contingent assets and liabilities. We regularly review our estimates and assumptions. These estimates and assumptions, which are based upon historical experience and on various other factors believed to be reasonable under the circumstances, form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Reported amounts and disclosures may have been different had management used different estimates and assumptions or if different conditions had occurred in the periods presented. Below is a discussion of the policies that we believe may involve a high degree of judgment and complexity.

We believe that the accounting policies disclosed below include estimates and assumptions critical to our business and their application could have a material impact on our consolidated financial statements. In addition to these critical policies, our significant accounting policies are included within Note 2 of our "Notes to Consolidated Financial Statements" included elsewhere in this filing.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded at the invoiced amount, do not bear interest, and primarily represent receivables from consumers and credit card receivables from merchant processors, after performance obligations have been fulfilled. Amounts collected on accounts receivable are included in operating activities in the statements of cash flows.

The Company maintains an allowance for credit losses, as deemed necessary, for estimated losses inherent in its accounts receivable portfolio. In estimating this reserve, management considers historical losses adjusted to take into account current market conditions and customers' financial condition, the amount of receivables in dispute, and the current receivables aging and current payment patterns. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. The Company does not have any customers with off-balance-sheet credit exposure. The Company writes off accounts receivable balances once the receivables are no longer deemed collectible.

Fair value measurements

Joint Ventures

The Company accounts for joint ventures in accordance with ASC 810-10, "Consolidations," ASC 323-10, "Investments-Equity Method and Joint Ventures" and ASC 825-10, "Finance Instruments," under which the Company's joint ventures meet the criteria to be accounted for as an equity method investment using the fair value method. As such, the difference between fair value and cash contribution is recorded as a gain to other income in the Company's consolidated statement of operations. The joint ventures are subject to fair value assessment each reporting period and the changes in fair value is booked to the Company's consolidated statement of operations. In valuing joint venture investments, we utilized the valuation from an independent third-party specialist, with input from management, which used a combination of net income and market approaches, with 50% weight to the discounted cash flow method and 25% weigh to each of the guideline public company and transaction methods. Changes in these estimates and assumptions or the relationship between those assumptions impact our valuation as of the valuation date and may have a material impact on the valuation.

Convertible notes

The Company accounts for the Convertible Notes in accordance with ASC 825-10, "Financial Instruments," under which the Convertible Notes meet the criteria to be accounted for using the fair value method. The Convertible Notes are subject to fair value assessment each reporting period. As such, changes to fair value are recorded in the consolidated income statements to change in fair value of the Convertible Notes. In valuing the Convertible Notes, we utilized the valuation from an independent third-party specialist, which uses a binomial lattice valuation model. Changes in these estimates and assumptions or the relationship between those assumptions impact our valuation as of the valuation date and may have a material impact on the valuation.

Standby Agreement

The Company has entered into a Standby Agreement and the Equity PIPE Subscription Agreement with a Financial Institution (Note 8) which is accounted for as a derivative in its entirety in accordance with ASC 815-10, and the structured payments within the Equity PIPE Subscription Agreement was considered an embedded feature in the Equity PIPE Subscription Agreement that met the definition of a derivative and required bifurcation from the Equity PIPE Subscription Agreement, as it is not clearly and closely related to the Equity PIPE Subscription Agreement and would be accounted for in accordance with ASC 815-10 (together the "Standby Agreement Derivative"). The Company accounted for the Standby Agreement Derivative acquired at fair value upon the closing of the Business Combination. The Company will continue to account for the Standby Agreement Derivative at fair value each reporting period in accordance with ASC 815-10. The Company engages a third-party valuation specialist to assist with the fair value assessment. The fair value changes is recorded in change in fair value of derivatives on the consolidated statements of operations.

Warrants

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in FASB ASC 480 and ASC Topic 815, "Derivatives and Hedging" ("ASC 815"). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's own shares of common stock, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding. For issued or modified warrants that meet all of the criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital at the time of issuance. For issued or modified warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded at their initial fair value on the date of issuance, and each balance sheet date thereafter until settlement. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss on the condensed consolidated statements of operations.

Revenue

Revenue is accounted for using Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 606, Revenue from Contracts with Customers.

In accordance with ASC Topic 606, the Company recognizes revenue when control of the promised goods or services is transferred to the Company's customers, in an amount that reflects the consideration it expects to be entitled to in exchange for those goods or services. The Company determines revenue recognition through the following steps:

•Identification of a contract with a customer,

•Identification of the performance obligations in the contract,

•Determination of the transaction price,

•Allocation of the transaction price to the performance obligations in the contract, and

•Recognition of revenue when or as the performance obligations are satisfied.

