

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, 2022

**OR**

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number: 000-50644

**Cutera, Inc.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**77-0492262**  
(I.R.S. Employer Identification No.)

**3240 Bayshore Blvd., Brisbane, California 94005**  
(Address of principal executive offices)

**(415) 657-5500**  
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock (\$0.001 par value)	CUTR	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 (check one):

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

The number of shares of Registrant's common stock issued and outstanding as of May 6, 2022, was 18,163,389.

CUTERA, INC.  
FORM 10-Q  
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In this Quarterly Report on Form 10-Q, “Cutera,” “the Company,” “we,” “us” and “its” refer to Cutera, Inc. and its consolidated subsidiaries.

This report may contain references to its proprietary intellectual property, including among others, trademarks for its systems and ancillary products, “*AviClear™*,” “*Cutera®*,” “*AccuTip 500®*,” “*CoolGlide®*,” “*CoolGlide excel®*,” “*enlighten®*,” “*excel HR®*,” “*excel V®*,” “*excel V+®*,” “*LimeLight®*,” “*MyQ®*,” “*Pearl®*,” “*PICO Genesis®*,” “*ProWave 770®*,” “*Solera®*,” “*Titan®*,” “*truSculpt®*,” “*truSculpt iD™*,” “*truSculpt flex™*,” “*Secret PRO*,” “*Secret RF®*,” and “*xeo®*.”

These trademarks and trade names are the property of Cutera or the property of its consolidated subsidiaries and are protected under applicable intellectual property laws. Solely for convenience, its trademarks and tradenames referred to in this Quarterly Report on Form 10-Q may appear without the ® or symbols, but such references are not intended to indicate in any way that the Company will not assert, to the fullest extent under applicable law, its rights to these trademarks and tradenames.

## PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS (UNAUDITED)

## CUTERA, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS  
(in thousands, except share and per share data)  
(unaudited)

	March 31, 2022	December 31, 2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 57,732	\$ 164,164
Marketable investments	74,047	—
Accounts receivable, net of allowance for credit losses of \$1,093 and \$899, respectively	33,169	31,449
Inventories	51,680	39,503
Other current assets and prepaid expenses	20,156	14,545
Total current assets	236,784	249,661
Property and equipment, net	3,009	3,019
Deferred tax asset	737	778
Operating lease right-of-use assets	14,330	14,627
Goodwill	1,339	1,339
Other long-term assets	9,792	10,169
Restricted cash	700	700
Total assets	\$ 266,691	\$ 280,293
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 13,646	\$ 7,891
Accrued liabilities	48,044	54,100
Operating lease liabilities	2,628	2,419
Deferred revenue	9,719	9,490
Total current liabilities	74,037	73,900
Deferred revenue, net of current portion	1,345	1,335
Operating lease liabilities, net of current portion	13,007	13,483
Convertible notes, net of unamortized debt issuance costs of \$3,788 and \$4,007, respectively	134,462	134,243
Other long-term liabilities	680	763
Total liabilities	223,531	223,724
Commitments and Contingencies (Note 12)		
Stockholders' equity:		
Common stock, \$0.001 par value; authorized: 50,000,000 shares; issued and outstanding: 18,132,949 and 17,995,344 shares at March 31, 2022 and December 31, 2021, respectively	18	18
Additional paid-in capital	116,468	114,724
Accumulated other comprehensive loss	(11)	—
Accumulated deficit	(73,315)	(58,173)
Total stockholders' equity	43,160	56,569
Total liabilities and stockholders' equity	\$ 266,691	\$ 280,293

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

## CUTERA, INC.

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share data)  
(unaudited)

	Three Months Ended March 31,	
	2022	2021
Net revenue:		
Products	\$ 52,066	\$ 43,551
Service	5,948	6,117
Total net revenue	<u>58,014</u>	<u>49,668</u>
Cost of revenue:		
Products	22,912	18,331
Service	3,314	3,627
Total cost of revenue	<u>26,226</u>	<u>21,958</u>
Gross profit	<u>31,788</u>	<u>27,710</u>
Operating expenses:		
Sales and marketing	24,944	15,068
Research and development	6,499	4,112
General and administrative	13,502	7,365
Total operating expenses	<u>44,945</u>	<u>26,545</u>
(Loss) income from operations	(13,157)	1,165
Interest and other expense, net:		
Amortization of debt issuance costs	(219)	(52)
Interest on convertible notes	(778)	(191)
Other expense, net	(755)	(1,023)
Total interest and other expense, net	<u>(1,752)</u>	<u>(1,266)</u>
Loss before income taxes	(14,909)	(101)
Income tax expense	233	258
Net loss	<u>\$ (15,142)</u>	<u>\$ (359)</u>
Net loss per share:		
Basic	<u>\$ (0.84)</u>	<u>\$ (0.02)</u>
Diluted	<u>\$ (0.84)</u>	<u>\$ (0.02)</u>
Weighted-average number of shares used in per share calculations:		
Basic	<u>18,080</u>	<u>17,768</u>
Diluted	<u>18,080</u>	<u>17,768</u>

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

## CUTERA, INC.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS  
(in thousands)  
(Unaudited)

	Three Months Ended March 31,	
	2022	2021
Net loss	\$ (15,142)	\$ (359)
Other comprehensive loss:		
Available-for-sale investments		
Net change in unrealized loss on available-for-sale investments	(11)	—
Other comprehensive loss, net of tax	(11)	—
Comprehensive loss	\$ (15,153)	\$ (359)

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

CUTERA, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY  
(in thousands, except share amounts)

Three Months Ended March 31, 2022 and 2021

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2021	17,995,344	\$ 18	\$ 114,724	\$ (58,173)	\$ —	\$ 56,569
Exercise of stock options	7,459	—	151	—	—	151
Purchase of capped call	—	—	—	—	—	—
Issuance of common stock in settlement of restricted and performance stock units, net of shares withheld for employee taxes	130,146	—	(2,450)	—	—	(2,450)
Stock-based compensation expense	—	—	4,043	—	—	4,043
Net loss	—	—	—	(15,142)	—	(15,142)
Net change in unrealized loss on available-for- sale investments	—	—	—	—	(11)	(11)
Balance at March 31, 2022	18,132,949	\$ 18	\$ 116,468	\$ (73,315)	\$ (11)	\$ 43,160

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2020	17,679,232	\$ 18	\$ 117,097	\$ (60,235)	\$ —	\$ 56,880
Exercise of stock options	24,090	—	396	—	—	396
Purchase of capped call	—	—	(16,134)	—	—	(16,134)
Issuance of common stock in settlement of restricted and performance stock units, net of shares withheld for employee taxes	98,604	—	(999)	—	—	(999)
Stock-based compensation expense	—	—	1,846	—	—	1,846
Net loss	—	—	—	(359)	—	(359)
Balance at March 31, 2021	17,801,926	\$ 18	\$ 102,206	\$ (60,594)	\$ —	\$ 41,630

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

CUTERA, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(in thousands)  
(unaudited)

	Three Months Ended March 31,	
	2022	2021
<b>Cash flows from operating activities:</b>		
Net loss	\$ (15,142)	\$ (359)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:		
Stock-based compensation	4,043	1,846
Depreciation and amortization	427	361
Amortization of contract acquisition costs	652	545
Amortization of debt issuance costs	219	52
Impairment of capitalized cloud computing costs	—	182
Change in deferred tax asset	41	45
Provision for excess and obsolete inventories	358	193
Provision for credit losses	192	218
Loss (gain) on sale of property and equipment	14	(59)
Change in right-of-use assets	638	604
Changes in assets and liabilities:		
Accounts receivable	(1,912)	(2,407)
Inventories	(12,535)	(6,214)
Other current assets and prepaid expenses	(5,611)	(1,560)
Other long-term assets	(385)	(500)
Accounts payable	5,755	(1,653)
Accrued liabilities	(5,989)	10,022
Operating lease liabilities	(608)	(563)
Deferred revenue	239	500
Net cash (used in) provided by operating activities	(29,604)	1,253
<b>Cash flows from investing activities:</b>		
Acquisition of property, equipment, and software	(321)	(101)
Proceeds from disposal of property and equipment	—	52
Purchase of marketable investments	(74,058)	—
Net cash used in investing activities	(74,379)	(49)
<b>Cash flows from financing activities:</b>		
Proceeds from exercise of stock options and employee stock purchase plan	151	396
Purchase of capped call	—	(16,134)
Proceeds from issuance of convertible notes	—	138,250
Payment of issuance costs of convertible notes	—	(4,717)
Taxes paid related to net share settlement of equity awards	(2,450)	(999)
Payments on finance lease obligations	(150)	(115)
Net cash (used in) provided by financing activities	(2,449)	116,681
Net (decrease) increase in cash, cash equivalents and restricted cash	(106,432)	117,885
Cash, cash equivalents, and restricted cash at beginning of period	164,864	47,047
Cash, cash equivalents, and restricted cash at end of period	\$ 58,432	\$ 164,932
<b>Supplemental disclosure of non-cash items:</b>		
Assets acquired under finance lease	\$ 57	\$ 25
Assets acquired under operating lease	\$ 320	\$ 123
Debt issuance costs accrued	\$ —	\$ 452
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest	\$ 1,577	\$ 14
Income tax paid	\$ 1,100	\$ 458

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



CUTERA, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**Note 1. Summary of Significant Accounting Policies****Description of Operations and Principles of Consolidation**

Cutera, Inc. ("Cutera" or the "Company") is a leading provider of aesthetic and dermatology solutions for practitioners worldwide. The Company develops, manufactures, distributes, and markets energy-based product platforms for use by medical practitioners, enabling them to offer safe and effective aesthetic treatments to their customers. The Company currently markets the following system platforms: *AviClear*, *enlighten*, *excel*, *Secret PRO*, *Secret RF*, *truSculpt* and *xeo*. Several of the Company's systems offer multiple hand pieces and applications, providing customers the flexibility to upgrade their systems. The sales of (i) systems, system upgrades, and hand pieces (collectively "Systems" revenue); (ii) replacement hand pieces, *Titan*, *truSculpt 3D*, *truSculpt iD* and *truSculpt flex* cycle refills, as well as single use disposable tips applicable to *Secret PRO* and *Secret RF* ("Consumables" revenue); and (iii) the distribution of third party manufactured skincare products ("Skincare" revenue); are collectively classified as "Products" revenue. In addition to Product revenue, the Company generates revenue from the sale of post-warranty service contracts, parts, detachable hand piece replacements (except for *Titan*, *truSculpt 3D*, *truSculpt iD* and *truSculpt flex*) and service labor for the repair and maintenance of products that are out of warranty, all of which are collectively classified as "Service" revenue.

In March 2022, the Company received the U.S. Food and Drug Administration's 510(k) clearance of the *AviClear* acne treatment device ("AviClear"). *AviClear* is a laser treatment that offers a safe, prescription-free solution for acne. *AviClear* will be rolled out to physicians in the United States throughout 2022.

The Company's corporate headquarters and U.S. operations are located in Brisbane, California, where the Company conducts manufacturing, warehousing, research and development, regulatory, sales and marketing, service, and administrative activities. The Company markets, sells and services its products through its sales and service employees in North America (including Canada), Australia, Austria, Belgium, France, Germany, Hong Kong, Japan, the Netherlands, Spain, Switzerland, and the United Kingdom. Sales and services outside of these direct markets are made through a worldwide distributor network in over 42 countries. The condensed consolidated financial statements include the accounts of the Company and its subsidiaries.

**Basis of Presentation**

In the opinion of the Company, the accompanying unaudited condensed consolidated financial statements included in this report reflect all adjustments necessary for a fair statement of its condensed consolidated statements of financial position as of March 31, 2022 and December 31, 2021, and its condensed consolidated statements of results of operations, comprehensive income (loss), changes in equity, and cash flows for the three months ended March 31, 2022, and 2021. The December 31, 2021 condensed consolidated balance sheet was derived from audited financial statements, but does not include all disclosures required by generally accepted accounting principles in the United States of America ("GAAP"). The results for interim periods are not necessarily indicative of results for the entire year or any other interim period. Presentation of certain prior year balances have been updated to conform with current year presentation. All intercompany accounts and transactions have been eliminated upon consolidation. The accompanying condensed consolidated financial statements should be read in conjunction with the Company's previously filed audited financial statements and the related notes thereto included in the Company's annual report on Form 10-K for the year ended December 31, 2021 filed with the Securities and Exchange Commission (the "SEC") on March 1, 2022.

**Risks and Uncertainties**

The Company's future results of operations involve a number of risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, rapid technological change, continued acceptance of the Company's products, stability of global financial markets, cybersecurity breaches and other disruptions that could compromise the Company's information or results, business disruptions that are caused by natural disasters or pandemic events, management of international activities, competition from substitute products and larger companies, ability to obtain and maintain regulatory approvals, government regulations and oversight, patent and other types of litigation, ability to protect proprietary technology from counterfeit versions of the Company's products, strategic relationships and dependence on key individuals.

The COVID-19 outbreak and related variants have negatively affected the United States and global economies. The spread of the coronavirus has impacted the global economy broadly in 2021 and 2020, including restrictions on travel, shifting work forces to work remotely and quarantine policies put into place by businesses and governments, had a material economic effect

on the Company's business during the year ended December 31, 2021. Healthcare facilities in many countries effectively banned elective procedures and this had a significant impact on the Company. Many of the Company's products are used in aesthetic elective procedures and as such, the bans on elective procedures substantially reduced the Company's sales and marketing efforts in the early months of the pandemic and led the Company to implement cost control measures. Although the Company's revenues and profits have improved as the economic outlook improved in 2021 and into 2022, the COVID-19 outbreak continues to be fluid, and the long-term impact on the Company's business due to COVID-19 is still uncertain. The Company cannot presently predict the scope and severity of any impacts in future periods from business shutdowns or disruptions due to the COVID-19 pandemic, but the impact on economic activity including the possibility of recession or financial market instability could have a material adverse effect on the Company's business, revenue, operating results, cash flows and financial condition.

The Company continues to assess whether any impairment of its goodwill or its long-lived assets has occurred and has determined that no charges were necessary during the three months ended March 31, 2022. The Company will continue to monitor future conditions important to its assessment of potential impairment of its long-lived assets and goodwill, including the impacts of the COVID-19 pandemic and other ongoing impacts which are subject to uncertainty.

In 2021, the Company experienced a significant increase in sales of skincare products under the exclusive distribution agreement with ZO Skin Health, Inc. ("ZO"), which allows the Company to sell ZO's skincare products in Japan. The reason for the increase in skincare products sales may have been the result of the COVID-19 pandemic changing customers' spending habits, resulting in customers purchasing aesthetic treatments that were able to be applied at home, due to limitations on in-person aesthetic procedures. Future growth in sales of skincare products depends on customers maintaining spending habits adopted during the COVID-19 pandemic. If customers revert to original spending habits after the COVID-19 pandemic, such changes may have a material adverse effect on the Company's revenue, operating results, and cash flows.

#### ***Accounting Policies***

These unaudited condensed consolidated financial statements are prepared in accordance with the rules and regulations of the SEC applicable to interim financial statements. While these statements reflect all normal recurring adjustments that are, in the opinion of management, necessary for fair presentation of the results of the interim period, they do not include all of the information and footnotes required by GAAP for complete financial statements. These condensed consolidated financial statements should be read in conjunction with the financial statement disclosures in its annual report on Form 10-K for the year ended December 31, 2021 filed with the SEC on March 1, 2022.

The Company uses the same accounting policies in preparing quarterly and annual financial statements. Unless otherwise noted, amounts presented within the notes to condensed consolidated financial statements refer to the Company's continuing operations.

#### ***Use of Estimates***

The preparation of condensed consolidated financial statements in conformity with GAAP requires the Company's management to make estimates and assumptions that affect the amounts reported of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the accompanying notes, and the reported amounts of revenue and expenses during the reported periods. Actual results could differ materially from those estimates.

On an ongoing basis, management evaluates its estimates, including those related to warranty obligations, sales commission, allowance for credit losses, sales allowances, fair value of investments, valuation of inventories, fair value of goodwill, useful lives of property and equipment, impairment testing for long-lived-assets, implicit and incremental borrowing rates related to the Company's leases, variables used in calculating the fair value of the Company's equity awards, expected achievement of performance based vesting criteria, management performance bonuses, assumptions used in operating and sales-type lease classification, the standalone selling price of the Company's products and services, the period of benefit used to capitalize and amortize contract acquisition costs, variable consideration, contingent liabilities, recoverability of deferred tax assets, residual value of leased equipment, lease term and effective income tax rates. Management bases estimates on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities.

#### ***Recently Adopted Accounting Pronouncements***

In December 2019, the FASB issued ASU No. 2019-12 *Income Taxes (Topic 740)-Simplifying the Accounting for Income Taxes*, to remove certain exceptions and improve consistency of application, including, among other things, requiring that an entity reflect the effect of an enacted change in tax laws or rates in the annual effective tax rate computation in the interim

period that includes the enactment date. The Company adopted this guidance starting January 1, 2021. The adoption of this guidance did not have a material impact on the Company's consolidated financial position and results of operations.

In August 2020, the FASB issued ASU No. 2020-6, *Debt – Debt with Conversion and Other Options (Topic 470) and Derivatives and Hedging – Contracts in Entity's Own Equity (Topic 815)*, to simplify the accounting for convertible debt instruments by removing the beneficial conversion and cash conversion separation models for convertible instruments. Under the amendment, the embedded conversion features are no longer separated from the host contract for convertible instruments with conversion features that are not required to be accounted for as derivatives or that do not result in substantial premiums accounted for as paid-in capital. The update also amends the accounting for certain contracts in an entity's own equity that are currently accounted for as derivatives because of specific settlement provisions. In addition, the new guidance modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the computation of diluted earnings per share. The Company early adopted the guidance on a prospective basis effective January 1, 2021. See Note 13 – Debt.

## Note 2. Cash, Cash Equivalents and Marketable Investments

The Company invests its cash primarily in money market funds and in highly liquid debt instruments of U.S. federal and municipal governments and their agencies. All highly liquid investments with stated maturities of three months or less from date of purchase are classified as cash equivalents; all highly liquid investments with stated maturities of greater than three months are classified as marketable investments. The majority of the Company's cash and investments are held in U.S. banks and U.S. Treasuries. The Company's foreign subsidiaries maintain a limited amount of cash in their local banks to cover their short term operating expenses.

The Company determines the appropriate classification of its investments in marketable securities at the time of purchase and re-evaluates such designation at each balance sheet date. The Company's marketable securities have been classified and accounted for as available-for-sale securities. Investments with remaining maturities of more than one year are viewed by the Company as available to support current operations and are classified as current assets under the caption marketable investments in the accompanying condensed consolidated balance sheets. Investments in available-for-sale debt securities are measured at fair value under the guidance in ASC 320. Credit losses on impaired available-for-sale debt securities are recognized through an allowance for credit losses. Under ASC 326, credit losses recognized on an available-for-sale debt security should not reduce the net carrying amount of the available-for-sale debt security below its fair value. Any changes in fair value unrelated to credit are recognized as an unrealized gain or loss in other comprehensive income.

The following table summarizes the Company's cash and cash equivalents and marketable investments (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Market Value
<b>March 31, 2022</b>				
Cash and cash equivalents	\$ 57,732	\$ —	\$ —	\$ 57,732
Non-current restricted cash	700	—	—	700
Cash, cash equivalents, and restricted cash as reported within the Consolidated Statements of Cash Flows	58,432	—	—	58,432
Marketable investments - U.S. Treasury	74,058	—	(11)	74,047
Total	<u>\$ 132,490</u>	<u>\$ —</u>	<u>\$ (11)</u>	<u>\$ 132,479</u>

<b>December 31, 2021</b>	<b>Amortized Cost</b>	<b>Gross Unrealized Gains</b>	<b>Gross Unrealized Losses</b>	<b>Fair Market Value</b>
Cash and cash equivalents	\$ 164,164	\$ —	\$ —	\$ 164,164
Non-current restricted cash	700	—	—	700
Cash, cash equivalents, and restricted cash as reported within the Consolidated Statements of Cash Flows	<u>\$ 164,864</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 164,864</u>

At March 31, 2022 and December 31, 2021, the net unrealized losses were \$11 thousand and nil, respectively, and were related to interest rate changes on available-for-sale marketable investments. The Company has concluded that it is more-likely-than-not that the securities will be held until maturity or the recovery of their cost basis. No securities were in an unrealized loss position for more than 12 months. The cash is restricted to support an outstanding letter of credit for \$0.7 million provided to a supplier.

The following table summarizes the contractual maturities of the Company's available-for-sale securities, classified as marketable investments, as of March 31, 2022 (in thousands):

<b>March 31, 2022</b>	<b>Amount</b>
Due in less than one year	\$ 74,058

### Note 3. Fair Value of Financial Instruments

The Company measures certain financial assets at fair value, including cash and cash equivalents.

The fair value hierarchy contains the following three levels of inputs that may be used to measure fair value, in accordance with ASC 820:

- Level 1: inputs, which include quoted prices in active markets for identical assets or liabilities;
- Level 2: inputs, which include observable inputs other than Level 1 inputs, such as quoted prices for similar assets or liabilities, quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the asset or liability. When sufficient quoted pricing for identical securities is not available, the Company uses market pricing and other observable market inputs for similar securities obtained from various third-party data providers. These inputs either represent quoted prices for similar assets in active markets or have been derived from observable market data; and
- Level 3: inputs, which include unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the underlying asset or liability. Level 3 assets and liabilities include those whose fair value measurements are determined using pricing models, discounted cash flow methodologies, or similar valuation techniques, as well as significant management judgment or estimation.

In determining fair value, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible as well as considering counterparty credit risk in its assessment of fair value.

As of March 31, 2022, financial assets measured and recognized at fair value on a recurring basis and classified under the appropriate level of the fair value hierarchy as described above were as follows (in thousands):

<b>March 31, 2022</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 2</b>
Cash equivalents:			
Money market funds	\$ 948	\$ —	\$ —
Marketable investments:			
Available-for-sale securities	74,047	—	—
Total	<u>\$ 74,995</u>	<u>\$ —</u>	<u>\$ —</u>

At December 31, 2021, the Company had no money market funds or marketable investments.

See Note 13 - Debt for the carrying amount and estimated fair value of the Company's convertible notes due 2026.

#### Note 4. Balance Sheet Details

##### Inventories

As of March 31, 2022 and December 31, 2021, inventories consist of the following (in thousands):

	March 31, 2022	December 31, 2021
Raw materials	\$ 31,134	\$ 24,035
Work in process	2,902	2,124
Finished goods	17,644	13,344
Total	<u>\$ 51,680</u>	<u>\$ 39,503</u>

##### Accrued Liabilities

As of March 31, 2022 and December 31, 2021, accrued liabilities consist of the following (in thousands):

	March 31, 2022	December 31, 2021
Bonus and payroll-related accruals	\$ 16,639	\$ 21,649
Sales and marketing accruals	3,678	4,808
Accrued inventory in transit	3,530	4,265
Product warranty	3,874	3,947
Accrued sales tax	9,853	9,110
Other accrued liabilities	10,470	10,321
Total	<u>\$ 48,044</u>	<u>\$ 54,100</u>

#### Note 5. Product Warranty

The Company has a direct field service organization in North America (including Canada). Internationally, the Company provides direct service support in Australia, Austria, Belgium, France, Germany, Hong Kong, Japan, the Netherlands, Spain, Switzerland, and the United Kingdom. In several other countries, where the Company does not have a direct presence, the Company provides service through a network of distributors and third-party service providers.

After the original warranty period, maintenance and support are offered on an extended service contract basis or on a time and materials basis. The Company provides the estimated cost to repair or replace products under standard warranty at the time of sale. Costs incurred in connection with extended service contracts are generally recognized at the time when costs are incurred.

The following table provides the changes in the product warranty accrual for the three months ended March 31, 2022 and 2021 (in thousands):

	Three Months Ended March 31,	
	2022	2021
Beginning Balance	\$ 3,947	\$ 2,908
Add: Accruals for warranties issued during the period	1,462	1,525
Less: Settlements made during the period	(1,535)	(1,082)
Ending Balance	<u>\$ 3,874</u>	<u>\$ 3,351</u>

#### Note 6. Deferred Revenue

The Company records deferred revenue when revenue is to be recognized subsequent to invoicing. For extended service contracts, the Company generally invoices customers at the beginning of the extended service contract term. The Company's extended service contracts typically have one to three-year terms. Deferred revenue also includes payments for training and extended marketing support services. Approximately 88% of the Company's deferred revenue balance of \$11.1 million as of March 31, 2022 will be recognized over the next 12 months.

The following table provides changes in the deferred revenue balance for the three months ended March 31, 2022 and 2021 (in thousands):

	Three Months Ended	
	March 31,	
	2022	2021
Beginning balance	\$ 10,825	\$ 11,237
Add: Payments received	4,864	4,929
Less: Revenue	(458)	(445)
Less: Revenue recognized from beginning balance	(4,167)	(3,984)
Ending balance	\$ 11,064	\$ 11,737

Costs for extended service contracts were \$1.7 million and \$2.0 million for the three months ended March 31, 2022, and March 31, 2021, respectively.

#### Note 7. Revenue

Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for promised goods or services. The Company's performance obligations are satisfied either over time or at a point in time. Revenue from performance obligations that are transferred to customers over time accounted for approximately 7% and 12% of the Company's total revenue for the three months ended March 31, 2022, and March 31, 2021, respectively.

The Company has certain systems sales arrangements that contain multiple products and services. For these bundled sale arrangements, the Company accounts for individual products and services as separate performance obligations if they are distinct. The Company's products and services are distinct if a customer can benefit from the product or service on its own or with other resources that are readily available to the customer, and if the Company's promise to transfer the products or service to the customer is separately identifiable from other promises in the sale arrangements. The Company's system sale arrangements can include all or a combination of the following performance obligations: the system and software license (considered as one performance obligation), system accessories (hand pieces), training, other accessories, extended service contracts, marketing services, and time and materials services.

For the Company's system sale arrangements that include an extended service contract, the period of service commences at the expiration of the Company's standard warranty offered at the time of the system sale. The Company considers the extended service contracts terms in the arrangements that are legally enforceable to be performance obligations. Other than extended service contracts and marketing services, which are satisfied over time, the Company generally satisfies all performance obligations at a point in time. Systems, system accessories (hand pieces), service contracts, training, and time and materials services are also sold on a stand-alone basis, and these performance obligations are satisfied at a point in time. For contracts with multiple performance obligations, the Company allocates the transaction price of the contract to each performance obligation on a relative standalone selling price basis.

#### Significant Judgments

The determination of whether two or more contracts entered into at or near the same time with the same customer should be combined and accounted for as one contract may require the use of significant judgment. In making this determination, the Company considers whether the contracts are negotiated as a package with a single commercial objective, have price interdependencies, or promise goods or services that represent a single performance obligation.

While the Company's purchase agreements do not provide customers with a contractual right of return, the Company maintains a sales allowance to account for potential returns or refunds as a reduction in transaction price at the time of sale. The Company estimates sales returns and other variable consideration based on historical experience.

The Company determines the standalone selling price ("SSP") for each performance obligation as follows:

- Systems: The SSPs for systems are based on directly observable sales in similar circumstances to similar customers.
- Extended warranty/Service contracts: SSP is based on observable price when sold on a standalone basis (by customer type).

### ***Nature of Products and Services***

#### ***Systems***

Systems revenue is generated from the sale of systems and from the sale of upgrades to existing systems. A system consists of a console that incorporates a universal graphic user interface, a laser or other energy-based module, control system software and high voltage electronics, as well as one or more hand pieces. In certain applications, the laser or other energy-based module is contained in the hand piece rather than within the console.

The system or upgrade and the right to use the embedded software represent a single performance obligation as the software license is integral to the functionality of the system or upgrade.

For systems sold directly to end-customers that are credit approved, revenue is recognized when the Company transfers control to the end-customer, which occurs when the product is shipped to the customer or when the customer receives the product, depending on the nature of the arrangement. When collectability is not established in advance of receipt of payment from the customer, revenue is recognized upon the later of the receipt of payment or the satisfaction of the performance obligation. For systems sold through credit approved distributors, revenue is recognized upon shipment to the distributor.

The Company typically receives payment for its system consoles and other accessories within 30 days of shipment. Certain international distributor arrangements allow for longer payment terms.

#### ***Skincare products***

The Company sells third-party manufactured skincare products in Japan. The skincare products are purchased from a third-party manufacturer and sold to medical offices and licensed physicians. The Company warrants that the skincare products are free of significant defects in workmanship and materials for 90 days from shipment. The Company acts as the principal in this arrangement, as the Company determines the price to charge customers for the skincare products and controls the products before they are transferred to the customer. The Company recognizes revenue for skincare products upon shipment.

#### ***Consumables and other accessories***

The Company classifies its customers' purchases of replacement cycles for *truSculpt iD* and *truSculpt flex*, as well as replacement hand pieces, *xeo* and *truSculpt 3D* hand pieces, and single use disposable tips applicable to *Secret PRO*, and *Secret RF*, as Consumable revenue, which provides the Company with a source of recurring revenue from existing customers. The *Secret RF* product single use disposable tips must be replaced after every treatment. The Company's systems offer multiple hand pieces and applications, which allow customers to upgrade their systems.

#### ***Extended contract services***

The Company offers post-warranty services to its customers through extended service contracts that cover parts and labor for terms of one to four years. Service contract revenue is recognized over time, using a time-based measure of progress, as customers benefit from the service throughout the service period. The Company also offers services on a time-and-materials basis for systems and detachable hand piece replacements. Revenue related to services performed on a time-and-materials basis is recognized when performed.

#### ***Training***

Sales of systems to customers include training on the use of the system to be provided within 180 days of purchase. The Company considers training a separate performance obligation as customers can immediately benefit from the training together with the customer's system. Training is also sold separately from systems. The Company recognizes revenue for training when the training is provided.

#### ***Loyalty Program***

The Company has a customer loyalty program for qualified customers located in the U.S., Canada, Australia and New Zealand. Under the loyalty program, based on their purchasing levels, customers accumulate points that can be redeemed for such rewards as the right to attend the Company's advanced training event for *truSculpt*, or a ticket for the Company's annual forum. A customer's account must be in good standing to receive the benefits of the rewards program. Rewards are earned on a quarterly basis and must be used in the following quarter. All unused rewards are forfeited. The fair value of the reward earned by loyalty program members is included in accrued liabilities and recorded as a reduction of net revenue at the time the reward is earned. As of March 31, 2022 and December 31, 2021, the liability for the loyalty program included in accrued liabilities was \$0.3 million and \$0.5 million, respectively.

#### **Deferred Sales Commissions**

Incremental costs of obtaining a contract, which consist of commissions and related payroll taxes, are deferred and amortized on a straight-line basis over an expected period of benefit estimated to be two to three years, except for costs that are recognized when product is sold.

Total capitalized costs as of March 31, 2022 and December 31, 2021 were \$3.5 million and \$4.2 million, respectively, and are included in Other long-term assets in the Company's condensed consolidated balance sheet. Amortization expense for these assets was \$0.7 million and \$0.5 million during the three months ended March 31, 2022, and March 31, 2021, respectively. The amortization related to these capitalized costs is included in sales and marketing expense in the Company's condensed consolidated statement of operations.

#### **Note 8. Stockholders' Equity and Stock-based Compensation Expense**

The Company's equity incentive plans are broad-based, long-term programs intended to attract and retain talented employees and align stockholder and employee interests. The 2019 Equity Incentive Plan (the "2019 Plan") provides for the grant of incentive stock options, non-statutory stock options, restricted stock units ("RSUs"), performance stock units ("PSUs"), and other stock or cash awards.

The Company's Board of Directors granted the Company's executive officers, senior management and certain employees 90,658 PSUs during the three months ended March 31, 2022. These PSUs vest subject to the Company's achievement of certain operational goals for the 2022 fiscal year related to product and commercial milestones. In addition, there is a service requirement related to half of the granted quantity that requires the grant recipient to provide one year of service subsequent to the milestone achievement date.

The Company's Board of Directors also granted its executive officers and senior management 95,761 RSUs and 207,062 non-qualified stock options ("NQs") during the three months ended March 31, 2022. The RSUs and NQs vest over four years with one-fourth vesting on the first anniversary of the vesting commencement date of January 1, 2022 and 1/36 of the remaining underlying shares vest each month thereafter.

Activity under the Company's equity incentive plans is summarized as follows:

	<b>Shares Available for Grant</b>
<b>Balance, December 31, 2021</b>	947,347
RSUs granted	(95,761)
PSUs granted	(90,658)
Options granted	(207,062)
Stock awards canceled / forfeited / expired	22,568
Options canceled / forfeited / expired	2,072
<b>Balance, March 31, 2022</b>	<b>578,506</b>



	Options Outstanding		
	Number of Stock Options Outstanding	Weighted-Average Exercise Price	Weighted Average Remaining Term (in Years)
<b>Balance, December 31, 2021</b>	287,175	\$ 25.89	4.92
Options granted	207,062	\$ 35.34	
Options exercised	(7,459)	\$ 20.24	
Options canceled / forfeited / expired	(2,072)	\$ 32.87	
<b>Balance, March 31, 2022</b>	<u>484,706</u>	<u>\$ 29.99</u>	<u>6.88</u>

	Stock Awards Outstanding	
	Number of Awards Outstanding	Weighted Average Grant Date Fair Value per Share
<b>Balance, December 31, 2021</b>	1,032,904	\$ 35.00
RSUs granted	95,761	\$ 39.53
PSUs granted	90,658	\$ 34.16
Awards released	(190,967)	\$ 28.04
Stock awards canceled / forfeited / expired	(21,081)	\$ 40.00
<b>Balance, March 31, 2022</b>	<u>1,007,275</u>	<u>\$ 36.57</u>

#### Stock-based Compensation Expense

Stock-based compensation expense by department recognized during the three months ended March 31, 2022 and 2021 was as follows (in thousands):

	Three Months Ended March 31,	
	2022	2021
Cost of revenue	\$ 459	\$ 144
Sales and marketing	576	721
Research and development	980	301
General and administrative	2,028	680
Total stock-based compensation expense	<u>\$ 4,043</u>	<u>\$ 1,846</u>

#### Note 9. Net Loss Per Share

On January 1, 2021, the Company adopted the accounting standard update to simplify the accounting for convertible debt instruments. The Company now uses the if converted method for its convertible notes in calculating the diluted net income (loss) per share, and includes the effect of potential share settlement for the convertible notes, if the effect is dilutive.

Basic earnings per share ("EPS") is computed based on the weighted average number of shares of common stock outstanding during the period. Diluted EPS is computed based on the weighted average number of shares of common stock plus the effect of dilutive potential common shares outstanding during the period using the treasury stock method and the if-converted method. Dilutive potential common shares include outstanding stock options, restricted stock units, performance stock units, ESPP shares and conversion shares under the convertible notes. The diluted EPS is computed with the assumption that the Company will settle the convertible debt in shares, rather than cash.

As of March 31, 2022, the Company's convertible notes were potentially convertible into 4,167,232 shares of common stock. The Company used the if-converted method to calculate the potential dilutive effect of the conversion spread on diluted net income per share for the three months ended March 31, 2022.

The denominator for diluted net income (loss) per share does not include any effect from the capped call transactions the Company entered into concurrently with the issuance of the convertible notes, as this effect would be anti-dilutive. In the event of conversion of a Convertible note, shares delivered to the Company under the capped call will offset the dilutive effect of the shares that the Company would issue under the convertible notes. In the three months ended March 31, 2022, the "if-converted method" was not applied as the effect would have been anti-dilutive.

For the three months ended March 31, 2022, a basic loss per common share and diluted loss per common share are the same in each respective period as the inclusion of any potentially issuable shares would be anti-dilutive.

The following table sets forth the computation of basic and diluted net loss and the weighted average number of shares used in computing basic and diluted net loss per share (in thousands, except per share data):

	Three Months Ended March 31,	
	2022	2021
<i>Numerator:</i>		
Net loss used in calculating net loss per share, basic and diluted	\$ (15,142)	\$ (359)
<i>Denominator:</i>		
Weighted average shares of common stock outstanding used in computing net loss per share, basic	18,080	17,768
Dilutive effect of incremental shares and share equivalents:		
Options	—	—
RSUs	—	—
PSUs	—	—
ESPP	—	—
Weighted average shares of common stock outstanding used in computing net loss per share, diluted	<u>18,080</u>	<u>17,768</u>
<i>Net loss per share:</i>		
Net loss per share, basic	\$ (0.84)	\$ (0.02)
Net loss per share, diluted	<u>\$ (0.84)</u>	<u>\$ (0.02)</u>

The following numbers of shares outstanding, prior to the application of the treasury stock method and the if-converted method, were excluded from the computation of diluted net loss per common share for the periods presented because including them would have had an anti-dilutive effect (in thousands):

	Three Months Ended March 31,	
	2022	2021
Capped call	4,167	4,167
Convertible notes	4,167	4,167
Options to purchase common stock	485	245
Restricted stock units	526	585
Performance stock units	482	92
Employee stock purchase plan shares	32	30
Total	<u>9,859</u>	<u>9,286</u>

#### Note 10. Income Taxes

For the three months ended March 31, 2022, the Company's income tax expense was \$0.2 million, compared to the tax expense of \$0.3 million for the three months ended March 31, 2021.

The Company's income tax expense for the three months ended March 31, 2022 and 2021, is due to income taxes in foreign jurisdictions. The Company continues to maintain a full valuation allowance on its U.S. deferred tax assets.