A performance obligation is a promise in a contract to transfer a distinct product. Performance obligations promised in a contract are identified based on the goods that will be transferred that are both capable of being distinct and are distinct in the context of the contract, whereby the transfer of the goods is separately identifiable from other promises in the contract. Performance obligations include establishing and maintaining customer online stores, providing access to the Company's e-commerce platform, customer service support, photography services, warehousing, and fulfillment. The Company has concluded the sale of goods and related shipping and handling on behalf of our customers are accounted for as a single performance obligation, while the expenses incurred for actual shipping charges are included in cost of sales.

The Company's revenue is mainly commission fees derived from contractually committed gross revenue processed by customers on the Company's e-commerce platform. Customers do not have the contractual right to take possession of the Company's software. Revenue is recognized in an amount that reflects the consideration that the Company expects to ultimately receive in exchange for those promised goods, net of expected discounts for sales promotions and customary allowances.

Commerce-as-a-Service Revenue is recognized on a net basis from maintaining e-commerce platforms and online orders, as the Company is engaged primarily in an agency relationship with its customers and earns defined amounts based on the individual contractual terms for the customer and the Company does not take possession of the customers' inventory or any credit risks relating to the products sold.

Variable consideration is included in revenue for potential product returns. The Company uses a reserve to constrain revenue for the expected variable consideration at each period end. The Company reviews and updates its estimates and related accruals of variable consideration each period based on the terms of the agreements, historical experience, and expected levels of returns. Any uncertainties in the ultimate resolution of variable consideration due to factors outside of the Company's influence are typically resolved within a short timeframe therefore not requiring any additional constraint on the variable consideration.

Payment terms and conditions are generally consistent for customers, including credit terms to customers ranging from seven days to 60 days, and the Company's contracts do not include any significant financing component. The Company performs credit evaluations of customers and evaluates the need for allowances for potential credit losses based on historical experience, as well as current and expected general economic conditions.

Sales taxes collected from customers and remitted to governmental authorities are accounted for on a net basis and, therefore, are excluded from net sales in the statements of operations.

Commerce-as-a-Service

The Company's main revenue stream is "Commerce-as-a-Service" revenue in which they receive commission fees derived from contractually committed gross revenue processed by customers on the Company's e-commerce platform. Consideration for online sales is collected directly from the shopper by the Company and amounts not owed to the Company are remitted to the client. Revenue is recognized on a net basis from maintaining e-commerce platforms and online orders, as the Company is engaged in an agency relationship with its customers and earns defined amounts based on the individual contractual terms for the customer and the Company does not take possession of the customers' inventory or any credit risks relating to the products sold.

Product revenue

Under one of the Company's Master Services Agreements, the Company is the owner of inventory and reseller of record. As a result, the Company is the principal in sales to end customers and records these revenues on a gross basis a point in time.

Fulfillment

Revenue for business-to-business ("B2B") fulfillment services is recognized on a gross basis either at a point in time or over a point in time. For example, inbound and outbound services are recognized when the service is complete, while monthly storage services are recognized over the service period.

Marketing

Revenue for marketing services is recognized on a gross basis as marketing services are complete. Performance obligations include providing marketing and program management such as procurement and implementation.

Shipping

Revenue for shipping services is recognized on a gross basis as shipments are completed and products are shipped to end customers.

Other services

Revenue for other services such as photography, business to customer ("B2C") fulfillment, customer service, development and web design are reimbursable costs and recognized on the gross basis, and are services rendered as part of the performance obligations to clients for which an online platform and online orders are managed. All reimbursable costs are the responsibility of the Company as the Company uses such services to fulfill its performance obligations.

Set up and implementation

The Company provides set up and implementation services for new clients. The revenue is recognized on a gross basis at the completion of the service, with the unearned amounts received for incomplete services recorded as deferred revenue, if any.

Sales taxes collected from customers and remitted to governmental authorities are accounted for on a net basis and, therefore, are excluded from net sales in the statements of operations.

Recently Issued Accounting Pronouncements

We discuss the potential impact of recent accounting pronouncements in Note 2 to our "Notes to Consolidated Financial Statements" under the caption "Summary of Significant Accounting Policies".

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The Company is a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and is not required to provide the information under this Item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management has established and maintains a system of disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act, such as this Report, is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms. The disclosure controls and procedures are also designed to provide reasonable assurance that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

As of the end of the period covered by this Report, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15(b) of the Exchange Act, as such disclosure controls and procedures are defined in Rule 13a-15(e) and 15d-15(e) of the Exchange Act. This evaluation was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer. Based on this evaluation, Chief Executive Officer and Chief Financial Officer have concluded that, as of March 31, 2023, our disclosure controls and procedures were effective to provide reasonable assurance of achieving their objectives.

Changes in Internal Control over Financial Reporting

There have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter to which this Report relates that have materially affected, or are reasonably likely to materially affect our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

We are and may become, from time to time, involved in legal actions in the ordinary course of business, including governmental and administrative investigations, inquiries and proceedings concerning employment, labor, environmental and other claims. Although management is unable to predict with certainty the eventual outcome of any legal action, management believes the ultimate liability arising from such actions, individually and in the aggregate, which existed at March 31, 2023, will not materially affect the Company’s consolidated results of operations, financial position or cash flows. Given the inherent unpredictability of these types of proceedings, however, it is possible that future adverse outcomes could have a material effect on our financial results.