#### Note 11. Leases

The Company is a party to certain operating and finance leases for vehicles, office space and storage facilities. The Company's operating leases consist of office space, as well as storage facilities and finance leases consist of automobiles. The Company's leases generally have remaining terms of one to ten years, some of which include options to renew the leases for up to five years. The Company leases space for operations in the United States, Australia, Belgium, France, Japan and Spain. In addition to the above facility leases, the Company also routinely leases automobiles for certain sales and field service employees under finance leases.

The Company determines if a contract contains a lease at inception. Operating lease assets and liabilities are recognized at the lease commencement date. Operating lease liabilities represent the present value of lease payments not yet paid. Operating lease assets represent the right to use an underlying asset and are based upon the operating lease liabilities adjusted for prepayments or accrued lease payments, initial direct costs, lease incentives, and impairment of operating lease assets. To determine the present value of lease payments not yet paid, the Company estimates the incremental secured borrowing rates corresponding to the maturities of the leases. The Company based the rate estimates on prevailing financial market conditions, credit analysis, and management judgment.

The Company recognizes expense for these leases on a straight-line basis over the lease term. Additionally, tenant incentives used to fund leasehold improvements are recognized when earned and reduce the Company's right-of-use ("ROU") asset related to the lease. These are amortized through the ROU asset as reductions of expense over the lease term.

Supplemental balance sheet information related to leases was as follows (in thousands):

Leases	Classification	March 31, 2022	December 31, 2021
<b>Assets</b>			
Right-of-use assets	Operating lease assets	\$ 14,330	\$ 14,627
Finance lease	Property and equipment, net	403	392
Total leased assets		<u>\$ 14,733</u>	<u>\$ 15,019</u>
Liabilities	Classification	March 31, 2022	December 31, 2021
<b>Operating lease liabilities</b>			
Operating lease liabilities, current	Operating lease liabilities	\$ 2,628	\$ 2,419
Operating lease liabilities, non-current	Operating lease liabilities, net of current portion	13,007	13,483
Total Operating lease liabilities		<u>\$ 15,635</u>	<u>\$ 15,902</u>
<b>Finance lease liabilities</b>			
Finance lease liabilities, current	Accrued liabilities	\$ 520	\$ 554
Finance lease liabilities, non-current	Other long-term liabilities	680	730
Total Finance lease liabilities		<u>\$ 1,200</u>	<u>\$ 1,284</u>

Lease costs during the three months ended March 31, 2022 and 2021 (in thousands):

Lease costs	Classification	Three Months Ended March 31,	
		2022	2021
Finance lease cost	Amortization expense	\$ 161	\$ 127
Finance lease cost	Interest for finance lease	\$ 21	\$ 14
Operating lease cost	Operating lease expense	\$ 915	\$ 878

Cash paid for amounts included in the measurement of lease liabilities during the three months ended March 31, 2022 and 2021 was as follows (in thousands):

Cash paid for amounts included in the measurement of lease liabilities	Classification	Three Months Ended March 31,	
		2022	2021
Operating cash flow	Finance lease	\$ 21	\$ 14
Financing cash flow	Finance lease	\$ 150	\$ 115
Operating cash flow	Operating lease	\$ 792	\$ 772

#### Facility leases

Maturities of facility leases were as follows as of March 31, 2022 (in thousands):

As of March 31, 2022	Amount
Remainder of 2022	\$ 2,469
2023	3,332
2024	2,904
2025	2,875
2026	2,970
2027 and thereafter	3,338
<b>Total lease payments</b>	<b>17,888</b>
Less: imputed interest	2,253
<b>Present value of lease liabilities</b>	<b>\$ 15,635</b>

#### Vehicle Leases

As of March 31, 2022, the Company was committed to minimum lease payments for vehicles leased under long-term non-cancelable finance leases as follows (in thousands):

As of March 31, 2022	Amount
Remainder of 2022	\$ 491
2023	349
2024	411
2025	21
2026	1
<b>Total lease payments</b>	<b>1,273</b>
Less: imputed interest	73
<b>Present value of lease liabilities</b>	<b>\$ 1,200</b>

Weighted-average remaining lease term and discount rate, as of March 31, 2022, were as follows:

<b>Lease Term and Discount Rate</b>	<b>March 31, 2022</b>
<b>Weighted-average remaining lease term (years)</b>	
Operating leases	5.5
Finance leases	2.1
<b>Weighted-average discount rate</b>	
Operating leases	4.7 %
Finance leases	6.6 %

#### **Note 12. Contingencies**

The Company is named from time to time as a party to other legal proceedings, product liability, commercial disputes, employee disputes, and contractual lawsuits in the normal course of business. A liability and related charge are recorded to earnings in the Company's consolidated financial statements for legal contingencies when the loss is considered probable and the amount can be reasonably estimated. The assessment is re-evaluated each accounting period and is based on all available information, including discussion with outside legal counsel. If a reasonable estimate of a known or probable loss cannot be made, but a range of probable losses can be estimated, the low-end of the range of losses is recognized if no amount within the range is a better estimate than any other. If a material loss is reasonably possible, but not probable and can be reasonably estimated, the estimated loss or range of loss is disclosed in the notes to the consolidated financial statements. The Company expenses legal fees as incurred.

On January 31, 2020, the Company filed a lawsuit against Lutronic Aesthetics in the United States District Court for the Eastern District of California. Lutronic employs numerous former Company employees. The complaint against Lutronic generally alleges claims for (1) misappropriation of trade secrets in violation of state and federal law; (2) violation of the Racketeer Influenced and Corrupt Organizations Act (RICO); (3) interference with contractual relations; (4) interference with prospective economic advantage; (5) unfair competition; and (6) aiding and abetting. On March 13, 2020, the court entered a temporary restraining order against Lutronic generally prohibiting it from using or disseminating the Company's confidential, proprietary, or trade secret information. The order also prohibits Lutronic, for two years, from using such information for the purpose of soliciting, or conducting business with, certain specified customers. At the parties' request, the Court subsequently entered a preliminary injunction providing for the same restrictions in the restraining order. On February 9, 2022, the Company filed a motion seeking leave from the court to file a second amended complaint. In addition to the above-referenced claims against Lutronic Aesthetics, the proposed amended complaint alleges additional claims against it, including (1) violation of the Lanham Act; (2) unlawful business practices; (3) false advertising; and (4) trademark infringement. The proposed amended complaint also seeks to add Lutronic Corporation (the Korean parent company of Lutronic Aesthetics) as an additional defendant, and also alleges against it the above-described claims for misappropriation of trade secrets, violation of RICO, interference with contractual relations and prospective economic advantage, unfair competition, and aiding and abetting. Discovery is ongoing and no trial date has been scheduled.

As of March 31, 2022 and March 31, 2021, the Company had accrued \$0.5 million and \$0.4 million, respectively, related to various pending commercial and product liability lawsuits. The Company does not believe that a material loss in excess of accrued amounts is reasonably likely.

#### **Note 13. Debt**

##### ***Convertible notes, net of unamortized debt issuance costs***

In March 2021, the Company issued \$138.3 million aggregate principal amount of convertible senior notes due on March 15, 2026 in a private placement offering. The convertible notes bear interest at a rate of 2.25% per year payable semiannually in arrears on March 15 and September 15 of each year, beginning on September 15, 2021. Upon conversion, the convertible notes will be convertible into cash, shares of the Company's common stock or a combination thereof, at the Company's election. The convertible notes are presented as convertible notes, net of unamortized debt issuance costs, on the condensed consolidated balance sheet. Proceeds from the offering were \$133.6 million, net of issuance costs, including initial purchasers fees.

Initially, each \$1,000 principal amount of Notes was convertible into 30.1427 shares of the Company's common stock at a conversion price of \$33.18 per share. The conversion rate for the convertible notes is subject to adjustment for certain events as

set forth in the Indenture governing the convertible notes. The convertible notes will mature on March 15, 2026, unless earlier converted, redeemed, or repurchased in accordance with the terms of the convertible notes. No sinking fund is provided for the Notes. As of March 31, 2022, the net carrying amount of the Company's convertible notes was \$134.5 million and the unamortized debt issuance costs were \$3.8 million.

Holders may convert their Notes at their option prior to the close of business on the business day immediately preceding December 15, 2025, in multiples of \$1,000 principal amount, only under the following circumstances:

- During any fiscal quarter commencing after the fiscal quarter ending on June 30, 2021 (and only during such fiscal quarter), if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on and including, the last trading day of the immediately preceding fiscal quarter, is greater than or equal to 130% of the conversion price for the convertible notes on each applicable trading day;
- During the five-business day period after any five consecutive trading day period (the "measurement period") in which the "trading price" per \$1,000 principal amount of convertible notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;
- The Company calls such convertible notes for redemption, at any time prior to the close of business on the second scheduled trading day immediately preceding the redemption date; or
- Upon the occurrence of specified corporate events.

On or after December 15, 2025, and until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their Notes, in multiples of \$1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

The circumstances described in the first bullet of the paragraph above were not met during the first quarter of 2022. As of March 31, 2022, the Notes are not convertible and this condition will remain until June 30, 2022. The notes may become convertible in future periods. Upon any conversion requests of the convertible notes, the Company would be required to pay or deliver, as the case may be, cash, shares of its common stock, or a combination of cash and shares of its common stock, at the Company's election with respect to such conversion requests. To the extent there are any conversion requests during the twelve months ending March 31, 2023, the Company intends to settle such conversion requests in shares of common stock. Therefore, as of March 31, 2022, the convertible notes have been included as Long-term debt on the condensed consolidated balance sheet.

The Company may not redeem the convertible notes prior to March 20, 2024. On or after March 20, 2024, the Company may redeem for cash all or any portion of the Notes, at the Company's option if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption at a redemption price equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. If the Company elects to redeem fewer than all of the outstanding Notes, at least \$50.0 million aggregate principal amount of Notes must be outstanding and not subject to redemption as of the relevant redemption notice date.

If a specified corporate event occurs, note holders have the option to require the Company to repurchase any portion or all of their convertible notes in \$1,000 principal increments for cash. The price for such repurchase is calculated as 100% of the principal amounts of Notes, plus accrued and unpaid interest to the day immediately preceding the Fundamental Change repurchase date. Additionally, holders of the Notes who convert in connection with a fundamental change are, under certain circumstances, entitled to an increase in conversion rate.

The convertible notes are general senior unsecured obligations that rank senior to any of the Company's indebtedness that is explicitly subordinated to the Notes. The Notes have equal rank in right of payment with all existing and future unsecured indebtedness that is not subordinated to the Notes. The Notes will be junior to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness. The Notes do not contain any financial or operating covenants or any restrictions on the payment of dividends, the issuance of other indebtedness or the issuance or repurchase of securities by the Company.

The estimated fair value of the convertible notes was approximately \$295.4 million as of March 31, 2022, which the Company determined through consideration of market prices. The fair value measurement is classified as Level 2, as defined in Note 3.

The following table presents the outstanding principal amount and carrying value of the convertible notes (in thousands):

	March 31, 2022	December 31, 2021
Outstanding principal amount	\$ 138,250	\$ 138,250
Unamortized debt issuance costs	(3,788)	(4,007)
Carrying Value	\$ 134,462	\$ 134,243

In connection with issuance of the convertible notes, the Company entered into capped call transactions with certain option counterparties. The capped call transactions are generally intended to reduce the potential dilution of the Company's common stock upon any conversion or settlement of the Notes or to offset any cash payment the Company is required to make in excess of the principal amount upon conversion of the Notes, as the case may be, with such reduction or offset subject to a cap based on the cap price. If the market price per share of the Company's common stock exceeds the cap price of the capped calls transaction, then the Company's stock would experience some dilution and/or the capped call would not fully offset the potential cash payments, in each case to the extent the then-market price per share of its common stock exceeds the cap price. Under the capped call transactions, the Company purchased from the option counterparties capped call options that in the aggregate relate to the total number of shares of the Company's common stock underlying the convertible notes, with a strike price equal to the conversion price of the convertible notes and with an initial cap price equal to \$45.5350, which represents a 75% premium over the last reported sale price of the Company's common stock of \$26.02 per share on March 4, 2021, with certain adjustments to the settlement terms that reflect standard anti-dilution provisions. The capped call transactions expire over 40 consecutive scheduled trading days ended on March 12, 2026. The capped calls were purchased for \$16.1 million. The Company evaluated the capped call transaction under authoritative accounting guidance and determined that it should be accounted for as a separate transaction and classified as a net reduction to Additional paid-in capital within stockholders' equity with no recurring fair value measurement recorded.

The Company early adopted ASU 2020-6, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40) on January 1, 2021. In accordance with Subtopic 470-20 and 815-40, as revised by ASU 2020-6, the Company records the convertible notes in long-term debt with no separation between the Notes and the conversion option. Each reporting period, the Company will determine whether any criteria is met for the note holders to have the option to redeem the Notes early, which could result in a change in the classification of the Notes to current liabilities.

#### **Debt Issuance Cost**

The issuance costs related to the convertible notes are presented in the condensed consolidated balance sheet as a direct deduction from the carrying amount of the convertible notes.

The issuance costs are amortized using an effective interest method basis over the term of the convertible notes and accordingly the Company recorded approximately \$0.2 million of amortization of debt issuance costs during the three months ended March 31, 2022.

The effective interest rate on the convertible notes is 2.97%. Interest expense for the three months ended March 31, 2022, including the amortization of debt issuance cost, totaled approximately \$1.0 million.

#### **Loan and Security Agreement**

On July 9, 2020, the Company entered into a Loan and Security Agreement with Silicon Valley Bank for a four-year secured revolving loan facility ("SVB Revolving Line of Credit") in an aggregate principal amount of up to \$30.0 million. The SVB Revolving Line of Credit matures on July 9, 2024.

In order to draw on the full amount of the SVB Revolving Line of Credit, the Company must satisfy certain liquidity ratios. If the Company is unable to meet these liquidity ratios, then availability under the revolving line is calculated as 80% of the Company's qualifying accounts receivable. The proceeds of the revolving loans may be used for general corporate purposes. The Company's obligations under the Loan and Security Agreement with Silicon Valley Bank are secured by substantially all of the assets of the Company. Interest on principal amount outstanding under the revolving line shall accrue at a floating per annum rate equal to the greater of either 1.75% above the Prime Rate or five percent (5.0%). The Company paid a non-refundable revolving line commitment fee of \$0.3 million, on the effective date of the Loan and Security Agreement with Silicon Valley Bank of July 9, 2020, and the Company is required to pay an anniversary fee of \$0.3 million on each twelve-month anniversary of the effective date of the Loan and Security Agreement.



The Loan and Security Agreement with Silicon Valley Bank contains customary affirmative covenants, such as financial statement reporting requirements and delivery of borrowing base certificates, as well as customary covenants that restrict the Company's ability to, among other things, incur additional indebtedness, sell certain assets, guarantee obligations of third parties, declare dividends, or make certain distributions, and undergo a merger or consolidation or certain other transactions. The Loan and Security Agreement also contains certain financial covenants, including maintaining a quarterly minimum revenue of \$90.0 million, determined in accordance with GAAP on a trailing twelve-month basis, but which is only applicable if the Company has an outstanding balance under the loan facility.

On March 4, 2021, the Loan and Security Agreement dated July 9, 2020 was amended to (i) permit the Company to issue the convertible notes and perform its obligations in connection therewith, and (ii) permit the Capped Call transactions.

On or about May 28, 2021, the Loan and Security Agreement was amended. The amendment removed the quarterly minimum revenue requirement but kept in place the other financial covenants.

As of March 31, 2022, the Company had not drawn on the SVB Revolving Line of Credit and the Company is in compliance with all financial covenants of the SVB Revolving Line of Credit.

***The Paycheck Protection Program (PPP) Loan***

On April 22, 2020, the Company received loan proceeds of \$7.2 million pursuant to the Paycheck Protection Program (the "PPP") under the CARES Act. The loan, which was in the form of a promissory note dated April 21, 2020, between the Company and Silicon Valley Bank as the lender, originally matured on April 21, 2022 and bore interest at a fixed rate of 1.00% per annum, payable monthly commencing September 2021. There was no prepayment penalty. Under the terms of the PPP, all or a portion of the principal may have been forgiven if the loan proceeds were used for qualifying expenses as described in the CARES Act, such as payroll costs, benefits, rent, and utilities.

The PPP loan and related accrued interest were forgiven in June 2021 under the provisions of the CARES Act, and a \$7.2 million gain on forgiveness was recorded as Gain on extinguishment of PPP loan in the condensed consolidated statement of operations.

**Note 14. Segment reporting**

Segment reporting is based on the "management approach," following the method that management organizes the Company's reportable segments for which separate financial information is made available to, and evaluated regularly by, the chief operating decision maker in allocating resources and in assessing performance. The Company's chief operating decision makers ("CODM") are its Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), who make decisions on allocating resources and in assessing performance. The CEO and CFO review the Company's consolidated results as one operating segment. In making operating decisions, the CODM primarily considers consolidated financial information, accompanied by disaggregated information about revenues by geography and product. All of the Company's principal operations and decision-making functions are located in the U.S. The Company's CODM view its operations, manages its business, and uses one measurement of profitability for the one operating segment - which sells aesthetic medical equipment and services, and distributes skincare products, to qualified medical practitioners. Substantially all of the Company's long-lived assets are located in the U.S.

The following table presents a summary of revenue by geography and product category for the three months March 31, 2022 and 2021 (in thousands):

	Three Months Ended	
	March 31,	
	2022	2021
<b>Revenue mix by geography:</b>		
United States	\$ 24,474	\$ 18,948
Japan	17,503	16,555
Asia, excluding Japan	3,609	1,989
Europe	4,191	5,001
Rest of the World, other than United States, Asia and Europe	8,237	7,175
Total consolidated revenue	<u>\$ 58,014</u>	<u>\$ 49,668</u>
<b>Revenue mix by product category:</b>		
Products	\$ 36,514	\$ 28,320
Consumables	3,903	2,925
Skincare	11,649	12,306
Total product revenue	<u>52,066</u>	<u>43,551</u>
Service	5,948	6,117
Total consolidated revenue	<u>\$ 58,014</u>	<u>\$ 49,668</u>

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*This Management's Discussion and Analysis should be read in conjunction with the Company's financial condition and results of operations in conjunction with the Company's unaudited condensed consolidated financial statements and notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and the Company's audited financial statements and notes thereto for the year ended December 31, 2021, included in its annual report on Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") on March 1, 2022.*

*Unless otherwise indicated, all results presented are prepared in a manner that complies, in all material respects, with accounting principles generally accepted in the United States of America ("GAAP"). Additionally, unless otherwise indicated, all changes identified for the current-period results represent comparisons to results for the prior corresponding fiscal period.*

### Special note regarding forward-looking statements

This report contains forward-looking statements that involve risks and uncertainties. The Company's actual results could differ materially from those discussed in the forward-looking statements. The statements contained in this report that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, ("the Exchange Act"). Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipate," "believe," "can," "continue," "could," "estimate," "expect," "intend," "may," "plan," "project," "seek," "should," "strategy," "target," "will," "would" and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of the Company's management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the section titled "Risk Factors" included under Part II, Item 1A below.

Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, the Company undertakes no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

### Introduction

The Management's Discussion and Analysis, or MD&A, is organized as follows:

- **Executive Summary.** This section provides a general description and history of the Company's business, a brief discussion of its product lines and the opportunities, trends, challenges and risks the Company focuses on in the operation of its business.
- **Critical Accounting Policies and Estimates.** This section describes the key accounting policies that are affected by critical accounting estimates.
- **Results of Operations.** This section provides the Company's analysis and outlook for the significant line items on its condensed consolidated statements of operations.
- **Liquidity and Capital Resources.** This section provides an analysis of the Company's liquidity and cash flows, as well as a discussion of its Commitments that existed as of March 31, 2022.

### Executive Summary

#### Company Description

The Company is a leading provider of aesthetic and dermatology solutions for practitioners worldwide. In addition to internal development of products, the Company distributes third party sourced products under the Company's own brand names. The Company offers easy-to-use products which enable medical practitioners to perform safe and effective procedures, including treatment for body contouring, skin resurfacing and revitalization, tattoo removal, removal of benign pigmented lesions, vascular conditions, hair removal, and toenail fungus. The Company's platforms are designed to be easily upgraded to add additional applications and hand pieces, which provide flexibility for the Company's customers as they expand their practices. In addition to systems and upgrade revenue, the Company generates revenue from the sale of post warranty service contracts, providing services for products that are out of warranty, hand piece refills and other per procedure related revenue on select systems and distribution of third-party manufactured skincare products. The Company also expands its revenues from sales of third-party skincare products by utilizing its network and relationships with physicians and practitioners.

The Company's ongoing research and development activities primarily focus on developing new products, as well as improving and enhancing the Company's portfolio of existing products. The Company also explores ways to expand the Company's product offerings through alternative arrangements with other companies, such as distribution arrangements. The Company introduced *Secret RF*, a fractional RF microneedling device for skin revitalization, in January 2018, *enlighten SR* in April 2018, *truSculpt iD* in July 2018, *excel V+* in February 2019, *truSculpt flex* in June 2019, *Secret PRO* in July 2020, *excel V+III* during the fourth quarter of 2020, and *AviClear* in April 2022.

The Company's corporate headquarters and U.S. operations are located in Brisbane, California, where the Company conducts manufacturing, warehousing, research and development, regulatory, sales and marketing, service, and administrative activities. The Company markets and services the Company's products through direct sales and service employees in North America (including Canada), Australia, Austria, Belgium, France, Germany, Hong Kong, Japan, Netherlands, Spain, Switzerland and the United Kingdom. Sales and Services outside of these direct markets are made through a worldwide distributor network in over 42 countries.

### **Products and Services**

The Company derives revenue from the sale of Products and Services. Product revenue includes revenue from the sale of systems, hand pieces and upgrade of systems (collectively "Systems" revenue), replacement hand pieces, *truSculpt iD* cycle refills, and *truSculpt flex* cycle refills, as well as single use disposable tips applicable to *Secret RF* ("Consumables" revenue), and the sale of third party manufactured skincare products ("Skincare" revenue). A system consists of a console that incorporates a universal graphic user interface, a laser and or other energy-based module, control system software and high voltage electronics, as well as one or more hand pieces. However, depending on the application, the laser or other energy-based module is sometimes contained in the hand piece.

The Company offers customers the ability to select the system that best fits their practice at the time of purchase and then to cost-effectively add applications to their system as their practice grows. This provides customers the flexibility to upgrade their systems whenever they choose and provides the Company with a source of additional Systems revenue. The Company's primary system platforms include *excel*, *enlighten*, *Secret RF*, *truSculpt* and *xeo*.

In March 2022, the Company received the U.S. Food and Drug Administration's ("FDA") 510(k) clearance of the *AviClear* acne treatment device.

*AviClear* is a laser treatment that offers a safe, prescription-free solution for acne. In addition to reducing existing acne, clinical trials show that future breakout episodes are shorter, less intense, and more infrequent following the *AviClear* procedure. Further, acne clearance results continue to improve over time, demonstrating the long-term efficacy of this novel treatment. Importantly, no pain mitigation was utilized or required by any clinical study participant.

Acne vulgaris is a nearly universal skin disease, with approximately 50 million North American teens and young adults seeking treatment each year. Overproduction of sebum by the sebaceous glands is one of the leading causes of acne. *AviClear* tackles acne at the source by selectively targeting the sebocytes and suppressing sebum production. This product is a 1726 nm laser device designed to treat inflammatory acne vulgaris. *AviClear* delivers optimal therapeutic energy in conjunction with the *AviCool* feature to ensure safety and scalability of the procedure across all skin types and acne severities. *AviClear* is currently available in a limited commercial capacity in the U.S. and will be rolled out to physicians in the United States throughout 2022. The *AviClear* device incorporates a revenue share model, resulting in recurring revenue.

Skincare revenue relates to the distribution of ZO's skincare products in Japan. The skincare products are purchased from a third-party manufacturer and sold to medical offices and licensed physicians. The Company acts as the principal in this arrangement, as the Company determines the price to charge customers for the skincare products and controls the products before they are transferred to the customer.

Service revenue includes prepaid service contracts, customer marketing support and labor on out-of-warranty products.

### **Significant Business Trends**

The Company believes that its ability to grow revenue will be primarily dependent on the following:

- the successful commercialization of *AviClear*
- continuing to expand the Company's product offerings, both through internal development and sourcing from other vendors;
- ongoing investment in the Company's global sales and marketing infrastructure;

- use of clinical results to support new aesthetic products and applications;
- enhanced physician development and reference selling efforts (to develop a location where Company's products can be displayed and used to assist in selling efforts);
- customer demand for the Company's products;
- consumer demand for the application of the Company's products;
- marketing to those practitioners focused on aesthetic and dermatological conditions; and
- generating recurring revenue from the Company's growing installed base of customers through the sale of system upgrades, services, hand piece refills, *truSculpt* cycles, skincare products and replacement tips for the *Secret RF* product.

For a detailed discussion of the significant business trends impacting its business, please see the section titled "Results of Operations" below.

#### ***Factors that May Impact Future Performance***

The Company's industry is impacted by numerous competitive, regulatory and other significant factors. The Company's industry is highly competitive and the Company's future performance depends on the Company's ability to compete successfully. Additionally, the Company's future performance is dependent upon the ability to continue to expand the Company's product offerings with innovative technologies, obtain regulatory clearances for the Company's products, protect the proprietary technology of the products and manufacturing processes, manufacture the products cost-effectively, and successfully market and distribute the products in a profitable manner. If the Company fails to execute on the aforementioned initiatives, the Company's business would be adversely affected.

The Company supports any reasonable action that helps ensure patient safety going forward. The Company has a robust, multi-functional process that reviews its promotional claims and materials to ensure they are truthful, not misleading, fair and balanced, and supported by sound scientific evidence.

A detailed discussion of these and other factors that could impact the Company's future performance are provided in (1) the Company's Annual Report on Form 10-K for the year ended December 31, 2021- Part I, Item 1A "Risk Factors," and (2) other announcements the Company makes from time to time.

#### ***Impact of COVID-19 on Company's business and operations***

The COVID-19 outbreak and related variants have negatively affected the United States and global economies. The spread of the coronavirus has impacted the global economy broadly in 2021 and 2020, including restrictions on travel, shifting work forces to work remotely and quarantine policies put into place by businesses and governments, had a material economic effect on the Company's business during the year ended December 31, 2021. Healthcare facilities in many countries effectively banned elective procedures and this had a significant impact on the Company. Many of the Company's products are used in aesthetic elective procedures and as such, the bans on elective procedures substantially reduced the Company's sales and marketing efforts in the early months of the pandemic and led the Company to implement cost control measures. Although the Company's operation and results of operations have significantly improved as the economic outlook improved in 2021 and into 2022, the COVID-19 outbreak continues to be fluid, and the aftermath of the business and economic disruptions due to the COVID-19 is still uncertain, making it difficult to forecast the final impact it could have on the Company's future operations, including disruptions in the Company's supply chain and contract manufacturing operations. The Company cannot presently predict the scope and severity of any impacts in future periods from business shutdowns or disruptions due to the COVID-19 pandemic, but the impact on economic activity including the possibility of recession or financial market instability could have a material adverse effect on the Company's business, revenue, operating results, cash flows and financial condition.

The Company continues to assess whether any impairment of its goodwill or its long-lived assets has occurred and has determined that no charges were necessary during the three months ended March 31, 2022. The Company will continue to monitor future conditions important to its assessment of potential impairment of its long-lived assets and goodwill, including the impacts of the COVID-19 pandemic and other ongoing impacts which are subject to uncertainty.

In 2021, the Company experienced a significant increase in sales of skincare products under the exclusive distribution agreement with ZO Skin Health, Inc., which allows the Company to sell ZO's skincare products in Japan. The reason for the increase in skincare products sales may have been the result of the COVID-19 pandemic changing customers' spending habits, resulting in customers purchasing aesthetic treatments that were able to be applied at home, due to limitations on in-person aesthetic procedures. Future growth in sales of skincare products depends on customers maintaining spending habits adopted during the COVID-19 pandemic. If customers revert to original spending habits after the COVID-19 pandemic, such changes may have a material adverse effect on the Company's revenue, operating results, and cash flows.

### **Critical accounting policies, significant judgments and use of estimates**

The preparation of the Company's consolidated financial statements and related notes requires the Company to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. The Company has based its estimates on historical experience and on various other assumptions that the Company believes to be reasonable under the circumstances. The Company periodically reviews its estimates and makes adjustments when facts and circumstances dictate. To the extent that there are material differences between these estimates and actual results, its financial condition or results of operations will be affected.

An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact the consolidated financial statements. The Company believes that its critical accounting policies reflect the more significant estimates and assumptions used in the preparation of its audited consolidated financial statements.

The accounting policies and estimates that the Company considers to be critical, subjective, and requiring judgment in their application are summarized in "Item 7-Management's Discussion and Analysis of Financial Condition and Results of Operations" in its Annual Report on Form 10-K for the year ended December 31, 2021 filed with the SEC on March 1, 2022. There have been no new or material changes to the significant accounting policies discussed in the Company's Annual Report on Form 10-K that are of significance, or potential significance, to the Company.

The Company established new accounting policies to account for the convertible notes and related transactions during the first quarter of 2021.

The Company issued \$138.3 million of convertible senior notes in a private placement offering on March 5, 2021. The notes bear interest at a rate of 2.25% per year. In accordance with ASU 2020-06, the Company recorded the Notes in long-term debt with no separation between the notes and the conversion option. Each reporting period, the Company will determine whether any criteria are met for the note holders to have the option to redeem the notes early, which will result in a change in the classification of the notes to current liabilities.

The issuance costs related to the convertible notes are presented in the balance sheet as a direct deduction from the carrying amount of the convertible notes. See Note 13 of the unaudited condensed consolidated financial statements included in Item I, Part 1 of this Quarterly Report on Form 10-Q.

**Results of Operations**

The following table sets forth selected consolidated financial data for the periods indicated, expressed as a percentage of total net revenue. Percentages in this table and throughout its discussion and analysis of financial condition and results of operations may reflect rounding adjustments.

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2022</b>	<b>2021</b>
Net revenue	100 %	100 %
Cost of revenue	45 %	44 %
Gross margin	55 %	56 %
<b>Operating expenses:</b>		
Sales and marketing	43 %	30 %
Research and development	11 %	8 %
General and administrative	23 %	15 %
Total operating expenses	77 %	53 %
Income (loss) from operations	(23)%	2 %
Amortization of debt issuance costs	— %	— %
Interest on convertible notes	(1)%	— %
Other expense, net	(1)%	(2)%
Income (loss) before income taxes	(26)%	0 %
Income tax expense	— %	1 %
Net loss	(26)%	(1)%

**Revenue**

The timing of the Company's revenue is significantly affected by the mix of system products, installation, training, consumables and extended contract services. The revenue generated in any given period is also impacted by whether the revenue is recognized over time or upon completion of delivery. For an additional description on revenue, see Note 1 in the notes to consolidated financial statements on the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and Note 7 to the unaudited condensed consolidated financial statements included in Item I, Part 1 of this Quarterly Report on Form 10-Q.

Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for promised goods or services. The Company's performance obligations are satisfied either over time or at a point in time. Revenue from performance obligations that are transferred to customers over time accounted for approximately 7% and 12% of the Company's total revenue for the three months ended March 31, 2022 and 2021, respectively. Revenue recognized over time relates to revenue from the Company's extended service contracts and marketing services. Revenue recognized upon delivery is primarily generated by the sales of systems, consumables and skincare.

**Total Net Revenue**

(Dollars in thousands)	Three Months Ended March 31,		
	2022	% Change	2021
<b>Revenue mix by geography:</b>			
North America	\$ 28,853	29 %	\$ 22,402
Japan	17,503	6 %	16,555
Rest of World	11,658	9 %	10,711
Consolidated total revenue	\$ 58,014	17 %	\$ 49,668
<i>North America as a percentage of total revenue</i>	50 %		45 %
<i>Japan as a percentage of total revenue</i>	30 %		33 %
<i>Rest of World as a percentage of total revenue</i>	20 %		22 %
<b>Revenue mix by product category:</b>			
Systems - North America	\$ 22,707	35 %	\$ 16,785
Systems - Rest of World (including Japan)	13,807	20 %	11,535
<i>Total Systems</i>	36,514	29 %	28,320
Consumables	3,903	33 %	2,925
Skincare	11,649	(5)%	12,306
<i>Total Products</i>	52,066	20 %	43,551
Service	5,948	(3)%	6,117
<i>Total Net Revenue</i>	\$ 58,014	17 %	\$ 49,668

The Company's total net revenue increased by \$8.3 million or 17% in the three months ended March 31, 2022, compared to the same period in 2021, as a result of recovery in the demand of the Company's products and services as the economic outlook due to the COVID-19 pandemic improved.

**Revenue by Geography**

The Company's North America revenue increased by \$6.5 million or 29%, in the three months ended March 31, 2022, compared to the same period in 2021. The increase was primarily due to a recovery in sales following an improvement in conditions related to the COVID-19 pandemic.

Revenue in Japan increased by \$0.9 million or 6%, in the three months ended March 31, 2022, compared to the same period in 2021, due to an increase in system sales.

The Company's Rest of World revenue increased by \$0.9 million or 9%, in the three months ended March 31, 2022, compared to the same period in 2021. The increase was mostly driven by a recovery in sales following an improvement in conditions related to the COVID-19 pandemic.



**Revenue by Product Type****Systems Revenue**

Systems revenue in North America increased by \$5.9 million or 35%, in the three months ended March 31, 2022, compared to the same period in 2021, mainly due to the recovery from the business disruptions caused by the COVID-19 pandemic.

System revenue in the Rest of the World (including Japan) increased by \$2.3 million or 20%, in the three months ended March 31, 2022, compared to the same period in 2021, primarily due to increased sales in the Company's direct businesses in Australia and Europe, partially offset by decreased sales from distributors in Middle East and Asian regions and a \$0.8 million adverse impact from weakening foreign currencies, namely the Euro, Australian Dollar and Japanese Yen.

**Consumables Revenue**

Consumables revenue increased by \$1.0 million or 33%, in the three months ended March 31, 2022, compared to the same period in 2021. The increase in consumables revenue was primarily due to the increasing installed base of *truSculpt iD*, *Secret RF*, *Secret PRO* and *truSculpt flex*, each of which have a consumable element.

**Skincare Revenue**

The Company's revenue from Skincare products in Japan decreased by \$0.7 million or 5%, in the three months ended March 31, 2022, compared to the same period in 2021. This decrease was due to a \$1.1 million adverse impact from the weakening Japanese Yen. The Company will continue to be exposed to fluctuations in the exchange rate between U.S. Dollars and Japanese Yen, as the Company's skincare revenue is denominated in Japanese Yen.

**Service Revenue**

The Company's Service revenue decreased \$0.2 million or 3%, in the three months ended March 31, 2022, compared to the same period in 2021. This decrease was due primarily to decreased sales of service contracts, and support and maintenance services, as well as the availability of certain parts.

**Gross Profit**

(Dollars in thousands)	Three Months Ended March 31,		
	2022	2021	Change
<b>Gross profit</b>	\$ 31,788	\$ 27,710	\$ 4,078
As a percentage of total net revenue	54.8 %	55.8 %	(1.0)%

The Company's cost of revenue consists primarily of material, personnel expenses, product warranty costs, and manufacturing overhead expenses.

Gross profit as a percentage of revenue for the three months ended March 31, 2022 decreased one percentage point compared to the same period in 2021. The decrease in gross profit as a percentage of revenue was primarily driven by an increase in manufacturing overhead, partially offset by a favorable portfolio mix.

**Sales and Marketing**

(Dollars in thousands)	Three Months Ended March 31,		
	2022	2021	Change
<b>Sales and Marketing</b>	\$ 24,944	\$ 15,068	\$ 9,876
As a percentage of total net revenue	43.0 %	30.3 %	12.7 %

Sales and marketing expenses consist primarily of personnel expenses, expenses associated with customer-attended workshops and trade shows, post-marketing studies, advertising, and training.

Sales and marketing expenses for the three months ended March 31, 2022, increased \$9.9 million compared to the same period in 2021. These increases reflected headcount growth related to preparing for the launch of the AviClear device and an increase

in commission costs due to higher revenue. Also contributing to the increase in sales and marketing expenses were marketing costs related to new business, trade shows and other promotions, and a resumption in travel activities.

#### Research and Development ("R&D")

(Dollars in thousands)	Three Months Ended March 31,		
	2022	2021	Change
<b>Research and development</b>	\$ 6,499	\$ 4,112	\$ 2,387
As a percentage of total net revenue	11.2 %	8.3 %	2.9 %

R&D expenses consist primarily of personnel expenses, clinical research, regulatory and material costs. R&D expenses increased by \$2.4 million, in the three months ended March 31, 2022, compared to the same period in 2021. These increases were due primarily to higher personnel expenses driven by an increase in headcount and increase in outside services.

#### General and Administrative ("G&A")

(Dollars in thousands)	Three Months Ended March 31,		
	2022	2021	Change
<b>General and administrative</b>	\$ 13,502	\$ 7,365	\$ 6,137
As a percentage of total net revenue	23.3 %	14.8 %	8.4 %

G&A expenses consist primarily of personnel expenses, legal, accounting, audit and tax consulting fees, as well as other general and administrative expenses. G&A expenses increased by \$6.1 million, for the three months ended March 31, 2022, compared to the same period in 2021. The increase was due primarily to \$2.4 million higher personnel expenses driven by an increase in headcount and \$4.0 million of enterprise resource planning (ERP) system implementation expense.

#### Interest and Other income (expense), Net

Interest and other income (expense), net, consists of the following:

(Dollars in thousands)	Three Months Ended March 31,		
	2022	2021	Change
<b>Interest and other expense, net</b>	\$ 1,752	\$ 1,266	\$ 486

Interest and other expense, net increased \$0.5 million for the three months ended March 31, 2022, compared to the same period in 2021, due to interest expense related to convertible notes issued in March 2021.

#### Provision for Income Taxes

(Dollars in thousands)	Three Months Ended March 31,		
	2022	2021	Change
<b>Income tax provision</b>	\$ 233	\$ 258	\$ (25)

The Company's income tax expenses were \$0.2 million for the three months ended March 31, 2022, compared to \$0.3 million for the same period in 2021.

#### Liquidity and Capital Resources

The Company's principal source of liquidity in the three months ended March 31, 2022, was cash generated from net proceeds from the issuance of the convertible notes in March 2021. The Company actively manages its cash usage to ensure the maintenance of sufficient funds to meet its daily needs. The majority of the Company's cash, cash equivalents, and investments are held in U.S. banks. The Company's foreign subsidiaries maintain a limited amount of cash in their local banks to cover short-term operating expenses.

As of March 31, 2022 and December 31, 2021, the Company had \$162.7 million and \$175.8 million of working capital, respectively. Cash, cash equivalents, restricted cash and marketable investments decreased by \$32.4 million to \$132.5 million as of March 31, 2022 from \$164.9 million as of December 31, 2021, primarily due to cash used in operating activities.

#### **Cash, Cash Equivalents, Restricted Cash and Marketable Investments**

The following table summarizes its cash, cash equivalents, restricted cash and marketable investments:

<b>(Dollars in thousands)</b>	<b>March 31, 2022</b>	<b>December 31, 2021</b>	<b>Change</b>
Cash and cash equivalents	\$ 57,732	\$ 164,164	\$ (106,432)
Restricted cash	700	700	—
Marketable investments	74,047	—	74,047
Total	<u>\$ 132,479</u>	<u>\$ 164,864</u>	<u>\$ (32,385)</u>

#### **Cash Flows**

<b>(Dollars in thousands)</b>	<b>Three Months Ended March 31,</b>	
	<b>2022</b>	<b>2021</b>
Net cash flow (used in) provided by:		
Operating activities	\$ (29,604)	\$ 1,253
Investing activities	(74,379)	(49)
Financing activities	(2,449)	116,681
Net (decrease) increase in cash and cash equivalents	<u>\$ (106,432)</u>	<u>\$ 117,885</u>

#### **Cash Flows from Operating Activities**

Net cash used in operating activities in the three months ended March 31, 2022, was \$29.6 million, which reflected net income, adjusted for non-cash items, of \$8.6 million, and changes in assets and liabilities of \$21.0 million. The increase in current assets mainly reflects an increase in inventory and deposits with vendors related to the launch of AviClear.

#### **Cash Flows from Investing Activities**

Net cash used in investing activities was \$74.4 million in the three months ended March 31, 2022, which was attributable to the purchase of marketable investments.

#### **Cash Flows from Financing Activities**

Net cash used in financing activities was \$2.4 million in the three months ended March 31, 2022, which was primarily due to taxes paid related to net share settlement of equity awards.

#### **Adequacy of Cash Resources to Meet Future Needs**

The Company had cash and cash equivalents of \$57.7 million and marketable investments of \$74.0 million as of March 31, 2022. In the first quarter of 2022, the Company's principal source of liquidity was cash generated from proceeds received from the issuance of the Company's notes in March 2021. The Company intends to use the net proceeds of the issuance to fund growth initiatives and market development activities and to provide for general corporate purposes, which may include working capital, capital expenditures, clinical trials, other corporate expenses and acquisitions of complementary products, technologies, or businesses.

The Company believes that the existing cash and cash equivalents and the cash available under the revolving credit facility will be sufficient to meet the Company's anticipated cash needs for at least the next 12 months from the date the financial statements are issued, but there can be no assurances.

#### **Debt**

In March 2021, the Company issued \$138.3 million aggregate principal amount of convertible notes due on March 15, 2026 in a private placement offering. The convertible notes bear interest at a rate of 2.25% per year payable semiannually in arrears on March 15 and September 15 of each year. The convertible notes are presented as long-term debt, net of debt discount. Proceeds

from the offering were \$133.6 million, net of issuance costs, including underwriters' fees, which were recorded in the condensed consolidated balance sheet.

On July 9, 2020, the Company terminated its undrawn revolving line of credit with Wells Fargo and subsequently entered into a Loan and Security Agreement with Silicon Valley Bank. The agreement provides for a four-year secured revolving loan facility ("SVB Revolving Line of Credit") in an aggregate principal amount of up to \$30.0 million. See Note 13 – Debt in the accompanying notes to consolidated financial statements for more information.

The Loan and Security Agreement with Silicon Valley Bank contains customary affirmative covenants, such as financial statement reporting requirements and delivery of borrowing base certificates, as well as customary covenants that restrict the Company's ability to, among other things, incur additional indebtedness, sell certain assets, guarantee obligations of third parties, declare dividends, or make certain distributions, and undergo a merger or consolidation or certain other transactions. The Loan and Security Agreement also contains certain financial condition covenants.

On March 4, 2021, the Loan and Security Agreement was amended to (i) permit the Company to issue the convertible notes, and (ii) to permit the capped call transactions.

On or about May 28, 2021, the Loan and Security Agreement was amended. The amendment removed the quarterly minimum revenue requirement but kept in place the other financial covenants.

As of March 31, 2022, the Company had not drawn on the SVB Revolving Line of Credit and the Company is in compliance with all financial covenants of the SVB Revolving Line of Credit.

***Commitments and Contingencies***

As of the date of this report, there were no material changes to the Company's contractual obligations and commitments outside the ordinary course of business since March 1, 2022, as reported in the Company's Annual Report on 2021 Form 10-K.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

A summary of the key market risks facing the Company is disclosed below. For a detailed discussion, please see the Company's Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 1, 2022 and other announcements the Company makes from time to time.

***The conditional conversion feature of the convertible notes, if triggered, may adversely affect the Company's financial condition and operating results.***

During any fiscal quarter commencing after the fiscal quarter ending on September 30, 2021 (and only during such fiscal quarter), if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on and including, the last trading day of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price for the convertible notes on each applicable trading day. This condition was not met during the first quarter of 2022. As of March 31, 2022, the Notes are not convertible and this condition will remain until June 30, 2022. The notes may become convertible in future periods. Upon any conversion requests of the convertible notes, the Company would be required to pay or deliver, as the case may be, cash, shares of its common stock, or a combination of cash and shares of its common stock, at the Company's election with respect to such conversion requests.

***Interest Rate and Market Risk***

As of March 31, 2022, the Company had not drawn on the Original Revolving Line of Credit, as amended. Overall interest rate sensitivity is primarily influenced by any amount borrowed on the line of credit and the prevailing interest rate on the line of credit facility. The effective interest rate on the line of credit facility is based on a floating per annum rate equal to the Prime rate. The Prime rate was 3.50% as of March 31, 2022, and accordingly the Company may incur additional expenses if the Company has an outstanding balance on the line of credit and the Prime rate increases in future periods.

***Inflation***

The Company experienced inflationary pressure on its business, but the impact was mitigated through ongoing cost improvement initiatives. If the Company's costs were to become subject to significant inflationary pressures, the Company may not be able to fully offset such higher costs through price increases. The Company's inability or failure to do so could harm the Company's business, financial condition, and results of operations.

***Foreign Exchange Fluctuations***

The Company generates revenue in Japanese Yen, Euros, Australian Dollars, Canadian Dollars, British Pounds, and Swiss Francs. Additionally, a portion of the Company's operating expenses, and assets and liabilities are denominated in each of these currencies. Therefore, fluctuations in these currencies against the U.S. dollar could materially and adversely affect the Company's results of operations upon translation of the Company's revenue denominated in these currencies, as well as the re-measurement of the Company's international subsidiaries' financial statements into U.S. dollars. The Company has historically not engaged in hedging activities relating to the Company's foreign currency denominated transactions.

### ITEM 4. CONTROLS AND PROCEDURES

***Evaluation of Disclosure Controls and Procedures***

The Company maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure.

Management identified a material weakness in the year ended December 31, 2021, over the Company's internal control over financial reporting. This material weakness is related to ineffective information technology general controls ("ITGCs") in the areas of user access and segregation of duties related to certain information technology ("IT") systems that support the Company's financial reporting process at its Japan subsidiary. Although this material weakness did not result in any material misstatement of the Company's consolidated financial statements for the periods presented, it could lead to a material misstatement of account balances or disclosures. Accordingly, management concluded that this deficiency constitutes a material weakness.

As required by SEC Rule 13a-15(b), the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's principal executive officer and principal financial officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. The Company's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO") concluded that the Company's disclosure controls and procedures were not effective as of March 31, 2022, at the reasonable assurance level, as a result of the material weakness in internal controls, which was disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2021. Notwithstanding this material weakness, the Company's management, including the CEO and CFO, has concluded that the consolidated financial statements, included in the 2021 Annual Report on Form 10-K, and in the Form 10-Q for the three months ended March 31, 2022, fairly present, in all material respects, the Company's financial condition, results of operations and cash-flows for the periods presented in conformity with generally accepted accounting principles.

#### ***Remediation Plans***

The Company has begun the process of designing and implementing effective internal control measures to remediate this material weakness. The Company's efforts include reviewing user access to IT systems that support financial reporting and implementing additional controls designed to detect potential material misstatements that may arise as a result of user access and segregation of duties conflicts at the Company's Japan subsidiary. The actions the Company is taking are subject to ongoing executive management review and are also subject to audit committee oversight. The Company will not be able to fully remediate this material weakness until these steps have been completed and have been operating effectively for a sufficient period of time. If the Company is unable to successfully remediate this material weakness, or if in the future, the Company identifies further material weaknesses in its internal control over financial reporting, the Company may not detect errors on a timely basis, and its condensed financial statements may be materially misstated.

#### ***Changes in Internal Control over Financial Reporting***

In January 2022, the Company completed the implementation of a new ERP system. Accordingly, the Company modified the design and operation of certain internal control processes and procedures relating to this new ERP system. Other than these ERP system implementation changes, there were no changes in the Company's internal control over financial reporting during the quarter ended March 31, 2022 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

#### ***Limitations on the Effectiveness of Controls***

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected. Accordingly, the Company's disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of the Company's disclosure control system are met.

## **PART II. OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

From time to time, the Company may be involved in legal and administrative proceedings and claims of various types. For a description of the Company's material pending legal and regulatory proceedings and settlements, see Note 11 to the Company's consolidated financial statements entitled "Commitments and Contingencies," in the Annual Report on Form 10-K for the year ended December 31, 2021, filed with the SEC on March 1, 2022.

### **ITEM 1A. RISK FACTORS**

There are no material changes from the Risk Factors previously disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021, filed with the SEC on March 1, 2022.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

The Company issued \$138.3 million aggregate principal amount of convertible notes in a private placement offering on March 5, 2021. The notes bear interest at a rate of 2.25% per year. In connection with issuance of the notes, the Company entered into capped call transactions with certain option counterparties. The capped call transactions are generally expected to reduce the potential dilution of the Company's common stock upon any conversion of the Notes. The capped calls were purchased for \$16.1 million.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

None.

**ITEM 5. OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
3.2	<a href="#">Amended and Restated Certificate of Incorporation of the Registrant (filed as Exhibit 3.5 to its Quarterly Report on Form 10-Q filed on November 7, 2017 and incorporated herein by reference).</a>
3.4	<a href="#">Bylaws of the Registrant (filed as Exhibit 3.4 to its Current Report on Form 8-K filed on January 8, 2015 and incorporated herein by reference).</a>
4.1	<a href="#">Specimen Common Stock certificate of the Registrant (filed as Exhibit 4.1 to its Annual Report on Form 10-K filed on March 25, 2005 and incorporated herein by reference).</a>
4.2*	<a href="#">Employment Offer Letter dated July 19, 2017 by and between Cutera, Inc. and Michael Karavitis</a>
4.3*	<a href="#">Change of Control and Severance Agreement dated February 1, 2018 by and between Cutera, Inc. and Michael Karavitis</a>
4.4*	<a href="#">Employment Offer Letter dated September 23, 2019 by and between Cutera, Inc. and Guy Thier</a>
4.5*	<a href="#">Change of Control and Severance Agreement dated October 7, 2019 by and between Cutera, Inc. and Guy Thier</a>
31.1	<a href="#">Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1	<a href="#">Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.ins	Instance Document
101.sch	Inline XBRL Taxonomy Extension Schema Document
101.cal	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.def	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.lab	Inline XBRL Taxonomy Extension Label Linkbase Document
101.pre	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

\* Management contract or compensatory plan



**SIGNATURE**

Pursuant to the requirements of Section 13 or 15(d) 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, in the city of Brisbane, State of California, on the 10th day of May, 2022.

**CUTERA, INC.**

*/s/ Rohan Seth*

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**Rohan Seth**

**Chief Financial Officer**

**(Principal Financial and Accounting Officer)**



WORLD HEADQUARTERS  
3340 Dayshore Boulevard, Brisbane, CA 94005 USA  
Phone: 415-637-5300 | Fax: 415-330-2914 | [www.cutera.com](http://www.cutera.com)

**Confidential**

**Via email**

July 19, 2017

Michael Karavitis  
1851 Pescadores Avenue  
San Pedro, CA 90732  
[michael@femtokings.com](mailto:michael@femtokings.com)

Dear Michael:

It is with great pleasure that we extend this offer letter to you to join Cutera, Inc. We believe that your skills and knowledge will prove helpful in growing our Company.

**Salary and position:** Your position will be **EVP, Chief Technology Officer** and your start date will be no later than **September 1, 2017**, reporting to James Reinstein, CEO. Your base salary will be **\$300,000.00** per year, prorated to your date of hire.

You are eligible to participate in the Company's Management Bonus Plan, your target is 35% of base salary, pro-rated to your date of hire. You will also be eligible to participate in our discretionary profit sharing plan. *(The existence and amount paid, if any, under this discretionary plan will at all times remain subject to Cutera's sole discretion. Any payment ever made under this discretionary plan does not guarantee any further payment.)*

This offer and your employment are contingent upon completion of a satisfactory background check. In addition, to comply with federal law, the Company needs proof of your eligibility to work in the United States by providing original documents as noted on the back of the "Employment Eligibility Verification" form. Please bring these documents on your start date.

**Equity Grant:** Subject to board approval, the Company will grant you the following equity awards:

**Stock options:** Option to purchase **20,000 shares** of its common stock at the fair market value at the time of the grant. These options would vest over a four-year period.

**RSUs:** **5,000 RSUs** of its restricted stock units which will vest over a four year period, commencing from your hire-on date, consistent with the Company's normal vesting program.

**Benefits:** The Company provides competitive benefits including medical, dental, vision, EAP, flexible spending, 401(k) retirement savings, ESPP and life insurance.

**Paid Time Off (PTO):** The Company offers a flexible plan for personal time, whether it is for vacation or sick leave. New full-time employees are entitled to 15 days of PTO per year (PTO hours are accrued per pay period). The PTO accrual amount increases by one day for every year of service up to 19 days of PTO per year. Details of the plan are fully defined in the Company's Employee Handbook.

**Change of Control and Severance Agreement (the "Severance Agreement"):**

Attached as an exhibit to this offer letter is a Severance Agreement that sets forth the detailed benefits that you will be entitled to receive in the event of a termination of your employment under certain circumstances. The following is a summary of the key severance benefits.

If you are terminated without cause, or resign for "good reason," *in connection with a Change of Control ("COC")* and the termination occurs within the period beginning three (3) months before, and ending twelve (12) months after the date of the COC, then you will receive a lump-sum payment of:

- Fifty percent (50%) of your annual base salary;
- Fifty percent (50%) of your annual target bonus; and
- Vesting acceleration of 100% of your unvested equity awards granted through the date of termination.

Please note that all severance and COC benefits are subject to you signing and delivering a release of claims with Cutera that becomes effective within 60 days of your termination.

**At Will Employment:** You understand and acknowledge that your employment with the Company is for an unspecified duration and constitutes "at-will" employment. This means that the Company or you may terminate this employment relationship at any time, with or without cause and with or without notice. The at-will nature of this employment relationship cannot be modified except expressly in a signed writing by the Company's president.

**Proprietary Information Agreement:** As a condition of your employment, you must sign the Company's standard Employee Proprietary Information Agreement. This offer letter, and the Employee Proprietary Information Agreement, constitute the entire agreement between the Company and you relating to your employment with the Company, and supersede all prior and contemporaneous discussions and understandings.

**New Hire Benefits Package:** A new hire benefits package will be sent to you separately through our Employee Human Resource System, BambooHR. Please complete the forms included on the "New Hire Checklist" by your first day.

**New Hire Orientation:** Your new hire orientation will occur at **9:30 am PST** on your start date in our headquarter office located in Brisbane, California. Please complete the forms enclosed in your new hire package online prior to your scheduled orientation. In addition, please bring applicable original documents as listed on the "Employment Eligibility Verification" form.


This offer will remain open until **5:00 p.m. PST on July 21, 2017**. We believe that your enthusiasm and past experience will be an asset to our Company and that you will have a positive impact on the organization. Please acknowledge your acceptance of this offer by signing below and emailing this letter to me: [jreinstein@cutera.com](mailto:jreinstein@cutera.com) by the stated deadline. We are looking forward to you joining the Cutera team!

Sincerely,



James Reinstein  
President & CEO

Offer Accepted:

  
Michael Karavitis

07/19/17  
Date



CUTERA, INC.  
CHANGE OF CONTROL AND SEVERANCE AGREEMENT

This Change of Control and Severance Agreement (the "Agreement") is made and entered into by and between Michael Karavitis ("Employee") and Cutera, Inc., a Delaware corporation (the "Company"), effective as of February 1, 2018 (the "Effective Date").

RECITALS

1. The Company may from time to time consider the possibility of an acquisition by another company or other change of control, or may terminate Employee's employment without cause or may cause Employee to resign his or her employment as a result of actions taken by the Company that materially and negatively change Employee's employment relationship with the Company. The Compensation Committee of the Board of Directors of the Company (the "Committee") recognizes that the risk of such events occurring can be a distraction to Employee and can cause Employee to consider alternative employment opportunities. The Committee has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Employee, notwithstanding the possibility that such events may occur.

2. The Committee believes that it is in the best interests of the Company and its stockholders to provide Employee with an incentive to continue his or her employment.