Item 1A. Risk Factors

We are subject to various risks and uncertainties in the course of our business. For a discussion of such risks and uncertainties, please see the section in our Annual Report on Form 10-K filed with the SEC on March 23, 2023 titled “Risk Factors.” There have been no material changes to the risk factors disclosed therein.

Item 2. Unregistered Sales of Equity Securities

Other than with respect to the Unregistered Securities described in the Company’s Current Report on Form 8-K filed with the SEC on March 27, 2023, we sold no securities during the three months ended March 31, 2023 that were not registered under the Securities Act.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

		Incorporated by Reference		
Exhibit	Exhibit Description	Form	Exhibit	Filing Date
3.1	Amended and Restated Certificate of Incorporation of Nogin, Inc.	8-K	3.1	9/01/2022
3.2	Amended and Restated Bylaws of Nogin, Inc.	8-K	3.2	9/01/2022
3.3	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Nogin, Inc.	8-K	3.1	3/28/2023
4.1	Supplemental Indenture, dated as of March 26, 2023, by and among Nogin, Inc., the guarantors named therein and U.S. Bank Trust Company, National Association, as trustee and collateral agent.	8-K	4.1	3/27/2023
4.2	Form of Promissory Note.	8-K	4.2	3/27/2023
4.3	Amendment to PIPE Warrant Agreement, dated as of March 26, 2023, by and between Nogin, Inc. and Continental Stock Transfer & Trust Company.	8-K	4.3	3/27/2023
10.1	Form of Limited Waiver and Consent.	8-K	10.1	3/27/2023
10.2	Separation Agreement and Mutual Release, dated January 27, 2023, by and between Nogin, Inc., Nogin Commerce, Inc. and Jan-Christopher Nugent.	8-K	10.1	1/27/2023
10.3	Employment Agreement, dated January 30, 2023, by and between Nogin, Inc. and Jonathan S. Huberman.	8-K	10.1	1/30/2023
10.4	Employment Agreement, dated January 30, 2023, by and between Nogin, Inc. and Shahriyar Rahmati.	8-K	10.2	1/30/2023
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).			
31.2	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (filed herewith).			
32.1	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith).			
32.2	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (furnished herewith).			
101	The following financial information from Nogin, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, formatted in Inline XBRL (Inline eXtensible Business Reporting Language): (i) the Condensed Consolidated Balance Sheets - Unaudited, (ii) the Condensed Consolidated Statement of Operations - Unaudited, (iii) the Condensed Consolidated Statements of Convertible Redeemable Preferred Stock and Stockholders' Deficit - Unaudited, (iv) the Condensed Consolidated Statement of Cash Flows - Unaudited and (v) the Notes to Condensed Consolidated Financial Statements - Unaudited (submitted electronically herewith).			
104	Cover Page Interactive Data File, formatted in Inline XBRL (included as Exhibit 101).			

* Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Company agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized:

NOGIN, INC.

By: /s/ Jonathan S. Huberman

Jonathan S. Huberman

Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer)

May 15, 2023

By: /s/ Shahriyar Rahmati

Shahriyar Rahmati

Chief Financial Officer and Chief Operating Officer (Principal Financial and Accounting Officer)

May 15, 2023

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Jonathan S. Huberman, certify that:

1.I have reviewed this Quarterly Report on Form 10-Q of Nogin, Inc. for the quarter ended March 31, 2023;

2.Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3.Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4.The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a.Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b.Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c.Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d.Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5.The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a.All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b.Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2023	By:	/s/ Jonathan S. Huberman
		Jonathan S. Huberman
		Chief Executive Officer, President and
		Chairman of the Board of Directors
		(Principal Executive Officer)

Exhibit 31.2

**CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Shahriyar Rahmati, certify that:

1.I have reviewed this Quarterly Report on Form 10-Q of Nogin, Inc. for the quarter ended March 31, 2023;

2.Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3.Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4.The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a.Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b.Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c.Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d.Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5.The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a.All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b.Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2023	By:	/s/ Shahriyar Rahmati
		Shahriyar Rahmati
		Chief Financial Officer and Chief Operating Officer (Principal Financial and Accounting Officer)

Exhibit 32.1

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Nogin, Inc. (the "Company") on Form 10-Q for the period ending March 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: May 15, 2023	By:	/s/ Jonathan S. Huberman Jonathan S. Huberman Chief Executive Officer, President and Chairman of the Board of Directors (Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Nogin, Inc. (the “Company”) on Form 10-Q for the period ending March 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1)The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2)The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: May 15, 2023	By:	/s/ Shahriyar Rahmati
		Shahriyar Rahmati
		Chief Financial Officer and Chief Operating Officer (Principal Financial and Accounting Officer)