3. The Committee believes that it is imperative to provide Employee with certain severance benefits in certain instances upon Employee's termination of employment. These benefits will provide Employee with enhanced financial security and incentive and encouragement to remain with the Company notwithstanding the possibility that certain events may occur that lead to the termination of Employee's employment.

4. Certain capitalized terms used in the Agreement are defined in Section 5 below.

5. This Agreement supersedes and replaces, in its entirety, any prior agreement between the Company and Employee relating to the subject matter that is contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Term of Agreement. This Agreement will have an initial term of three (3) years commencing on the Effective Date (the "Initial Term"). On the third anniversary of the Effective Date, this Agreement will renew automatically for additional one (1) year terms (each, an "Additional Term") unless either party provides the other party with written notice of non-renewal at least sixty (60) days prior to the date of automatic renewal. Notwithstanding the foregoing sentence, if a Change of Control occurs at any time during either the Initial Term or an Additional Term, the term of this Agreement will extend automatically through the date that is twelve (12) months following the effective date of the Change of Control. If Employee becomes entitled to benefits under Section 3 during the term of this Agreement, the Agreement will not terminate until all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and Employee acknowledge that Employee's employment is and will continue to be at-will, as defined under applicable law. If Employee's employment terminates for any reason, including (without limitation) any termination prior to or following a Change of Control as provided herein, Employee will not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement or as provided in any employment agreement entered into between the Company and Employee, and the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses.



### 3. Severance Benefits.

(a) Termination without Cause or Resignation for Good Reason in Connection with a Change of Control. If the Company terminates Employee's employment with the Company without Cause or if Employee resigns from such employment for Good Reason, and such termination occurs within the period beginning three (3) months before, and ending twelve (12) months following, a Change of Control, and Employee signs and does not revoke a release of claims with the Company (in substantially the same form as set forth in Exhibit A) and provided that such release of claims becomes effective no later than sixty (60) days following the termination date (such deadline, the "Release Deadline"), then subject to this Section 3, Employee will receive the following:

(i) Severance Payment. Employee will receive a lump-sum payment equal to the sum of (A) fifty percent (50%) of Employee's annual base salary as in effect immediately prior to Employee's termination date or, if greater, at the level in effect immediately prior to the Change of Control, and (B) fifty percent (50%) of Employee's annual target bonus for the fiscal year of Employee's termination or, if greater, Employee's annual target bonus in effect immediately prior to the Change of Control.

(ii) Vesting Acceleration of Equity Awards. The forfeiture restrictions on all shares of time-based vesting restricted stock as to which such restrictions remain in place lapse immediately, and all unvested stock options vest immediately. If Employee is terminated for Cause or due to death or Disability or resigns without Good Reason then the unvested equity awards that are outstanding as of the date of termination shall terminate immediately pursuant to their terms. In all other cases, Employee's unvested equity awards will remain outstanding and unvested for an additional three (3) months following termination (but in no event beyond each such equity award's original maximum term to expiration, if applicable) to determine whether a Change of Control occurs during such period. If a Change of Control does not occur during the three (3) month period following Employee's termination then the unvested equity awards shall terminate at the end of such period. If Employee has been terminated without Cause or for Good Reason and a Change of Control occurs during the three (3) month period following termination, the equity awards that are outstanding as of the date of termination (and are still within their maximum term to expiration) shall accelerate and become fully vested.

(iii) Accrued Compensation. The Company will pay Employee all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to Employee under any Company-provided plans, policies, and arrangements.

(iv) COBRA. Provided that Employee and/or his eligible dependents timely elects to continue their healthcare coverage under the Company's group health plan pursuant to the Consolidated Omnibus Reconciliation Act ("COBRA"), the Company agrees to reimburse Employee for the costs incurred to obtain such continued coverage for himself and his eligible dependents for a period of six (6) months measured from the termination date. In order to obtain reimbursement for such healthcare coverage costs, Employee agrees to submit appropriate evidence to the Company of each periodic payment within thirty (30) days after the payment date, and the Company agrees to, within thirty (30) days after submission of appropriate evidence, reimburse Employee for that payment. During the period such healthcare coverage remains in effect hereunder, the following provisions govern the arrangement: (a) the amount of coverage costs eligible for reimbursement in any one calendar year of such coverage will not affect the amount of coverage costs eligible for reimbursement in any other calendar year for which such reimbursement is to be provided hereunder; (ii) no coverage costs will be reimbursed after the close of the calendar year following the calendar year in which those coverage costs were incurred; and (iii) Employee's right to the reimbursement of such coverage costs cannot be liquidated or exchanged for any other benefit. To the extent the reimbursed coverage costs constitute taxable income to Employee, the Company will report the reimbursement as taxable W-2 wages and collect the applicable withholding taxes, and any remaining tax liability will be Employee's sole responsibility, provided

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that the reimbursed coverage costs will not be considered as taxable income to Employee if such treatment is permissible under applicable law.

(b) Timing of Payments.

(i) If the release of claims does not become effective by the Release Deadline, Employee will forfeit any rights to severance or benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the release of claims becomes effective and irrevocable.

(ii) Unless otherwise required by Section 3(f), the Company will pay any severance payments set forth in Section 3(a)(i) in a lump-sum payment payable within thirty (30) days following Employee's termination date; provided, however, that no severance or other benefits, other than the accrued compensation set forth in Section 3(a)(i), will be paid or provided until the release of claims discussed in Section 3(a) becomes effective and irrevocable, and such severance amounts or benefits otherwise payable between Employee's termination date and the date such release becomes effective and irrevocable will be paid on the date the release becomes effective and irrevocable. If Employee should die before all of the severance amounts have been paid, such unpaid amounts will be paid in a lump-sum payment promptly following such event to Employee's designated beneficiary, if living, or otherwise to the personal representative of Employee's estate.

(c) Voluntary Resignation; Termination for Cause; Termination Not in Connection with a Change of Control. If Employee's employment with the Company terminates (i) voluntarily by Employee (other than for Good Reason), (ii) for Cause by the Company, or (iii) for any reason outside of the period beginning three (3) months before, and ending twelve (12) months following, a Change of Control, then Employee will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company's then existing severance and benefits plans and practices or pursuant to other written agreements with the Company.

(d) Disability; Death. If the Company terminates Employee's employment as a result of Employee's Disability, or Employee's employment terminates due to his or her death, then Employee will not be entitled to receive any other severance or other benefits except for those (if any) as may then be established under the Company's then existing written severance and benefits plans and practices or pursuant to other written agreements with the Company.

(e) Exclusive Remedy. In the event of a termination of Employee's employment as set forth in Section 3(a) of this Agreement, the provisions of this Section 3 are intended to be and are exclusive and in lieu of any other rights or remedies to which Employee or the Company otherwise may be entitled, whether at law, tort or contract, in equity, or under this Agreement (other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses). Employee will be entitled to no benefits, compensation or other payments or rights upon a termination of employment prior to or following a Change of Control other than those benefits expressly set forth in Section 3 of this Agreement.

(f) Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Employee, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits are considered deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the final regulations and any guidance promulgated thereunder ("Section 409A") (together, the "Deferred Compensation Separation Benefits") will be paid or otherwise provided until Employee has a "separation from service" within the meaning of Section 409A. Similarly, no severance payable to Employee, if any, pursuant to this Agreement that otherwise would be exempt from



Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Employee has a "separation from service" within the meaning of Section 409A.

(ii) Any severance payments or benefits under this Agreement that would be considered Deferred Compensation Severance Benefits will be paid on, or, in the case of installments, will not commence until, the sixtieth (60<sup>th</sup>) day following Employee's separation from service, or, if later, such time as required by Section 3(f)(iii). Except as required by Section 3(f)(iii), any installment payments that would have been made to Employee during the sixty (60) day period immediately following Employee's separation from service but for the preceding sentence will be paid to Employee on the sixtieth (60<sup>th</sup>) day following Employee's separation from service and the remaining payments shall be made as provided in this Agreement.

(iii) Notwithstanding anything to the contrary in this Agreement, if Employee is a "specified employee" within the meaning of Section 409A at the time of Employee's termination (other than due to death), then the Deferred Compensation Separation Benefits that are payable within the first six (6) months following Employee's separation from service, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Employee's separation from service. All subsequent Deferred Compensation Separation Benefits, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Employee dies following Employee's separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Employee's death and all other Deferred Compensation Separation Benefits will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(iv) Any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute Deferred Compensation Separation Benefits for purposes of clause (i) above. It is the intent of this Agreement that all cash severance payments under Section 3(a)(i) will satisfy the requirements of the "short-term deferral" rule.

(v) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Compensation Separation Benefits for purposes of clause (i) above.

(vi) The foregoing provisions are intended to be exempt from or comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be exempt or so comply. The Company and Employee agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A.

(g) Other Requirements. Employee's receipt of any payments or benefits under this Section 3 will be subject to Employee continuing to comply with the terms of any confidential information agreement executed by Employee in favor of the Company and the provisions of this Agreement.

4. Limitation on Payments. In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute "parachute payments" within the meaning of Section 280G of the Code, and (ii) but for this Section 4, would be subject to the excise tax imposed by Section 4999 of the Code, then Employee's benefits under Section 3 will be either:

- (a) delivered in full, or
- (b) delivered as to such lesser extent which would result in no portion of such benefits being subject to the excise tax under Section 4999 of the Code,

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Employee on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting "parachute payments" is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: reduction of cash payments; cancellation of awards granted "contingent on a change in ownership or control" (within the meaning of Code Section 280G), cancellation of accelerated vesting of equity awards; and reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Employee's equity awards. In no event shall Employee have any discretion with respect to the ordering of payment reductions.

Unless the Company and Employee otherwise agree in writing, any determination required under this Section 4 will be made in writing by the Company's independent public accountants immediately prior to a Change of Control or such other person or entity to which the parties mutually agree (the "Accountants"), whose determination will be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 4, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Employee will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 4.

5. Definition of Terms. The following terms referred to in this Agreement will have the following meanings:

(a) Cause. "Cause" will mean Employee's termination only upon:

(i) Employee's willful failure to substantially perform Employee's duties (subject to notice and a reasonable period to cure), other than a failure resulting from Employee's complete or partial incapacity due to physical or mental illness or impairment.

(ii) Employee's willful act which constitutes gross misconduct and which is injurious to the Company;

(iii) Employee's willful breach of a material provision of this Agreement (subject to notice and reasonable period to cure); or

(iv) Employee's knowing, material and willful violation of a federal or state law or regulation applicable to the business of the Company.

(b) Change of Control. "Change of Control" will mean the occurrence of any of the following events:

(i) Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Company's Board of Directors (the "Board") will not be considered a Change of Control; or



(ii) Change in Effective Control of the Company. A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or

(iii) Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing provisions of this definition, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

(c) Disability. "Disability" will mean that Employee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. Termination resulting from Disability may only be effected after at least thirty (30) days' written notice by the Company of its intention to terminate Employee's employment. In the event that Employee resumes the performance of substantially all of his or her duties hereunder before the termination of his or her employment becomes effective, the notice of intent to terminate will automatically be deemed to have been revoked.

(d) Good Reason. "Good Reason" will mean Employee's termination of employment within ninety (90) days following the expiration of any cure period (discussed below) following the occurrence of one or more of the following, without Employee's consent:

(i) A material reduction in Employee's authority, duties, or responsibilities relative to duties, position or responsibilities in effect immediately prior to such reduction;

(ii) A material reduction in Employee's base salary as in effect immediately prior to such reduction; or

(iii) A material change in the geographic location at which Employee must perform services (in other words, the relocation of Employee to a facility that is more than fifty (50) miles from Employee's then-current location).

Employee will not resign for Good Reason without first providing the Company with written notice within ninety (90) days of the event that Employee believes constitutes "Good Reason" specifically identifying the acts or omissions constituting the grounds for Good Reason and a reasonable cure period of not less than thirty (30) days following the date of such notice and such grounds for "Good Reason" have not been cured during such cure period.

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(e) Section 409A Limit. "Section 409A Limit" will mean the lesser of two (2) times: (i) Employee's annualized compensation based upon the annual rate of pay paid to Employee during the Employee's taxable year preceding the Employee's taxable year of Employee's separation from service as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(1) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Employee's separation from service occurred.

#### 6. Successors.

(a) The Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" will include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this Section 6(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. The terms of this Agreement and all rights of Employee hereunder will inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

#### 7. Arbitration.

(a) The Company and Employee each agree that any and all disputes arising out of the terms of this Agreement, Employee's employment by the Company, Employee's service as an officer or director of the Company, or Employee's compensation and benefits, their interpretation and any of the matters herein released, will be subject to binding arbitration under the arbitration rules set forth in California Code of Civil Procedure Sections 1280 through 1294.2, including Section 1281.8 (the "Act"), and pursuant to California law. Disputes that the Company and Employee agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. The Company and Employee further understand that this agreement to arbitrate also applies to any disputes that the Company may have with Employee.

(b) Procedure. The Company and Employee agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS"), pursuant to its Employment Arbitration Rules & Procedures (the "JAMS Rules"). The Arbitrator will have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. The Arbitrator will have the power to award any remedies available under applicable law, and the Arbitrator will award attorneys' fees and costs to the prevailing party, except as prohibited by law. The Company will pay for any administrative or hearing fees charged by the Arbitrator or JAMS except that Employee will pay any filing fees associated with any arbitration that Employee initiates, but only so much of the filing fees as Employee would have instead paid had he or she filed a complaint in a court of law. The Arbitrator will administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure, and the Arbitrator will apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS Rules conflict with California law, California law will take precedence. The decision of the Arbitrator will be in writing. Any arbitration under this Agreement will be conducted in San Mateo County, California.



(c) Remedy. Except as provided by the Act and this Agreement, arbitration will be the sole, exclusive, and final remedy for any dispute between Employee and the Company. Accordingly, except as provided for by the Act and this Agreement, neither Employee nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative Relief. Employee understands that this Agreement does not prohibit him or her from pursuing any administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers' Compensation Board. This Agreement does, however, preclude Employee from pursuing court action regarding any such claim, except as permitted by law.

(e) Voluntary Nature of Agreement. Each of the Company and Employee acknowledges and agrees that such party is executing this Agreement voluntarily and without any duress or undue influence by anyone. Employee further acknowledges and agrees that he or she has carefully read this Agreement and has asked any questions needed for him or her to understand the terms, consequences, and binding effect of this Agreement and fully understand it, including that *Employee is waiving his or her right to a jury trial*. Finally, Employee agrees that he or she has been provided an opportunity to seek the advice of an attorney of his or her choice before signing this Agreement.

#### 8. Notice.

(a) General. Notices and all other communications contemplated by this Agreement will be in writing and will be deemed to have been duly given when personally delivered when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or when delivered by a private courier service such as UPS, DHL or Federal Express that has tracking capability. In the case of Employee, mailed notices will be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the attention of its President.

(b) Notice of Termination. Any termination by the Company for Cause or by Employee for Good Reason will be communicated by a notice of termination to the other party hereto given in accordance with Section 8(a) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than ninety (90) days after the giving of such notice). The failure by Employee to include in the notice any fact or circumstance which contributes to a showing of Good Reason will not waive any right of Employee hereunder or preclude Employee from asserting such fact or circumstance in enforcing his or her rights hereunder.

#### 9. Miscellaneous Provisions.

(a) No Duty to Mitigate. Employee will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any such payment be reduced by any earnings that Employee may receive from any other source.

(b) Waiver. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

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(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by duly authorized representatives of the parties hereto and which specifically mention this Agreement.

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions). Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) will be commenced or maintained in any state or federal court located in the jurisdiction where Employee resides, and Employee and the Company hereby submit to the jurisdiction and venue of any such court.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision hereof, which will remain in full force and effect.

(g) Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable income, employment and other taxes.

(h) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year set forth below.

COMPANY:

Cutera, Inc.

By: 

Name: James A. Reinstein

Title: President & Chief Executive Officer

EMPLOYEE:

By: 

Name: Michael Karavitis



EXHIBIT A

RELEASE

1. Release of All Claims. In consideration for the benefits to which Employee is entitled pursuant to that certain **CHANGE OF CONTROL AND SEVERANCE AGREEMENT** dated \_\_\_\_\_, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee, for Employee and Employee's heirs, assigns, and all persons and entities claiming by, through, or under Employee, hereby irrevocably, unconditionally, and completely releases, discharges, and agrees to hold harmless the Company and its Affiliates (hereinafter referred to, both individually and collectively, as "Releasees") of and from any and all claims, liabilities, charges, demands, grievances, lawsuits, and causes of action of any kind or nature whatsoever, including without limitation claims for contribution, subrogation, or indemnification, whether direct or indirect, liquidated or unliquidated, known or unknown, which Employee has, had, or may claim to have against Releasees (hereinafter collectively referred to as "Claim(s)").
  
  2. The release, discharge, and agreement to hold harmless set forth in this Section 1 includes, without limitation, any Claim(s) that Employee had, has, or may claim to have against Releasees:
    - a. for wrongful or constructive discharge or termination, negligent or intentional infliction of emotional distress, breach of express or implied contract, breach of the covenant of good faith and fair dealing, violation of public policy, defamation, promissory estoppel, detrimental reliance, retaliation, tortious interference with contract or prospective economic advantage, invasion of privacy, whistleblower protection, hostile work environment, personal injury (whether physical or mental), or any other Claim(s), whether arising in tort or in contract;
    - b. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under federal, state, or local law, including without limitation Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Pay Act, all claims under Titles 29 and 42 of the United States Code, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, or any other federal, state, or local law prohibiting discrimination, harassment, or retaliation on the basis of race, color, national origin, religion, age, sex, sexual orientation, gender identity, disability, veteran status, or any other protected group status;
    - c. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act arising on or before the date of this Agreement; and/or
    - d. arising under the Employee Retirement Income Security Act ("ERISA");
    - e. arising under the Family and Medical Leave Act ("FMLA");
    - f. arising under any state or local employment and antidiscrimination law;
    - g. arising under the Dodd-Frank Wall-Street Reform and Consumer Protection Act or other whistleblower protection to the full extent allowed by law;
    - h. for unpaid wages, bonuses, commissions, or other compensation of any type or kind to the full extent allowed by law;
    - i. for attorney's fees and/or costs;
    - j. for any other Claim(s) in any way related to or arising out of Employee's employment with the Company or the termination of that employment;
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- k. Arising under the California Fair Employment and Housing Act; and/or
    - l. Arising under the federal Worker Adjustment and Retraining Notification Act (29 U.S. Code Chapter 23)(“WARN Act”) and California Labor Code §§ 1400 et seq. (“Cal-WARN Act”), which may entitle employee to 60 days advance notice prior to termination.
  3. Employee hereby waives the provisions of section 1542 of the California Civil Code, which states: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”
  4. Nothing in this Agreement waives Employee’s rights, if any, to (i) continue Employee’s participation in the Company’s employee health benefit plan, as allowed by COBRA and the terms, conditions, and limitations of the plan, (ii) any vested rights that Employee may have under any employee pension or welfare benefit plan in which Employee participated as an employee of the Company, and/or (iii) any claims Employee has or may claim to have for worker’s compensation or unemployment benefits, and/or (iv) any claims that are non-waivable by law.
  5. Exclusion for Certain Claims. Notwithstanding the foregoing, the Company and Employee agree that the releases set forth in Sections 1 and 2 above do not apply to any claims arising after the Employee’s termination date, nor does anything herein prevent Employee or the Company from instituting any action to enforce the terms of this Agreement. The Parties agree and acknowledge that the release and waiver set forth in Sections 1 and 2 above do not prevent Employee from filing a charge of discrimination with or from participating or otherwise cooperating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other comparable federal, state, or local agency relating to any claim or allegation of unlawful discrimination, harassment or retaliation. Notwithstanding the foregoing, Employee agrees that, to the full extent allowed by law, Employee is not entitled to and hereby waives any right to recover compensation, damages, or any other form of relief of any type or kind and/or reinstatement to employment that may be awarded or ordered by any court or administrative agency to or for Employee’s benefit arising from or relating to any Claim(s) released by Employee under this Agreement. Employee further specifically acknowledges and agrees that Employee is waiving, on behalf of Employee and Employee’s attorneys, all claims for fees and expenses and court costs.
  6. Full and Complete Release. Employee understands and agrees that Employee is releasing and waiving any Claim(s) that Employee does not know exists or may exist in Employee’s favor at the time Employee signs this Agreement which, if known by Employee, would materially affect Employee’s decision to sign this Agreement. Nonetheless, for the purpose of implementing a full and complete release of all Claim(s), Employee expressly acknowledges that the release set forth in Sections 15 and 16 is intended to include, without limitation, all Claim(s) that Employee does not know or suspect to exist in Employee’s favor and that the release set forth in Sections 15 and 16 includes the release and extinguishment of any such Claim(s). In addition, Employee agrees that Employee will not seek re-employment with the Company at any time in the future and that the provisions of this Section 20 are adequate and legal grounds to (a) reject Employee’s application for re-employment or (b) terminate Employee’s employment should Employee be rehired by the Company in violation of this Section 20.
  7. Employee agrees and covenants not to sue or prosecute any claim that might now or ever be asserted arising out of, or pertaining to, his employment with the Company and any of its predecessors or affiliates.
  8. Should any provision of this Agreement be held to be invalid or wholly or partially unenforceable by a final, non-appealable judgment in a court of competent jurisdiction, such holding shall not invalidate or void the remainder of this Agreement, and those portions held to be invalid or unenforceable shall be revised and reduced in scope so as to be valid and enforceable or, if such is not possible, then such
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portions shall be deemed to have been wholly excluded with the same force and effect as if it had never been included herein.

9. Employee and his representatives, attorneys, and agents will not make any public or private statement with respect to the Company (including, as to Employee, any statement with respect to the directors, officers, employees, representatives, attorneys, and agents of the Company) that is derogatory, disparaging or may tend to injure the Company or such person in its or their business, public or private affairs. The foregoing obligations do not apply to information required to be disclosed or requested by any governmental agency, court or stock exchange, or any law, rule or regulation. Any public disclosure related to this Agreement as required by any law, rule or regulation will be negotiated by the Parties in advance, except that the Company has the final, sole discretion as to the content of any such announcement.
10. This Agreement is governed by and construed and enforced, in all respects, in accordance with the laws of the State of California without regard to conflict of law principles unless preempted by federal law, in which case federal law governs.
11. Review and Revocation. Employee acknowledges and agrees that he has 45 days from the date he receives this Agreement to consider the terms of and to sign this Agreement. Employee may, at Employee's sole and absolute discretion, sign this Agreement prior to the expiration of the above review period. In addition, information is available to Employee as required by the Older Workers Benefit Protection Act.
12. Employee may revoke this Agreement for a period of up to 7 days after Employee signs it (not counting the day it was signed) and the Agreement shall not become effective or enforceable until the 7-day revocation period has expired. To revoke this Agreement, Employee must give written notice stating that Employee wishes to revoke the Agreement to the Company's Vice President, Global HR. Any notice stating that Employee wishes to revoke this Agreement must be emailed (with a reply confirmation from the Company's Vice President, Global HR), hand-delivered, or mailed (with confirmation of delivery) to the Company, as set forth in this paragraph, in sufficient time to be received by the Company on or before the expiration of the 7-day revocation period.

AGREED AND ACCEPTED, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_



**Confidential**

September 23, 2019

Via email  
[guy@guythier.com](mailto:guy@guythier.com)

Guy Thier

Dear Guy:

It is with great pleasure that we extend this offer letter to join Cutera, Inc. It is our belief that you will be a great addition to our Company.

**Salary and position:** Your position will be **Chief Information Officer** and your start date will be **Monday, October 7, 2019**, reporting to **Dave Mowry, CEO**. Your base salary will be **\$315,000** per year, prorated to your date of hire. You will be paid on the 15<sup>th</sup> and the last day of the month (24 pay cycles).

You are eligible to participate in the Company's Management Bonus Program, your target is **40%** of base salary, pro-rated to your date of hire.

This offer and your employment are contingent upon completion of a satisfactory background check. In addition, to comply with federal law, the Company needs proof of your eligibility to work in the United States by providing original documents as noted on the back of the "Employment Eligibility Verification" form. Please bring these documents on your start date.

**Benefits:** The Company provides competitive benefits including medical, dental, vision, EAP, flexible spending, 401(k) retirement savings, ESPP and life insurance.

**Equity:** Subject to board approval, the Company will grant you 8,417 RSUs (Restricted Stock Units) that will vest over a four-year period, commencing from your date of hire, consistent with the Company's normal vesting program (25% per year for 4 years).

**Relocation:** The Company will provide a relocation bonus of \$100,000 during the first payroll period following your date of hire. You agree that you will relocate to the SF Bay Area no later than January 1, 2020. This bonus will be forgiven over a 24 month period in increments of \$4,166.66 per month. If you should not relocate by January 1, 2020, or if you should leave the company prior to this 24 month period, you are responsible for reimbursing the bonus money that has not yet been forgiven by Cutera.

**Change of Control and Severance Agreement (the "Severance Agreement"):** Attached as an exhibit to this offer letter is a Severance Agreement that sets forth the detailed benefits that you will be entitled to receive in the event of a termination of your



employment under certain circumstances. The following is a summary of the key severance benefits:

If you are terminated without cause, or resign for "good reason" in connection with a Change of Control ("CoC"), and the termination occurs within the period beginning three (3) months before, and ending twelve (12) months after the date of the CoC, then you will receive a lump-sum payment of:

- Fifty percent (50%) of your annual base salary;
- Fifty percent (50%) of your annual target bonus; and
- Vesting acceleration of 100% of your unvested equity awards granted through the date of termination.

Please note that all severance and COC benefits are subject to you signing and delivering a release of claims with Cutera that becomes effective within 60 days of your termination.

**Paid Time Off (PTO):** The Company offers a flexible plan for personal time, whether it is for vacation or sick leave. New full-time employees are entitled to 15 days of PTO per year (PTO hours are accrued per pay period). The PTO accrual amount increases by one day for every year of service up to 19 days of PTO per year. Details of the plan are fully defined in the Company's Employee Handbook.

**At Will Employment:** You understand and acknowledge that your employment with the Company is for an unspecified duration and constitutes "at-will" employment. This means that the Company or you may terminate this employment relationship at any time, with or without cause and with or without notice. The at-will nature of this employment relationship cannot be modified except expressly in a signed writing by the Company's president.

**Proprietary Information Agreement:** As a condition of your employment, you must sign the Company's standard Employee Proprietary Information Agreement. This offer letter, and the Employee Proprietary Information Agreement, constitute the entire agreement between the Company and you relating to your employment with the Company, and supersede all prior and contemporaneous discussions and understandings.

**New Hire Benefits Package:** A new hire benefits package will be sent to you separately via email through our Human Resource Information System, BambooHR. Please complete the forms included on the "New Hire Checklist" by your first day.

**New Hire Orientation:** Your new hire orientation will occur at **9:30 am PST** on your start date in our headquarters office located in Brisbane, California. Please complete the on-line new hire forms prior to your scheduled orientation. In addition, please bring applicable original documents as listed on the "Employment Eligibility Verification" form.

This offer will remain open until **5:00 p.m. PST on Wednesday, September 25, 2019**. We believe that your enthusiasm and past experience will be an asset to our Company and that you will have a positive impact on the organization.

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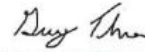
Please acknowledge your acceptance of this offer by signing below and returning this letter to Cindee Van Vleck at [cvanvleck@cutera.com](mailto:cvanvleck@cutera.com) by the stated deadline. We are looking forward to you joining the Cutera team!

Sincerely,

**Offer accepted:**



Cindee Van Vleck  
Vice President  
Global Human Resources



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Guy Their

Attachments:

- Proprietary Information Agreement
- Cutera Benefits Overview
- Management Bonus Program
- Change of Control



**CUTERA, INC.**  
**CHANGE OF CONTROL AND SEVERANCE AGREEMENT**

This Change of Control and Severance Agreement (the "Agreement") is made and entered into by and between Guy Their, ("Employee") and Cutera, Inc., a Delaware corporation (the "Company"), effective as of October 7, 2019 (the "Effective Date").

RECITALS

1. The Company may from time to time consider the possibility of an acquisition by another company or other change of control, or may terminate Employee's employment without cause or may cause Employee to resign his or her employment as a result of actions taken by the Company that materially and negatively change Employee's employment relationship with the Company. The Compensation Committee of the Board of Directors of the Company (the "Committee") recognizes that the risk of such events occurring can be a distraction to Employee and can cause Employee to consider alternative employment opportunities. The Committee has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Employee, notwithstanding the possibility that such events may occur.

2. The Committee believes that it is in the best interests of the Company and its stockholders to provide Employee with an incentive to continue his or her employment.

3. The Committee believes that it is imperative to provide Employee with certain severance benefits in certain instances upon Employee's termination of employment. These benefits will provide Employee with enhanced financial security and incentive and encouragement to remain with the Company notwithstanding the possibility that certain events may occur that lead to the termination of Employee's employment.

4. Certain capitalized terms used in the Agreement are defined in Section 5 below.

5. This Agreement supersedes and replaces, in its entirety, any prior agreement between the Company and Employee relating to the subject matter that is contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Term of Agreement. This Agreement will have an initial term of three (3) years commencing on the Effective Date (the "Initial Term"). On the third anniversary of the Effective Date, this Agreement will renew automatically for additional one (1) year terms (each, an "Additional Term") unless either party provides the other party with written notice of non-renewal at least sixty (60) days prior to the date of automatic renewal. Notwithstanding the foregoing sentence, if a Change of Control occurs at any time during either the Initial Term or an Additional Term, the term of this Agreement will extend automatically through the date that is twelve (12) months following the effective date of the Change of Control. If Employee becomes entitled to benefits under Section 3 during the term of this Agreement, the Agreement will not terminate until all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and Employee acknowledge that Employee's employment is and will continue to be at-will, as defined under applicable law. If Employee's employment terminates for any reason, including (without limitation) any termination prior to or following a Change of Control as provided herein, Employee will not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement or as provided in any employment agreement entered into between the Company and Employee, and the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses.

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### 3. Severance Benefits.

(a) Termination without Cause or Resignation for Good Reason in Connection with a Change of Control. If the Company terminates Employee's employment with the Company without Cause or if Employee resigns from such employment for Good Reason, and such termination occurs within the period beginning three (3) months before, and ending twelve (12) months following, a Change of Control, and Employee signs and does not revoke a release of claims with the Company (in substantially the same form as set forth in Exhibit A) and provided that such release of claims becomes effective no later than sixty (60) days following the termination date (such deadline, the "Release Deadline"), then subject to this Section 3, Employee will receive the following:

(i) Severance Payment. Employee will receive a lump-sum payment equal to the sum of (A) fifty percent (50%) of Employee's annual base salary as in effect immediately prior to Employee's termination date or, if greater, at the level in effect immediately prior to the Change of Control, and (B) fifty percent (50%) of Employee's annual target bonus for the fiscal year of Employee's termination or, if greater, Employee's annual target bonus in effect immediately prior to the Change of Control.

(ii) Vesting Acceleration of Equity Awards. The forfeiture restrictions on all shares of time-based vesting restricted stock as to which such restrictions remain in place lapse immediately, and all unvested stock options vest immediately. If Employee is terminated for Cause or due to death or Disability or resigns without Good Reason then the unvested equity awards that are outstanding as of the date of termination shall terminate immediately pursuant to their terms. In all other cases, Employee's unvested equity awards will remain outstanding and unvested for an additional three (3) months following termination (but in no event beyond each such equity award's original maximum term to expiration, if applicable) to determine whether a Change of Control occurs during such period. If a Change of Control does not occur during the three (3) month period following Employee's termination then the unvested equity awards shall terminate at the end of such period. If Employee has been terminated without Cause or for Good Reason and a Change of Control occurs during the three (3) month period following termination, the equity awards that are outstanding as of the date of termination (and are still within their maximum term to expiration) shall accelerate and become fully vested.

(iii) Accrued Compensation. The Company will pay Employee all accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to Employee under any Company-provided plans, policies, and arrangements.

(iv) COBRA. Provided that Employee and/or his or her eligible dependents timely elects to continue their healthcare coverage under the Company's group health plan pursuant to the Consolidated Omnibus Reconciliation Act ("COBRA"), the Company agrees to reimburse Employee for the costs incurred to obtain such continued coverage for himself and his or her eligible dependents for a period of six (6) months measured from the termination date. In order to obtain reimbursement for such healthcare coverage costs, Employee agrees to submit appropriate evidence to the Company of each periodic payment within thirty (30) days after the payment date, and the Company agrees to, within thirty (30) days after submission of appropriate evidence, reimburse Employee for that payment. During the period such healthcare coverage remains in effect hereunder, the following provisions govern the arrangement: (a) the amount of coverage costs eligible for reimbursement in any one calendar year of such coverage will not affect the amount of coverage costs eligible for reimbursement in any other calendar year for which such reimbursement is to be provided hereunder; (ii) no coverage costs will be reimbursed after the close of the calendar year following the calendar year in which those coverage costs were incurred; and (iii) Employee's right to the reimbursement of such coverage costs cannot be liquidated or exchanged for any other benefit. To the extent the reimbursed coverage costs constitute taxable income to Employee, the Company will report the reimbursement as taxable W-2 wages and collect the applicable withholding taxes, and any remaining tax liability will be Employee's sole responsibility, provided



that the reimbursed coverage costs will not be considered as taxable income to Employee if such treatment is permissible under applicable law.

(b) Timing of Payments.

(i) If the release of claims does not become effective by the Release Deadline, Employee will forfeit any rights to severance or benefits under this Agreement. In no event will severance payments or benefits be paid or provided until the release of claims becomes effective and irrevocable.

(ii) Unless otherwise required by Section 3(f), the Company will pay any severance payments set forth in Section 3(a)(i) in a lump-sum payment payable within thirty (30) days following Employee's termination date; provided, however, that no severance or other benefits, other than the accrued compensation set forth in Section 3(a)(i), will be paid or provided until the release of claims discussed in Section 3(a) becomes effective and irrevocable, and such severance amounts or benefits otherwise payable between Employee's termination date and the date such release becomes effective and irrevocable will be paid on the date the release becomes effective and irrevocable. If Employee should die before all of the severance amounts have been paid, such unpaid amounts will be paid in a lump-sum payment promptly following such event to Employee's designated beneficiary, if living, or otherwise to the personal representative of Employee's estate.

(c) Voluntary Resignation; Termination for Cause; Termination Not in Connection with a Change of Control. If Employee's employment with the Company terminates (i) voluntarily by Employee (other than for Good Reason), (ii) for Cause by the Company, or (iii) for any reason outside of the period beginning three (3) months before, and ending twelve (12) months following, a Change of Control, then Employee will not be entitled to receive severance or other benefits except for those (if any) as may then be established under the Company's then existing severance and benefits plans and practices or pursuant to other written agreements with the Company.

(d) Disability; Death. If the Company terminates Employee's employment as a result of Employee's Disability, or Employee's employment terminates due to his or her death, then Employee will not be entitled to receive any other severance or other benefits except for those (if any) as may then be established under the Company's then existing written severance and benefits plans and practices or pursuant to other written agreements with the Company.

(e) Exclusive Remedy. In the event of a termination of Employee's employment as set forth in Section 3(a) of this Agreement, the provisions of this Section 3 are intended to be and are exclusive and in lieu of any other rights or remedies to which Employee or the Company otherwise may be entitled, whether at law, tort or contract, in equity, or under this Agreement (other than the payment of accrued but unpaid wages, as required by law, and any unreimbursed reimbursable expenses). Employee will be entitled to no benefits, compensation or other payments or rights upon a termination of employment prior to or following a Change of Control other than those benefits expressly set forth in Section 3 of this Agreement.

(f) Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Employee, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits are considered deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and the final regulations and any guidance promulgated thereunder ("Section 409A") (together, the "Deferred Compensation Separation Benefits") will be paid or otherwise provided until Employee has a "separation from service" within the meaning of Section 409A. Similarly, no severance payable to Employee, if any, pursuant to this Agreement that otherwise would be exempt from

Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) will be payable until Employee has a "separation from service" within the meaning of Section 409A.

(ii) Any severance payments or benefits under this Agreement that would be considered Deferred Compensation Severance Benefits will be paid on, or, in the case of installments, will not commence until, the sixtieth (60<sup>th</sup>) day following Employee's separation from service, or, if later, such time as required by Section 3(f)(iii). Except as required by Section 3(f)(iii), any installment payments that would have been made to Employee during the sixty (60) day period immediately following Employee's separation from service but for the preceding sentence will be paid to Employee on the sixtieth (60<sup>th</sup>) day following Employee's separation from service and the remaining payments shall be made as provided in this Agreement.

(iii) Notwithstanding anything to the contrary in this Agreement, if Employee is a "specified employee" within the meaning of Section 409A at the time of Employee's termination (other than due to death), then the Deferred Compensation Separation Benefits that are payable within the first six (6) months following Employee's separation from service, will become payable on the first payroll date that occurs on or after the date six (6) months and one (1) day following the date of Employee's separation from service. All subsequent Deferred Compensation Separation Benefits, if any, will be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Employee dies following Employee's separation from service, but prior to the six (6) month anniversary of the separation from service, then any payments delayed in accordance with this paragraph will be payable in a lump sum as soon as administratively practicable after the date of Employee's death and all other Deferred Compensation Separation Benefits will be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment, installment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations.

(iv) Any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations will not constitute Deferred Compensation Separation Benefits for purposes of clause (i) above. It is the intent of this Agreement that all cash severance payments under Section 3(a)(i) will satisfy the requirements of the "short-term deferral" rule.

(v) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) will not constitute Deferred Compensation Separation Benefits for purposes of clause (i) above.

(vi) The foregoing provisions are intended to be exempt from or comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder will be subject to the additional tax imposed under Section 409A, and any ambiguities or ambiguous terms herein will be interpreted to be exempt or so comply. The Company and Employee agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition prior to actual payment to Employee under Section 409A.

(g) Other Requirements. Employee's receipt of any payments or benefits under this Section 3 will be subject to Employee continuing to comply with the terms of any confidential information agreement executed by Employee in favor of the Company and the provisions of this Agreement.

4. Limitation on Payments. In the event that the severance and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute "parachute payments" within the meaning of Section 280G of the Code, and (ii) but for this Section 4, would be subject to the excise tax imposed by Section 4999 of the Code, then Employee's benefits under Section 3 will be either:

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- (a) delivered in full, or
- (b) delivered as to such lesser extent which would result in no portion of such benefits being subject to the excise tax under Section 4999 of the Code.

whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the excise tax imposed by Section 4999, results in the receipt by Employee on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in severance and other benefits constituting "parachute payments" is necessary so that benefits are delivered to a lesser extent, reduction will occur in the following order: reduction of cash payments; cancellation of awards granted "contingent on a change in ownership or control" (within the meaning of Code Section 280G); cancellation of accelerated vesting of equity awards; and reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Employee's equity awards. In no event shall Employee have any discretion with respect to the ordering of payment reductions.

Unless the Company and Employee otherwise agree in writing, any determination required under this Section 4 will be made in writing by the Company's independent public accountants immediately prior to a Change of Control or such other person or entity to which the parties mutually agree (the "Accountants"), whose determination will be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 4, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and Employee will furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section. The Company will bear all costs the Accountants may reasonably incur in connection with any calculations contemplated by this Section 4.

5. Definition of Terms. The following terms referred to in this Agreement will have the following meanings:

(a) Cause. "Cause" will mean Employee's termination only upon:

(i) Employee's willful failure to substantially perform Employee's duties (subject to notice and a reasonable period to cure), other than a failure resulting from Employee's complete or partial incapacity due to physical or mental illness or impairment.

(ii) Employee's willful act which constitutes gross misconduct and which is injurious to the Company;

(iii) Employee's willful breach of a material provision of this Agreement (subject to notice and reasonable period to cure); or

(iv) Employee's knowing, material and willful violation of a federal or state law or regulation applicable to the business of the Company.

(b) Change of Control. "Change of Control" will mean the occurrence of any of the following events:

(i) Change in Ownership of the Company. A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group ("Person"), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company, except that any change in the ownership of the stock of the Company as a result of a private financing of the Company that is approved by the Company's Board of Directors (the "Board") will not be considered a Change of Control; or

(ii) Change in Effective Control of the Company. A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any twelve (12) month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person will not be considered a Change of Control; or

(iii) Change in Ownership of a Substantial Portion of the Company's Assets. A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the twelve (12) month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing provisions of this definition, a transaction will not be deemed a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

(c) Disability. "Disability" will mean that Employee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months. Termination resulting from Disability may only be effected after at least thirty (30) days' written notice by the Company of its intention to terminate Employee's employment. In the event that Employee resumes the performance of substantially all of his or her duties hereunder before the termination of his or her employment becomes effective, the notice of intent to terminate will automatically be deemed to have been revoked.

(d) Good Reason. "Good Reason" will mean Employee's termination of employment within ninety (90) days following the expiration of any cure period (discussed below) following the occurrence of one or more of the following, without Employee's consent:

(i) A material reduction in Employee's authority, duties, or responsibilities relative to duties, position or responsibilities in effect immediately prior to such reduction;

(ii) A material reduction in Employee's base salary as in effect immediately prior to such reduction; or

(iii) A material change in the geographic location at which Employee must perform services (in other words, the relocation of Employee to a facility that is more than fifty (50) miles from Employee's then-current location).

Employee will not resign for Good Reason without first providing the Company with written notice within ninety (90) days of the event that Employee believes constitutes "Good Reason" specifically identifying the acts or omissions constituting the grounds for Good Reason and a reasonable cure period of not less than thirty (30) days following the date of such notice and such grounds for "Good Reason" have not been cured during such cure period.

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(e) Section 409A Limit. "Section 409A Limit" will mean the lesser of two (2) times: (i) Employee's annualized compensation based upon the annual rate of pay paid to Employee during the Employee's taxable year preceding the Employee's taxable year of Employee's separation from service as determined under, and with such adjustments as are set forth in, Treasury Regulation 1.409A-1(b)(9)(iii)(A)(i) and any Internal Revenue Service guidance issued with respect thereto; or (ii) the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which Employee's separation from service occurred.

#### 6. Successors.

(a) The Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets will assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" will include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this Section 6(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. The terms of this Agreement and all rights of Employee hereunder will inure to the benefit of, and be enforceable by, Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

#### 7. Arbitration.

(a) The Company and Employee each agree that any and all disputes arising out of the terms of this Agreement, Employee's employment by the Company, Employee's service as an officer or director of the Company, or Employee's compensation and benefits, their interpretation and any of the matters herein released, will be subject to binding arbitration under the arbitration rules set forth in California Code of Civil Procedure Sections 1280 through 1294.2, including Section 1281.8 (the "Act"), and pursuant to California law. Disputes that the Company and Employee agree to arbitrate, and thereby agree to waive any right to a trial by jury, include any statutory claims under local, state, or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Sarbanes-Oxley Act, the Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, the Family and Medical Leave Act, the California Family Rights Act, the California Labor Code, claims of harassment, discrimination, and wrongful termination, and any statutory or common law claims. The Company and Employee further understand that this agreement to arbitrate also applies to any disputes that the Company may have with Employee.

(b) Procedure. The Company and Employee agree that any arbitration will be administered by Judicial Arbitration & Mediation Services, Inc. ("JAMS"), pursuant to its Employment Arbitration Rules & Procedures (the "JAMS Rules"). The Arbitrator will have the power to decide any motions brought by any party to the arbitration, including motions for summary judgment and/or adjudication, motions to dismiss and demurrers, and motions for class certification, prior to any arbitration hearing. The Arbitrator will have the power to award any remedies available under applicable law, and the Arbitrator will award attorneys' fees and costs to the prevailing party, except as prohibited by law. The Company will pay for any administrative or hearing fees charged by the Arbitrator or JAMS except that Employee will pay any filing fees associated with any arbitration that Employee initiates, but only so much of the filing fees as Employee would have instead paid had he or she filed a complaint in a court of law. The Arbitrator will administer and conduct any arbitration in accordance with California law, including the California Code of Civil Procedure, and the Arbitrator will apply substantive and procedural California law to any dispute or claim, without reference to rules of conflict of law. To the extent that the JAMS Rules conflict with California law, California law will take precedence. The decision of the Arbitrator will be in writing. Any arbitration under this Agreement will be conducted in San Mateo County, California.



(c) Remedy. Except as provided by the Act and this Agreement, arbitration will be the sole, exclusive, and final remedy for any dispute between Employee and the Company. Accordingly, except as provided for by the Act and this Agreement, neither Employee nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative Relief. Employee understands that this Agreement does not prohibit him or her from pursuing any administrative claim with a local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, including, but not limited to, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the National Labor Relations Board, or the Workers' Compensation Board. This Agreement does, however, preclude Employee from pursuing court action regarding any such claim, except as permitted by law.

(e) Voluntary Nature of Agreement. Each of the Company and Employee acknowledges and agrees that such party is executing this Agreement voluntarily and without any duress or undue influence by anyone. Employee further acknowledges and agrees that he or she has carefully read this Agreement and has asked any questions needed for him or her to understand the terms, consequences, and binding effect of this Agreement and fully understand it, including that *Employee is waiving his or her right to a jury trial*. Finally, Employee agrees that he or she has been provided an opportunity to seek the advice of an attorney of his or her choice before signing this Agreement.

#### 8. Notice.

(a) General. Notices and all other communications contemplated by this Agreement will be in writing and will be deemed to have been duly given when personally delivered when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or when delivered by a private courier service such as UPS, DHL or Federal Express that has tracking capability. In the case of Employee, mailed notices will be addressed to him or her at the home address which he or she most recently communicated to the Company in writing. In the case of the Company, mailed notices will be addressed to its corporate headquarters, and all notices will be directed to the attention of its President.

(b) Notice of Termination. Any termination by the Company for Cause or by Employee for Good Reason will be communicated by a notice of termination to the other party hereto given in accordance with Section 8(a) of this Agreement. Such notice will indicate the specific termination provision in this Agreement relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than ninety (90) days after the giving of such notice). The failure by Employee to include in the notice any fact or circumstance which contributes to a showing of Good Reason will not waive any right of Employee hereunder or preclude Employee from asserting such fact or circumstance in enforcing his or her rights hereunder.

#### 9. Miscellaneous Provisions.

(a) No Duty to Mitigate. Employee will not be required to mitigate the amount of any payment contemplated by this Agreement, nor will any such payment be reduced by any earnings that Employee may receive from any other source.

(b) Waiver. No provision of this Agreement will be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Employee and by an authorized officer of the Company (other than Employee). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

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(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes in their entirety all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by duly authorized representatives of the parties hereto and which specifically mention this Agreement.

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement will be governed by the laws of the State of California (with the exception of its conflict of laws provisions). Any claims or legal actions by one party against the other arising out of the relationship between the parties contemplated herein (whether or not arising under this Agreement) will be commenced or maintained in any state or federal court located in the jurisdiction where Employee resides, and Employee and the Company hereby submit to the jurisdiction and venue of any such court.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement will not affect the validity or enforceability of any other provision hereof, which will remain in full force and effect.

(g) Withholding. All payments made pursuant to this Agreement will be subject to withholding of applicable income, employment and other taxes.

(h) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year set forth below.

COMPANY:

EMPLOYEE:

Cutera, Inc.

By: \_\_\_\_\_

By: *Guy Their* \_\_\_\_\_

Name: Dave Mowry \_\_\_\_\_

Name: Guy Their \_\_\_\_\_

Title: Chief Executive Officer

EXHIBIT A

RELEASE

1. Release of All Claims. In consideration for the benefits to which Employee is entitled pursuant to that certain **CHANGE OF CONTROL AND SEVERANCE AGREEMENT** dated \_\_\_\_\_, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employee, for Employee and Employee's heirs, assigns, and all persons and entities claiming by, through, or under Employee, hereby irrevocably, unconditionally, and completely releases, discharges, and agrees to hold harmless the Company and its Affiliates (hereinafter referred to, both individually and collectively, as "Releasees") of and from any and all claims, liabilities, charges, demands, grievances, lawsuits, and causes of action of any kind or nature whatsoever, including without limitation claims for contribution, subrogation, or indemnification, whether direct or indirect, liquidated or unliquidated, known or unknown, which Employee has, had, or may claim to have against Releasees (hereinafter collectively referred to as "Claim(s)").
  
  2. The release, discharge, and agreement to hold harmless set forth in this Section 1 includes, without limitation, any Claim(s) that Employee had, has, or may claim to have against Releasees:
    - a. for wrongful or constructive discharge or termination, negligent or intentional infliction of emotional distress, breach of express or implied contract, breach of the covenant of good faith and fair dealing, violation of public policy, defamation, promissory estoppel, detrimental reliance, retaliation, tortious interference with contract or prospective economic advantage, invasion of privacy, whistleblower protection, hostile work environment, personal injury (whether physical or mental), or any other Claim(s), whether arising in tort or in contract;
    - b. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under federal, state, or local law, including without limitation Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Pay Act, all claims under Titles 29 and 42 of the United States Code, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, or any other federal, state, or local law prohibiting discrimination, harassment, or retaliation on the basis of race, color, national origin, religion, age, sex, sexual orientation, gender identity, disability, veteran status, or any other protected group status;
    - c. for discrimination, hostile work environment / harassment, retaliation, or otherwise arising under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act arising on or before the date of this Agreement; and/or
    - d. arising under the Employee Retirement Income Security Act ("ERISA");
    - e. arising under the Family and Medical Leave Act ("FMLA");
    - f. arising under any state or local employment and antidiscrimination law;
    - g. arising under the Dodd-Frank Wall-Street Reform and Consumer Protection Act or other whistleblower protection to the full extent allowed by law;
    - h. for unpaid wages, bonuses, commissions, or other compensation of any type or kind to the full extent allowed by law;
    - i. for attorney's fees and/or costs;
    - j. for any other Claim(s) in any way related to or arising out of Employee's employment with the Company or the termination of that employment;
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- k. Arising under the California Fair Employment and Housing Act; and/or
  - l. Arising under the federal Worker Adjustment and Retraining Notification Act (29 U.S. Code Chapter 23)(“WARN Act”) and California Labor Code §§ 1400 et seq. (“Cal-WARN Act”), which may entitle employee to 60 days advance notice prior to termination.
- 3. Employee hereby waives the provisions of section 1542 of the California Civil Code, which states: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”
- 4. Nothing in this Agreement waives Employee’s rights, if any, to (i) continue Employee’s participation in the Company’s employee health benefit plan, as allowed by COBRA and the terms, conditions, and limitations of the plan, (ii) any vested rights that Employee may have under any employee pension or welfare benefit plan in which Employee participated as an employee of the Company, and/or (iii) any claims Employee has or may claim to have for worker’s compensation or unemployment benefits, and/or (iv) any claims that are non-waivable by law.
- 5. Exclusion for Certain Claims. Notwithstanding the foregoing, the Company and Employee agree that the releases set forth in Sections 1 and 2 above do not apply to any claims arising after the Employee’s termination date, nor does anything herein prevent Employee or the Company from instituting any action to enforce the terms of this Agreement. The Parties agree and acknowledge that the release and waiver set forth in Sections 1 and 2 above do not prevent Employee from filing a charge of discrimination with or from participating or otherwise cooperating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other comparable federal, state, or local agency relating to any claim or allegation of unlawful discrimination, harassment or retaliation. Notwithstanding the foregoing, Employee agrees that, to the full extent allowed by law, Employee is not entitled to and hereby waives any right to recover compensation, damages, or any other form of relief of any type or kind and/or reinstatement to employment that may be awarded or ordered by any court or administrative agency to or for Employee’s benefit arising from or relating to any Claim(s) released by Employee under this Agreement. Employee further specifically acknowledges and agrees that Employee is waiving, on behalf of Employee and Employee’s attorneys, all claims for fees and expenses and court costs.
- 6. Full and Complete Release. Employee understands and agrees that Employee is releasing and waiving any Claim(s) that Employee does not know exists or may exist in Employee’s favor at the time Employee signs this Agreement which, if known by Employee, would materially affect Employee’s decision to sign this Agreement. Nonetheless, for the purpose of implementing a full and complete release of all Claim(s), Employee expressly acknowledges that the release set forth in Sections 15 and 16 is intended to include, without limitation, all Claim(s) that Employee does not know or suspect to exist in Employee’s favor and that the release set forth in Sections 15 and 16 includes the release and extinguishment of any such Claim(s). In addition, Employee agrees that Employee will not seek re-employment with the Company at any time in the future and that the provisions of this Section 20 are adequate and legal grounds to (a) reject Employee’s application for re-employment or (b) terminate Employee’s employment should Employee be rehired by the Company in violation of this Section 20.
- 7. Employee agrees and covenants not to sue or prosecute any claim that might now or ever be asserted arising out of, or pertaining to, his or her employment with the Company and any of its predecessors or affiliates.
- 8. Should any provision of this Agreement be held to be invalid or wholly or partially unenforceable by a final, non-appealable judgment in a court of competent jurisdiction, such holding shall not invalidate or void the remainder of this Agreement, and those portions held to be invalid or unenforceable shall be revised and reduced in scope so as to be valid and enforceable or, if such is not possible, then such

portions shall be deemed to have been wholly excluded with the same force and effect as if it had never been included herein.

9. Employee and his or her representatives, attorneys, and agents will not make any public or private statement with respect to the Company (including, as to Employee, any statement with respect to the directors, officers, employees, representatives, attorneys, and agents of the Company) that is derogatory, disparaging or may tend to injure the Company or such person in its or their business, public or private affairs. The foregoing obligations do not apply to information required to be disclosed or requested by any governmental agency, court or stock exchange, or any law, rule or regulation. Any public disclosure related to this Agreement as required by any law, rule or regulation will be negotiated by the Parties in advance, except that the Company has the final, sole discretion as to the content of any such announcement.
10. This Agreement is governed by and construed and enforced, in all respects, in accordance with the laws of the State of California without regard to conflict of law principles unless preempted by federal law, in which case federal law governs.
11. Review and Revocation. Employee acknowledges and agrees that he or she has 45 days from the date he or she receives this Agreement to consider the terms of and to sign this Agreement. Employee may, at Employee's sole and absolute discretion, sign this Agreement prior to the expiration of the above review period. In addition, information is available to Employee as required by the Older Workers Benefit Protection Act.
12. Employee may revoke this Agreement for a period of up to 7 days after Employee signs it (not counting the day it was signed) and the Agreement shall not become effective or enforceable until the 7-day revocation period has expired. To revoke this Agreement, Employee must give written notice stating that Employee wishes to revoke the Agreement to the Company's Vice President, Global HR. Any notice stating that Employee wishes to revoke this Agreement must be emailed (with a reply confirmation from the Company's Vice President, Global HR), hand-delivered, or mailed (with confirmation of delivery) to the Company, as set forth in this paragraph, in sufficient time to be received by the Company on or before the expiration of the 7-day revocation period.

AGREED AND ACCEPTED, on this 24 day of September, 2019.

*Guy Thier*

Printed Name: Guy Thier



**Certification of Chief Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, David H. Mowry, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cutera, Inc.;
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 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 its 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 its 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 its 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 first 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 and I have disclosed, based on its 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 10, 2022

*/s/ David H. Mowry*

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**David H. Mowry  
Chief Executive Officer  
(Principal Executive Officer)**

**Certification of Chief Financial Officer**  
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Rohan Seth, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cutera, Inc.:
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 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 its 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 annual report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under its 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 its 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 first 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
6. The registrant's other certifying officer and I have disclosed, based on its most recent evaluation of internal control over financial reporting, to the registrant's auditor and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (e) 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
  - (f) 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 10, 2022

/s/ Rohan Seth

**Rohan Seth**  
**Chief Financial Officer**  
**(Principal Financial and Accounting Officer)**

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER  
AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, David H. Mowry, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that

- i. the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended March 31, 2022 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2022

*/s/ David H. Mowry*  
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**David H. Mowry**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

I, Rohan Seth, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that

- i. the accompanying Quarterly Report on Form 10-Q of the Company for the quarterly period ended March 31, 2022 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2022

*/s/ Rohan Seth*  
\_\_\_\_\_  
**Rohan Seth**  
**Chief Financial Officer**  
**(Principal Financial and Accounting Officer)**

This certification accompanies this Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended.