UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q/A

(Amendment No. 1)

(Mark One)

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

For the quarterly period ended March 31, 2023

OR

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

For the transition period from _____ to_____.

Commission File Number: 000-50644

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

Delaware	**77-0492262**
(State or other jurisdiction of incorporation or organization)	**(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 5, 2023, was 19,835,472.

EXPLANATORY NOTE

Cutera, Inc., a Delaware corporation ("we", "us", "our", the "Company" or "Cutera"), is filing this Amendment No. 1 to Form 10-Q (this "Amendment" or "Form 10-Q/A") to amend and restate certain items in its Quarterly Report on Form 10-Q for the quarter ended March 31, 2023 originally filed with the Securities and Exchange Commission (the "SEC") on May 10, 2023 (the "Original 10-Q", and, as amended by this Amendment, the "Quarterly Report") to reflect the restatement of the Company's financial statements as of and for the quarter ended March 31, 2023 contained in the Original 10-Q (the "Restatement").

Background of Restatement

As previously reported in the Form 8-K filed on December 21, 2023, the Company performed a physical inventory count at the end of the third quarter of its fiscal year ending December 31, 2023. The physical inventory count identified a shortfall of inventory relative to the Company's system of record, resulting in an error overstating the inventory in the condensed consolidated balance sheets as of March 31, 2023 and June 30, 2023 and corresponding understatement of cost of revenue in the condensed consolidated statements of operations for the periods then ended.

The Company concluded that a restatement was necessary to correct the misstatement in inventory, cost of revenue, and disclosures of basic and diluted earnings (loss) per share for the first and second quarters of the 2023 fiscal year. The Company also determined to correct other misstatements that were identified and deemed immaterial in previous periods, as further detailed in Note 1 – *Restatement of Previously Issued Financial Statements*.

On December 21, 2023, the Board of Directors of Cutera, upon the recommendation of its Audit Committee, and in consultation with management of the Company and the Company's independent registered public accounting firm, BDO USA, P.C. ("BDO"), concluded that certain items of the Company's previously issued unaudited condensed consolidated interim financial statements as of and for the fiscal periods ended March 31, 2023 and June 30, 2023 included in the Company's Quarterly Reports on Form 10-Q for such periods should no longer be relied upon and that the Company needed to restate these previously issued financial statements. Similarly, earnings releases, and investor communications describing the financial statements for the periods described above should no longer be relied upon.

For a more detailed description of the financial impact of the Restatement, see Note 1 – *Restatement of Previously Issued Financial Statements*, to the unaudited condensed consolidated financial statements contained in this Amendment and "Restatement of Previously Issued Financial Statements" under Part I, Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations," contained in this Amendment.

Concurrently with the filing of this Amendment, the Company is filing an amendment to its Quarterly Report on Form 10-Q as of and for the period ended June 30, 2023.

Internal Control Considerations

The Company's management identified material weaknesses in its internal control over financial reporting, which were previously identified in connection with, and disclosed in, the Company's Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on April 7, 2023, as amended on May 1, 2023, and the Company's condensed consolidated financial statements as of and for the three months ended March 31, 2023, and as of and for the three and six months ended June 30, 2023.

In connection with the Company's review and preparation of its financial statements leading to the Restatement, management identified an additional material weakness. Specifically, the Company failed to design, maintain and monitor a risk assessment program at a sufficiently precise level and therefore failed to identify new and evolving risks related to accounting policies, procedures and related controls performed over areas including, but not limited to inventory, revenues and lease income, costs for leased devices, and testing of certain key reports used in controls. Consequently, the Company failed to timely implement new controls to respond to changes in the business and leadership.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented or detected and corrected on a timely basis. Therefore, the Company's management concluded that material weaknesses exist in the Company's internal control over financial reporting and that the Company's disclosure controls and procedures were not effective as of March 31, 2023. For further information regarding the effectiveness of the Company's disclosure controls and procedures, see Part I, Item 4, "Controls and Procedures", included in this Amendment.

Items Amended in the Form 10-Q/A

The following items are amended and restated in their entirety in this Amendment: (i) Part I, Item 1, "Financial Statements"; Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations"; and Item 4, "Controls and Procedures"; and (ii) Part II, Item 6, "Exhibits".

Pursuant to Rule 12b-15 promulgated under the Securities Act of 1934, as amended (the "Exchange Act"), this Amendment also contains new currently dated certifications by the Company's principal executive officer and principal financial officer, as required by Section 302 of the Sarbanes-Oxley Act of 2002.

Except as described above, this Amendment does not amend, update or change any other disclosures in the Original 10-Q. In addition, the information contained in this Amendment does not reflect events occurring after the filing of the Original 10-Q and does not modify or update the disclosures therein. Among other things, forward-looking statements made in the Original 10-Q have not been revised to reflect events, results or developments that occurred or facts that became known to us after the date of the Original 10-Q, other than with respect to the Restatement, and such forward-looking statements should be read in conjunction with the Company's filings with the SEC, including those subsequent to the filing of the Original 10-Q. Unless otherwise stated or unless the context otherwise requires, defined terms used throughout this Amendment have the meanings ascribed to them in the Original 10-Q.

CUTERA, INC.

FORM 10-Q

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In this Amendment, “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, “CUTERA®,” “AVI360®,” “AVICARE®," “AVICLEAR®," “AVICOOL®, "ACUTIP 500®," “COOLGLIDE®,” “CUCF®,” “CUTERA UNIVERSITY CLINICAL FORUM®,” “ENLIGHTEN®,” “EXCEL HR®,” “EXCEL V®,” “EXCEL V+™,” “GENESIS®,” “LASER GENESIS®,” “LIMELIGHT®,” "MYQ®," “PEARL®,” “PICO GENESIS®,” “PROWAVE 770®,” “SOLERA®,” “TITAN®,” “TRUBODY®,” “TRUFLEX™,” “TRUSCULPT®,” “TRUSCULPT ID®,” “TRUSCULPT FLEX®,” “VANTAGE®,” 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 Amendment 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, 2023	December 31, 2022
	(As Restated)	
Assets		
Current assets:		
Cash and cash equivalents	$ 166,828	$ 145,924
Marketable investments	100,823	171,390
Accounts receivable, net of allowance for credit losses of $2,722 and $2,497, respectively	51,747	45,562
Inventories, net	69,791	63,628
Other current assets and prepaid expenses	26,156	24,036
Restricted cash	700	700
Total current assets	416,045	451,240
Property and equipment, net	52,216	40,368
Deferred tax assets	577	590
Goodwill	1,339	1,339
Operating lease right-of-use assets	12,059	12,831
Other long-term assets	14,343	14,620
Total assets	$ 496,579	$ 520,988
Liabilities and Stockholders' deficit		
Current liabilities:		
Accounts payable	$ 35,169	$ 33,736
Accrued liabilities	58,660	57,452
Operating lease liabilities	2,722	2,810
Deferred revenue	12,056	11,841
Total current liabilities	108,607	105,839
Deferred revenue, net of current portion	1,643	1,657
Operating lease liabilities, net of current portion	10,652	11,352
Convertible notes, net of unamortized debt issuance costs of $12,114 and $12,666, respectively	417,011	416,459
Other long-term liabilities	711	862
Total liabilities	538,624	536,169
Commitments and Contingencies (Note 14)		
Stockholders' deficit:		
Common stock, $0.001 par value; authorized: 50,000,000 shares; issued and outstanding: 19,785,107 and 19,668,603 shares at March 31, 2023 and December 31, 2022, respectively	20	20
Additional paid-in capital	126,504	125,406
Accumulated other comprehensive loss	(8)	(94)
Accumulated deficit	(168,561)	(140,513)
Total stockholders' deficit	(42,045)	(15,181)
Total liabilities and stockholders' deficit	$ 496,579	$ 520,988

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,	
	2023	2022
	(As Restated)	
Net revenue:		
Products	$ 49,121	$ 52,066
Service	5,405	5,948
Total net revenue	54,526	58,014
Cost of revenue:		
Products	30,059	22,912
Service	2,835	3,314
Total cost of revenue	32,894	26,226
Gross profit	21,632	31,788
Operating expenses:		
Sales and marketing	29,512	24,944
Research and development	6,468	6,499
General and administrative	12,253	13,502
Total operating expenses	48,233	44,945
Loss from operations	(26,601)	(13,157)
Interest and other expense, net:		
Amortization of debt issuance costs	(552)	(219)
Interest on convertible notes	(2,939)	(778)
Interest income (expense), net	2,479	(144)
Other expense, net	(163)	(611)
Total interest and other expense, net	(1,175)	(1,752)
Loss before income taxes	(27,776)	(14,909)
Income tax expense	272	233
Net loss	$ (28,048)	$ (15,142)
Net loss per share:		
Basic	$ (1.42)	$ (0.84)
Diluted	$ (1.42)	$ (0.84)
Weighted-average number of shares used in per share calculations:		
Basic	19,776	18,080
Diluted	19,776	18,080

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

CUTERA, INC.

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

	Three Months Ended March 31,	
	2023	**2022**
	(As Restated)	
Net loss	$ (28,048)	$ (15,142)
Other comprehensive loss:		
Available-for-sale investments		
Net change in unrealized loss on available-for-sale investments	86	(11)
Other comprehensive loss, net of tax	86	(11)
Comprehensive loss	$ (27,962)	$ (15,153)

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

CUTERA, INC.

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

Three Months Ended March 31, 2023 and 2022

(As Restated)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Deficit
	Shares	Amount				
Balance at December 31, 2022	19,668,603	$ 20	$ 125,406	$ (140,513)	$ (94)	$ (15,181)
Exercise of stock options	5,775	—	109	—	—	109
Issuance of common stock in settlement of restricted and performance stock units, net of shares withheld for employee taxes	110,729	—	(2,397)	—	—	(2,397)
Stock-based compensation expense	—	—	3,386	—	—	3,386
Net change in unrealized loss on available-for-sale investments	—	—	—	—	86	86
Net loss	—	—	—	(28,048)	—	(28,048)
Balance at March 31, 2023	19,785,107	$ 20	$ 126,504	$ (168,561)	$ (8)	$ (42,045)

	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
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 change in unrealized loss on available-for-sale investments	—	—	—	—	(11)	(11)
Net loss	—	—	—	(15,142)	—	(15,142)
Balance at March 31, 2022	18,132,949	$ 18	$ 116,468	$ (73,315)	$ (11)	$ 43,160

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,	
	2023	2022
	(As Restated)	
Cash flows from operating activities:		
Net loss	$ (28,048)	$ (15,142)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation	3,386	4,043
Depreciation and amortization	1,409	427
Amortization of contract acquisition costs	2,178	652
Amortization of debt issuance costs	552	219
Deferred tax assets	13	41
Provision for credit losses	225	192
Loss on sale of property and equipment	—	14
Unrealized gain on foreign exchange forward	(623)	—
Accretion of discount on investment securities and investment income, net	(34)	—
Changes in assets and liabilities:		
Accounts receivable	(6,410)	(1,912)
Inventories	(6,163)	(12,177)
Other current assets and prepaid expenses	(2,053)	(5,611)
Other long-term assets	(2,011)	(385)
Accounts payable	(1,330)	5,755
Accrued liabilities	1,706	(5,989)
Operating leases, net	(16)	30
Deferred revenue	201	239
Net cash used in operating activities	(37,018)	(29,604)
Cash flows from investing activities:		
Acquisition of property and equipment	(10,353)	(321)
Proceeds from maturities of marketable investments	94,154	—
Purchase of marketable investments	(23,467)	(74,058)
Net cash provided by (used in) investing activities	60,334	(74,379)
Cash flows from financing activities:		
Proceeds from exercise of stock options and employee stock purchase plan	109	151
Taxes paid related to net share settlement of equity awards	(2,397)	(2,450)
Payments on finance lease obligations	(124)	(150)
Net cash used in financing activities	(2,412)	(2,449)
Net increase (decrease) in cash, cash equivalents and restricted cash	20,904	(106,432)
Cash, cash equivalents, and restricted cash at beginning of period	146,624	164,864
Cash, cash equivalents, and restricted cash at end of period	$ 167,528	$ 58,432
Supplemental non-cash investing and financing activities:		
Assets acquired under finance lease	$ 33	$ 57
Assets acquired under operating lease	$ 57	$ 320
Acquisition of property and equipment	$ 6,894	$ —
Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 778	$ 1,577
Income tax paid	$ 483	$ 1,100

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

CUTERA, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Restatement of Previously Issued Financial Statements

Background of Restatement

The accompanying unaudited condensed consolidated financial statements have been restated to correct errors related to (1) an accounting error identified as a result of a physical inventory count performed by the Company and (2) other accounting adjustments identified that were deemed immaterial. The details of the errors are further described below:

1. The Company determined that, as a result of an accounting error identified by the physical inventory count, there was a shortfall of inventory relative to the Company's system of record. The effect of this error was an overstatement of $1.2 million of inventory on the condensed consolidated balance sheet as of March 31, 2023. This error resulted in an associated understatement of $1.2 million of cost of revenue on the condensed consolidated statement of operations for the three months ended March 31, 2023.

2. The Company corrected certain other errors that were deemed immaterial to the related interim period and restated the financial statements for the quarter ended March 31, 2023. The details of these corrections are noted in the footnotes to the tables below.

The Company's basic and diluted losses per share for the three months ended March 31, 2023, increased by $0.16 per share. The Company's income tax expense for the three months ended March 31, 2023 did not change as a result of the restatement. The errors did not have an impact on the Company’s net cash or liquidity.

Effect of Restatement

The effects of the accounting error on the Company's condensed consolidated balance sheet as of March 31, 2023 are as follows (in thousands):

	March 31, 2023 (As Reported)	Adjustments		March 31, 2023 (As Restated)
Assets				
Current assets:				
Cash and cash equivalents	$ 166,828	$ —		$ 166,828
Marketable investments	100,823	—		100,823
Accounts receivable, net of allowance	52,138	(391)	*(f), (h)*	51,747
Inventories, net	71,819	(2,028)	*(a), (c), (d)*	69,791
Other current assets and prepaid expenses	26,156	—		26,156
Restricted cash	700	—		700
Total current assets	418,464	(2,419)		416,045
Property and equipment, net	53,016	(800)	*(b), (e)*	52,216
Deferred tax assets	577	—		577
Goodwill	1,339	—		1,339
Operating lease right-of-use assets	12,059	—		12,059
Other long-term assets	14,343	—		14,343
Total assets	$ 499,798	$ (3,219)		$ 496,579
Liabilities and stockholders' deficit				
Current liabilities:				
Accounts payable	$ 35,169	$ —		$ 35,169
Accrued liabilities	58,660	—		58,660
Operating lease liabilities	2,722	—		2,722
Deferred revenue	12,243	(187)	*(g)*	12,056
Total current liabilities	108,794	(187)		108,607
Deferred revenue, net of current portion	1,643	—		1,643
Operating lease liabilities, net of current portion	10,652	—		10,652
Convertible notes, net of unamortized debt issuance costs	417,011	—		417,011
Other long-term liabilities	711	—		711
Total liabilities	538,811	(187)		538,624
Stockholders’ deficit:				
Common stock	20	—		20
Additional paid-in capital	126,504	—		126,504
Accumulated other comprehensive income (loss)	(8)	—		(8)
Accumulated deficit	(165,529)	(3,032)	*(j)*	(168,561)
Total stockholders’ deficit	(39,013)	(3,032)		(42,045)
Total liabilities and stockholders’ deficit	$ 499,798	$ (3,219)		$ 496,579

The effects of the accounting error on the Company's condensed consolidated income statement for the three-month period ended March 31, 2023 are as follows (in thousands, except per share data):

	Three Months Ended March 31, 2023	Adjustments		Three Months Ended March 31, 2023
	(As Reported)			*(As Restated)*
Net revenue:				
Products	$ 49,588	$ (467)	*(f), (g)*	$ 49,121
Service	5,405	—		5,405
Total net revenue	54,993	(467)		54,526
Cost of revenue:				
Products	27,231	2,828	*(a), (b), (c), (d), (e)*	30,059
Service	2,835	—		2,835
Total cost of revenue	30,066	2,828		32,894
Gross profit	24,927	(3,295)		21,632
Operating expenses:				
Sales and marketing	29,512	—		29,512
Research and development	6,468	—		6,468
General and administrative	12,516	(263)	*(h)*	12,253
Total operating expenses	48,496	(263)		48,233
Loss from operations	(23,569)	(3,032)		(26,601)
Interest and other expense, net:				
Amortization of debt issuance costs	(552)	—		(552)
Interest on convertible notes	(2,939)	—		(2,939)
Interest income	2,479	—		2,479
Other expense, net	(163)	—		(163)
Total interest and other expense, net	(1,175)	—		(1,175)
Loss before income taxes	(24,744)	(3,032)		(27,776)
Income tax expense	272	—		272
Net loss	$ (25,016)	$ (3,032)	*(j)*	$ (28,048)
Net loss per share:				
Basic	$ (1.26)	$ (0.16)		$ (1.42)
Diluted	$ (1.26)	$ (0.16)		$ (1.42)
Weighted-average number of shares used in per share calculation:				
Basic	19,776	19,776		19,776
Diluted	19,776	19,776		19,776

The effects of the accounting errors on the Company's condensed consolidated statement of cash flows for the three-month period ended March 31, 2023 are as follows (in thousands):

	Three Months Ended March 31,		
	2023	Adjustments	2023
	(As Reported)		*(As Restated)*
Cash flows from operating activities:			
Net loss	$ (25,016)	$ (3,032) *(j)*	$ (28,048)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock-based compensation	3,386	—	3,386
Depreciation and amortization	1,409	—	1,409
Amortization of contract acquisition costs	2,178	—	2,178
Amortization of debt issuance costs	552	—	552
Deferred tax assets	13	—	13
Provision for credit losses	488	(263) *(h)*	225
Unrealized gain on foreign exchange forward	(623)	—	(623)
Accretion of discount on investment securities and investment income, net	(880)	846 *(i)*	(34)
Changes in assets and liabilities:			
Accounts receivable	(7,064)	654 *(f)*	(6,410)
Inventories	(8,191)	2,028 *(a), (c), (d)*	(6,163)
Other current assets and prepaid expenses	(2,053)	—	(2,053)
Other long-term assets	(2,011)	—	(2,011)
Accounts payable	(1,330)	—	(1,330)
Accrued liabilities	1,706	—	1,706
Operating leases, net	(16)	—	(16)
Deferred revenue	388	(187) *(g)*	201
Net cash used in operating activities	(37,064)	46	(37,018)
Cash flows from investing activities:			
Acquisition of property and equipment	(11,153)	800 *(b), (e)*	(10,353)
Proceeds from maturities of marketable investments	95,000	(846) *(i)*	94,154
Purchase of marketable investments	(23,467)	—	(23,467)
Net cash provided by (used in) investing activities	60,380	(46)	60,334
Cash flows from financing activities:			
Proceeds from exercise of stock options and employee stock purchase plan	109	—	109
Taxes paid related to net share settlement of equity awards	(2,397)	—	(2,397)
Payments on finance lease obligations	(124)	—	(124)
Net cash used in financing activities	(2,412)	—	(2,412)
Net increase (decrease) in cash, cash equivalents and restricted cash	20,904	—	20,904
Cash, cash equivalents, and restricted cash at beginning of period	146,624	—	146,624
Cash, cash equivalents, and restricted cash at end of period	$ 167,528	$ —	$ 167,528
Supplemental non-cash investing and financing activities:			
Assets acquired under finance lease	$ 33	$ —	$ 33
Assets acquired under operating lease	$ 57	$ —	$ 57
Acquisition of property and equipment	$ 6,894	$ —	$ 6,894
Supplemental disclosure of cash flow information:			
Cash paid for interest	$ 778	$ —	$ 778
Income tax paid	$ 483	$ —	$ 483

Footnote to tables:

(a) Correction of the accounting error for the overstatement of inventory identified as a result of the physical inventory count ($1.2 million)
(b) Correction of the accounting error related to AviClear devices identified as a result of the physical inventory count ($1.0 million)
(c) Correction of the overstatement of demonstration and field inventory, net of quarterly amortization ($0.4 million)
(d) Correction of the overstatement of demonstration and field inventory ($0.4 million)
(e) Correction of AviClear capitalized labor cost incorrectly expensed in previous period ($0.2 million)
(f) Correction of AviClear treatment revenue incorrectly recognized in the period ended June 30, 2023 ($0.7 million)
(g) Correction of AviClear sales and lease arrangements incorrectly allocated to deferred revenue in previous period ($0.2 million)
(h) Correction of the overstatement of the provision for credit losses associated with other receivables ($0.3 million)

(i) Correction of the classification error related to the cash interest received on investments in marketable securities purchased at a discount ($0.8 million)
(j) Net change in net loss for the three-month period ended March 31, 2023

The impact of the restatement on the Company's condensed consolidated statement of stockholders' deficit and condensed consolidated statement of comprehensive loss for the three months ended March 31, 2023 is limited to the understatement of net loss, comprehensive loss, accumulated deficit, and total stockholders' deficit of $3.0 million.

The related notes to the condensed consolidated financial statements have also been restated to reflect the error corrections described above.

Note 2. Summary of Significant Accounting Policies

Description of Operations and Principles of Consolidation

Cutera, Inc. ("Cutera" or the "Company") develops, manufactures, distributes, and markets energy-based product platforms for medical practitioners, enabling them to offer treatments to their customers. In addition, the Company distributes third-party manufactured skincare products. The Company currently markets the following system platforms: *AviClear, enlighten, excel, truSculpt, Secret PRO*, *Secret RF,* and *xeo.* These platforms enable medical practitioners to perform procedures including treatment for acne, body contouring, skin resurfacing and revitalization, hair and tattoo removal, removal of benign pigmented lesions, and vascular conditions. Several of the Company's systems offer multiple hand pieces and applications, providing customers the flexibility to upgrade their systems. The sales of systems, system upgrades, and hand pieces (collectively "Systems" revenue); the leasing of *AviClear* devices for acne treatment ("AviClear" revenue); the replacement hand pieces, *Titan, truSculpt* 3*D,truSculpt* and *truFex* cycle refills, as well as single use disposable tips applicable to *Secret PRO,* and *Secret RF* ("Consumables" revenue); and the distribution of third-party manufactured skincare products ("Skincare" revenue); are collectively classified as "Products" revenue. In addition to Products revenue, the Company generates revenue from the sale of post-warranty service contracts, parts, detachable hand piece replacements (except for *Titan, truSculpt 3D, truSculpt* and *truFlex)* and service labor for the repair and maintenance of products that are out of warranty, all of which are collectively classified as "Service" revenue.

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 also maintains regional distribution centers ("RDCs") in select locations across the U.S. These RDCs serve as forward warehousing for systems and service parts in various geographies. The Company markets, sells 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, 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 37 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, 2023 and December 31, 2022, and its condensed consolidated statements of results of operations, comprehensive income (loss), changes in equity (deficit), and cash flows for the three months ended March 31, 2023, and 2022. The December 31, 2022 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 the 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, 2022 filed with the Securities and Exchange Commission (the "SEC") on April 7, 2023, and as amended on May 1, 2023.

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, the Company's ability to obtain and maintain regulatory approvals, government regulations and oversight, patent and other types of litigation, the Company's ability to protect proprietary technology from counterfeit versions of the Company's products, the successful execution of new product launches, strategic relationships and dependence on key individuals.

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. The Company uses the same accounting policies in preparing quarterly and annual financial statements.

Leases

The Company incurs costs to fulfill its lease agreement obligations with its AviClear device lessees. These costs consist of freight, installation, and training. In addition to these mobilization costs, the Company incurs commission costs associated with the placement of the AviClear device. The Company capitalizes commission costs and has made a policy election to capitalize the mobilization costs.

In the three months ended March 31, 2023, the Company capitalized $1.8 million of mobilization costs and $1.0 million of deferred commission costs related to placements of the AviClear device. These costs are recorded in Other long-term assets in the Company's condensed consolidated balance sheets and will be amortized over the expected lease term. The amortization of the mobilization costs and amortization of deferred commission costs are recorded in cost of revenue and sales and marketing, respectively, in the Company's condensed consolidated statement of operation. Total capitalized commissions as of March 31, 2023, and December 31, 2022, were $3.7 million and $3.3 million, respectively, and are included in Other long-term assets in the Company’s consolidated balance sheet.

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 commissions, 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 and management performance bonuses, assumptions used in operating and sales-type lease classifications, the standalone selling price of the Company's products and services, the period of benefit used to capitalize and amortize contract acquisition costs, variable considerations, 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.

Customer Concentration

The Company generates revenue from the distribution of skincare products, which are manufactured by ZO Skin Health, Inc. (“ZO”), and sold in the Japanese market. In the three months ended March 31, 2023, and 2022, revenue from the distribution of skincare products represented 15% and 20% of the Company’s consolidated revenue, respectively.

There are certain economic requirements in the distribution agreement with ZO that were not met for the 2022 fiscal year. The distribution agreement provides that the Company and ZO shall meet during the first quarter of the subsequent fiscal year to develop an improvement plan and/or change the minimum purchase requirements for 2023.

To date, the Company has been unable to reach terms with ZO on an improvement plan and/or minimum purchase requirements for 2023 and therefore ZO has the option to terminate the distribution agreement in its sole discretion during the second quarter of 2023. If ZO terminates the Company’s distribution rights, or requires the Company to amend the terms of its distribution agreement in a manner favorable to ZO, there would be an adverse effect the Company's future revenue, results of operations, cash flows and stock price.

Note 3. Cash, Cash Equivalents and Marketable Investments

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 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):

March 31, 2023	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Market Value
Cash and cash equivalents	N/A	N/A	N/A	$ 166,828
Current restricted cash	N/A	N/A	N/A	700
Cash, cash equivalents, and restricted cash as reported within the Condensed Consolidated Statements of Cash Flows	N/A	N/A	N/A	167,528
Marketable investments - U.S. Treasury	100,831	133	(141)	100,823
Total	$ 100,831	$ 133	$ (141)	$ 268,351

December 31, 2022	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Market Value
Cash and cash equivalents	N/A	N/A	N/A	$ 145,924
Current restricted cash	N/A	N/A	N/A	700
Cash, cash equivalents, and restricted cash as reported within the Condensed Consolidated Statements of Cash Flows	N/A	N/A	N/A	146,624
Marketable investments - U.S. Treasury	171,484	8	(102)	171,390
Total	$ 171,484	$ 8	$ (102)	$ 318,014

At March 31, 2023 and December 31, 2022, net unrealized losses were nil and $0.1 million, 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 restricted cash balance relates to an outstanding letter of credit provided to a supplier.

All the marketable investments will mature less than one year from March 31, 2023.

Note 4. 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, 2023, 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):

March 31, 2023	**Level 1**	**Level 2**
Cash equivalents:		
Money market funds	$ 94,131	$ —
Marketable investments:		
Available-for-sale securities	100,823	—
Derivative assets:		
Foreign exchange forward	—	65
Total	$ 194,954	$ 65

As of December 31, 2022, financial assets and liabilities 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):

December 31, 2022	**Level 1**	**Level 2**
Cash equivalents:		
Money market funds	$ 26,408	$ —
Marketable investments:		
Available-for-sale securities	171,390	—
Derivative liabilities:		
Foreign exchange forward	—	(558)
Total	$ 197,798	$ (558)

See Note 14 - Debt for the carrying amount and estimated fair value of the Company’s 2.25% Convertible Senior Notes due 2026 (the “2026 Notes”), the 2.25% Convertible Senior Notes due 2028 (the “2028 Notes”), and the 4.00% Convertible Senior Notes due 2029 (the “2029 Notes”).

Note 5. Derivative Instruments

The Company uses foreign currency exchange forward contracts to manage the impact of currency exchange fluctuations on earnings and cash flow. The Company does not enter into derivative instruments for speculative purposes. The Company is exposed to potential credit loss in the event of nonperformance by counterparties on its outstanding derivative instruments but the Company does not anticipate nonperformance by any of its counterparties. Should a counterparty default, the Company's maximum loss exposure would be the potential asset balance of the instrument.

The cash flow effect of the derivative instruments settlement is recorded in cash flow from operations.

March 31, 2023	**Classification**	**Foreign Exchange Forward**	
(Dollars in thousands)			
Gross notional amount	N/A	$	5,557
Fair value	Other current assets and prepaid expenses	$	65
Unrealized gain	Other expense, net	$	394

Note 6. Balance Sheet Details (Restated)

Inventories, net (Restated)

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

	March 31, 2023		**December 31, 2022**	
	(As Restated)			
Raw materials	$	42,243	$	36,323
Work in process		1,416		2,117
Finished goods		26,132		25,188
Total	$	69,791	$	63,628

Other current assets and prepaid expenses

Other current assets and a prepaid expenses, consists of the following (in thousands):

	March 31, 2023		**December 31, 2022**	
Deposits with vendors	$	14,118	$	13,917
Foreign tax receivable		9,129		7,147
Prepayments		2,837		2,972
Foreign exchange forward		65		—
Other		7		—
Total	$	26,156	$	24,036

Property and Equipment, net (Restated)

Property and equipment, net, consists of the following (in thousands):

	March 31, 2023		**December 31, 2022**	
	(As Restated)			
Leasehold improvements	$	793	$	793
AviClear devices		29,870		19,904
Office equipment and furniture		1,976		1,936
Machinery and equipment		5,802		5,106
Assets under construction		20,323		17,876
		58,764		45,615
Less: Accumulated depreciation		(6,548)		(5,247)
Property and equipment, net	$	52,216	$	40,368

Accrued Liabilities

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

	March 31, 2023	December 31, 2022
Bonus and payroll-related accruals	$ 17,300	$ 18,951
Sales and marketing accruals	4,184	5,347
Liability for inventory in transit	8,597	7,028
Product warranty	3,154	3,254
Accrued sales tax	9,657	9,066
Other accrued liabilities	15,768	13,806
Total	$ 58,660	$ 57,452

Note 7. 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, 2023 and 2022 (in thousands):

	Three Months Ended March 31,	
	2023	2022
Beginning Balance	$ 3,254	$ 3,947
Add: Accruals for warranties issued during the period	1,016	1,462
Less: Settlements made during the period	(1,116)	(1,535)
Ending Balance	$ 3,154	$ 3,874

Note 8. Deferred Revenue (Restated)

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. Approximately 88% of the Company’s deferred revenue balance of $13.7 million as of March 31, 2023 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, 2023 and 2022 (in thousands):

	Three Months Ended March 31,	
	2023	2022
	(As Restated)	
Beginning balance	$ 13,498	$ 10,825
Add: Payments received	6,045	4,864
Less: Revenue from current period sales	(615)	(458)
Less: Revenue recognized from beginning balance	(5,229)	(4,167)
Ending balance	$ 13,699	$ 11,064

The fixed annual license fees received related to the AviClear contracts are deferred and recognized over the annual lease periods. The AviClear deferred license fee balance included in the total deferred revenue balance at March 31, 2023, and December 31, 2022, was $2.9 million and $2.3 million, respectively.

Costs for extended service contracts were $1.6 million and $1.7 million for the three months ended March 31, 2023 and March 31, 2022, respectively.

Note 9. Revenue (Restated)

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 11% and 7% of the Company's total revenue for the three months ended March 31, 2023 and March 31, 2022, respectively.

The Company has certain system sale 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 one performance obligation), system accessories (hand pieces), training, AviClear license agreements, 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. 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.

The Company leases the AviClear device to customers and receives a fixed annual lease fee over the term of the arrangement and variable revenue related to the number of treatments performed by the lessee.

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, such as with the Company's *Pearl* and *Pearl Fractional* applications, rather than within the console.

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 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 at the time of 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.

AviClear

The Company leases the AviClear device to customers and receives a fixed annual license fee over the term of the arrangement and variable lease income related to the number of treatments performed by the lessee. The Company classifies its lease income as product revenue and classifies the AviClear contracts as operating leases. The fixed annual license fee is recognized evenly over the period of the lease contract on a straight-line basis. The treatment fee is recognized in the period the treatment protocol is initiated.

Consumables and other accessories

The Company classifies its customers' purchases of replacement cycles for *truSculpt* and *truFlex,* as well as replacement hand pieces, x*eo* and *truSculpt 3D* hand pieces, and single use disposable tips applicable to *Secret PRO,* and *Secret RF* as Consumable revenue. The *Secret PRO* and *Secret RF* products' 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.

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 at a point in time upon shipment.

Extended service contract

The Company offers post-warranty services to its customers through extended service contracts that cover parts and labor for a term of one to three 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.

Significant Judgments

The Company determines 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 to similar customers.

Loyalty Program

The Company operates a customer loyalty program for qualified customers located in the U.S. and Canada. Under the loyalty program, customers accumulate points based on their purchasing levels which can be redeemed for such rewards as the right to attend the Company's advanced training event for a product, 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, 2023 and December 31, 2022, the liability for the loyalty program included in accrued liabilities was $0.2 million and $0.3 million, respectively.

Deferred Sales Commissions

Incremental costs of obtaining a contract related to the sale of a system, which consist primarily of commissions and related payroll taxes, are capitalized, and amortized on a straight-line basis over the expected period of benefit, except for costs that are recognized when product is sold. The Company uses the portfolio method to recognize the amortization expense related to these capitalized costs related to initial contracts and such expense is recognized over a period associated with the revenue of the related portfolio, which is generally two to three years.

Total capitalized commissions as of March 31, 2023 and December 31, 2022 were $3.4 million and $3.8 million, respectively, and are included in Other long-term assets in the Company's condensed consolidated balance sheet. Amortization expense for these assets was $0.6 million and $0.8 million during the three months ended March 31, 2023 and March 31, 2022, 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 10. 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.

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

	Shares Available for Grant
Balance, December 31, 2022	1,070,925
RSUs granted	(36,541)
Stock awards canceled / forfeited / expired	206,087
Options canceled / forfeited / expired	4,835
Balance, March 31, 2023	1,245,306

	Options Outstanding		
	Number of Stock Options Outstanding	Weighted-Average Exercise Price	Weighted Average Remaining Term (in Years)
Balance, December 31, 2022	513,935	$ 34.41	6.63
Options exercised	(5,775)	$ 18.93	
Options canceled / forfeited / expired	(4,835)	$ 46.99	
Balance, March 31, 2023	503,325	$ 34.47	5.29

	Stock Awards Outstanding	
	Number of Awards Outstanding	Weighted Average Grant Date Fair Value per Share
Balance, December 31, 2022	$ 906,211	$ 40.39
RSUs granted	36,541	$ 31.14
Awards released	(168,525)	$ 30.78
Stock awards canceled / forfeited / expired	(206,268)	$ 46.17
Balance, March 31, 2023	567,959	$ 40.54

Stock-based Compensation Expense

Stock-based compensation expense by department recognized during the three months ended March 31, 2023 and 2022 was as follows (in thousands):

	Three Months Ended March 31,	
	2023	2022
Cost of revenue	$ 364	$ 459
Sales and marketing	1,148	576
Research and development	693	980
General and administrative	1,181	2,028
Total stock-based compensation expense	$ 3,386	$ 4,043

Note 11. Net Loss Per Share (Restated)

As of March 31, 2023, the Company’s Convertible Notes were potentially convertible into 8,696,792 shares of common stock.

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 issuances of 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, 2023 and 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, 2023 and March 31, 2022, a basic loss per common share and diluted loss per common share are the same in each 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,	
	2023	2022
Numerator:	*(As Restated)*	
Net loss used in calculating net loss per share, basic	$ (28,048)	$ (15,142)
Denominator:		
Weighted average shares of common stock outstanding used in computing net loss per share, basic	19,776	18,080
Dilutive effect of incremental shares and share equivalents:		
Convertible notes	—	—
Options	—	—
RSUs	—	—
PSUs	—	—
ESPP	—	—
Weighted average shares of common stock outstanding used in computing net loss per share, diluted	19,776	18,080
Net loss per share:		
Net loss per share, basic	$ (1.42)	$ (0.84)
Net loss per share, diluted	$ (1.42)	$ (0.84)

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,	
	2023	2022
Capped call	8,697	4,167
Convertible notes	8,697	4,167
Options to purchase common stock	503	485
Restricted stock units	370	526
Performance stock units	235	482
Employee stock purchase plan shares	52	32
Total	18,554	9,859

Note 12. Income Taxes

For the three months ended March 31, 2023, the Company's income tax expense was $0.3 million compared to tax expense of $0.2 million for the three months ended March 31, 2022.

The Company's income tax expense for the three months ended March 31, 2023 and 2022 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 13. Leases (Restated)

The Company is a party to certain operating and finance leases for vehicles, office space and storage facilities. The Company’s material operating leases consist of office space, as well as storage facilities and finance leases consist of automobile leases. The Company’s leases generally have remaining terms of one to 10 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, Japan, Belgium, France, and Spain.

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.

Tenant incentives used to fund leasehold improvements are recognized when earned and reduce the Company's right-of-use asset related to the lease. These are amortized through the right-of-use 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, 2023**	**December 31, 2022**
Assets			
Right-of-use assets	Operating lease right-of-use assets	$ 12,059	$ 12,831
Finance lease	Property and equipment, net	1,535	1,606
Total leased assets		$ 13,594	$ 14,437

Liabilities	**Classification**	**March 31, 2023**	**December 31, 2022**
Operating lease liabilities			
Operating lease liabilities, current	Operating lease liabilities	$ 2,722	$ 2,810
Operating lease liabilities, non-current	Operating lease liabilities, net of current portion	10,652	11,352
Total Operating lease liabilities		$ 13,374	$ 14,162
Finance lease liabilities			
Finance lease liabilities, current	Accrued liabilities	$ 480	$ 485
Finance lease liabilities, non-current	Other long-term liabilities	675	825
Total Finance lease liabilities		$ 1,155	$ 1,310

Lease costs during the three months ended March 31, 2023 and 2022 (in thousands) was as follows:

		Three Months Ended March 31,	
Lease costs	**Classification**	**2023**	**2022**
Finance lease cost	Amortization expense	$ 150	$ 161
Finance lease cost	Interest for finance lease	$ 20	$ 21
Operating lease cost	Operating lease expense	$ 891	$ 915

Cash paid for amounts included in the measurement of lease liabilities during the three months ended March 31, 2023 and 2022 was as follows (in thousands):

		Three Months Ended March 31,	
Cash paid for amounts included in the measurement of lease liabilities	**Classification**	**2023**	**2022**
Operating cash flow	Finance lease	$ 20	$ 21
Financing cash flow	Finance lease	$ 124	$ 150
Operating cash flow	Operating lease	$ 699	$ 792

Facility leases

Maturities of facility leases were as follows as of March 31, 2023 (in thousands):

As of March 31, 2023	**Amount**
Remainder of 2023	$ 2,489
2023	2,937
2024	2,934
2025	3,029
2026	3,132
2027 and thereafter	468
Total lease payments	**14,989**
Less: imputed interest	1,615
Present value of lease liabilities	**$ 13,374**

Vehicle Leases

As of March 31, 2023, 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, 2023	**Amount**
Remainder of 2023	$ 402
2024	614
2025	263
2025	8
Total lease payments	**1,287**
Less: imputed interest	132
Present value of lease liabilities	**$ 1,155**

Weighted-average remaining lease term and discount rate, as of March 31, 2023, were as follows:

Lease Term and Discount Rate	March 31, 2023
Weighted-average remaining lease term (years)	
Operating leases	4.8
Finance leases	2.0
Weighted-average discount rate	
Operating leases	4.8 %
Finance leases	6.2 %

Lessor - AviClear (Restated)

Lessor revenue (Restated)

The Company leases the AviClear device to customers and receives a fixed annual license fee over the term of the arrangement and variable revenue related to the number of treatments performed by the lessee. The contractual term of the lease agreement is three years with a one-year autorenewal feature. Certain lease agreements' terms in excess of one year can be terminated without financial penalty, and these agreements are accounted for as having a lease term of one year. The AviClear lease agreements are accounted for as operating leases. The fixed annual license fee is recognized evenly throughout the period of the lease agreement on a straight-line basis. The treatment revenue is recognized in the period the lessee has the ability to perform the patient treatment.

The following table summarizes the amount of operating lease income included in product revenue in the accompanying condensed consolidated statements of operations (in thousands):

	Three Months Ended March 31,	
	2023	2022
	(As Restated)	
AviClear operating lease license fee revenue	$ 1,225	$ —
AviClear operating lease revenue	2,703	—
Total AviClear revenue	$ 3,928	$ —

The AviClear device being leased has a useful life of seven years. The Company expects that a device will be leased for two consecutive lease terms at the end of which its residual value will be immaterial.

The following is the minimum future lease payments as of March 31, 2023, under non-cancelable operating leases, assuming the minimum contractual lease term (in thousands):

As of March 31, 2023	Amount
Remainder of 2023	$ 2,463
2024	4,581
2025	2,119
Total AviClear revenue	$ 9,163

Practical Expedients

The Company elected to apply a practical expedient to operating leases and elected not to separate lease and nonlease components as long as the lease and at least one nonlease component have the same timing and pattern of transfer. As such, updates or upgrades on a when-and-if available basis to the AviClear device are combined with the operating lease revenue. The combined component is being accounted for under ASC 842. Additionally, the Company made an accounting policy election to present AviClear revenue net of sales and other similar taxes.

Capitalized sales commissions

Sales commissions related to obtaining AviClear lease agreements are accounted for as initial direct costs and are capitalized and amortized on a straight-line basis over the lease term. Amortization expenses for these assets were $1.0 million for the three months ended March 31, 2023, and nil for the three months ended March 31, 2022, and were included in Sales and marketing expense in the Company's condensed consolidated statement of operations. Total capitalized commissions as of March 31, 2023, and December 31, 2022, were $3.7 million and $3.3 million, respectively, and are included in Other long-term assets in the Company's condensed consolidated balance sheet.

Lease installment costs

The Company capitalizes fulfillment costs incurred before AviClear lease commencement and these costs include freight, installation, and training costs. Amortization expenses for these assets were $0.5 million during the three months ended March 31, 2023, and nil for the three months ended March 31, 2023, and were included in Cost of revenue in the Company's condensed consolidated statement of operations. Total lease installment costs as of March 31, 2023, and December 31, 2022, were $1.8 million and $1.4 million, respectively, and are included in Other long-term assets in the Company's condensed consolidated balance sheet.

Note 14. Contingencies

The Company is named from time to time as a party to other legal proceedings, product liability, intellectual property disputes, commercial disputes, employee disputes, and contractual lawsuits. 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. Certain of the cases below are still in the preliminary stages, and the Company is not able to quantify the extent of its potential liability, if any, other than as described. The outcome of litigation is inherently unpredictable and subject to significant uncertainties. If any of these matters are resolved adversely to the Company, this could have a material adverse effect on its business, financial condition, results of operations, and cash flows. In addition, defending these legal proceedings is likely to be costly, which may have a material adverse effect on the Company's financial condition, results of operations and cash flows, and may divert management's attention from the day-to-day operations of its business.

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 Cutera 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 ("TRO") 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. On April 9, 2020, the parties stipulated to the entry of a preliminary injunction providing for the same relief afforded by the TRO. On August 4, 2022, Cutera filed a second amended complaint. In addition to the above referenced claims, Cutera alleged claims for violation of the Lanham Act, unlawful business practices, false advertising and trademark infringement. Discovery is ongoing. No trial date has been scheduled.

In March 2023, Serendia, LLC ("Serendia"), filed patent infringement complaints against the Company with the International Trade Commission ("ITC") and in U.S. District Court for the District of Delaware alleging infringement of six Serendia patents by the Secret RF and Secret Pro systems, which the Company distributes in the U.S. on behalf of ILOODA Co. Ltd., a Korean company. If, following a successful third-party action for infringement, the Company cannot obtain a license for its products, the Company may have to stop selling the applicable products.

On April 11, 2023, J. Daniel Plants, the Company's former Executive Chairperson, and David Mowry, the Company's former Chief Executive Officer, filed a complaint in the Delaware Court of Chancery against directors Gregory Barrett, Sheila Hopkins, Timothy O'Shea, Juliane Park and Janet Widmann, as defendants, and the Company, as nominal defendant (the "Delaware Litigation") seeking a declaration that the individual defendants breached their fiduciary duties and enjoining them from enforcing the nomination deadline under the Company's Amended and Restated Bylaws in connection with the 2023 annual meeting of stockholders, or in the alternative, a declaration that the Company must hold a special meeting of the stockholders on June 2, 2023. Mr. Plants and Mr. Mowry filed a motion for expedited proceedings with their complaint. Mr. Plants and Mr. Mowry subsequently agreed that the determination made by the Special Committee of the Board to hold a special meeting of the stockholders on June 9, 2023 mooted their request in the Delaware Litigation for a declaration that the Company hold a special meeting of the stockholders. On April 18, 2023, the Court of Chancery denied Mr. Plants and Mr. Mowry's motion for expedited proceedings.

As of March 31, 2023 and December 31, 2022, the Company had accrued $0.8 million and $0.5 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 15. Debt

Convertible notes, net of unamortized debt issuance costs

The following table presents the outstanding principal amount and carrying value of the Company's Convertible Notes (in thousands):

	March 31, 2023	December 31, 2022
Notes due in 2026		
Outstanding principal amount	$ 69,125	$ 69,125
Unamortized debt issuance costs	(1,437)	(1,553)
Carrying Value	$ 67,688	$ 67,572
Notes due in 2028		
Outstanding principal amount	$ 240,000	$ 240,000
Unamortized debt issuance costs	(6,613)	(6,908)
Carrying Value	$ 233,387	$ 233,092
Notes due in 2029		
Outstanding principal amount	$ 120,000	$ 120,000
Unamortized debt issuance costs	(4,064)	(4,205)
Carrying Value	$ 115,936	$ 115,795
Convertible notes, net	$ 417,011	$ 416,459

Issuance of convertible notes due in 2026

In March 2021, the Company issued $138.3 million aggregate principal amount of 2026 Notes in a private placement offering. In May 2022, the Company entered into privately-negotiated exchange agreements with certain holders of the Company's outstanding 2026 Notes. Following the exchange, approximately $69.1 million in aggregate principal amount of the 2026 Notes remained outstanding.

The 2026 Notes bear interest at a rate of 2.25% per year payable semiannually in arrears on March 15 and September 15 of each year. Upon conversion, the 2026 Notes will be convertible into either 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. The aggregate proceeds from the offering were approximately $133.6 million, net of issuance costs, including initial purchasers fees.

Each $1,000 principal amount of the 2026 Notes is initially convertible into 30.1427 shares of the Company's common stock, which is equivalent to a conversion price of approximately $33.18 per share. The conversion rate for the 2026 Notes is subject to adjustment for certain events as set forth in the indenture governing the 2026 Notes. The 2026 Notes will mature on March 15, 2026, unless earlier converted, redeemed, or repurchased in accordance with the terms of the 2026 Notes.

Issuance of convertible notes due in 2028

In May 2022, the Company issued $240.0 million aggregate principal amount of 2028 Notes. A total of $230.0 million of aggregate principal amount of 2028 Notes was issued in a private placement offering and concurrently with this private placement, the Company entered into a purchase agreement with Voce Capital Management LLC ("Voce"), an entity affiliated with J. Daniel Plants, the Company's former Executive Chairperson, pursuant to which the Company issued to Voce $10.0 million aggregate principal amount of 2028 Notes on the same terms and conditions. The aggregate proceeds from the offering of 2028 Notes were approximately $232.4 million, net of issuance costs, including initial purchaser fees.

The 2028 Notes bear interest at a rate of 2.25% per year payable semiannually in arrears on June 1 and December 1 of each year, beginning on December 1, 2022. Upon conversion, the 2028 Notes will be convertible into either cash, shares of the Company's common stock or a combination thereof, at the Company's election. Each $1,000 principal amount of the 2028 Notes is initially convertible into 18.9860 shares of the Company's common stock, which is equivalent to an initial conversion price of approximately $52.67 per share. The conversion rate for the 2028 Notes is subject to adjustment for certain events as set forth in the indenture governing the 2028 Notes. The 2028 Notes are presented as Convertible notes, net of unamortized debt issuance costs, on the condensed consolidated balance sheet.

Issuance of convertible notes due in 2029

In December 2022, the Company issued $120.0 million aggregate principal amount of 2029 Notes in a private placement offering. The 2029 Notes bear interest at a rate of 4.00% per year payable semiannually in arrears on June 1 and December 1 of each year. Upon conversion, the 2029 Notes will be convertible into either 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. The aggregate proceeds from the offering were approximately $115.8 million, net of issuance costs, including initial purchasers fees.

Each $1,000 principal amount of the 2029 Notes is initially convertible into 17.1378 shares of the Company's common stock, which is equivalent to a conversion price of approximately $58.35 per share. The conversion rate for the 2029 Notes is subject to adjustment for certain events as set forth in the indenture governing the 2029 Notes. The 2029 Notes will mature on June 1, 2029, unless earlier converted, redeemed, or repurchased in accordance with the terms of the 2029 Notes.

2026 Notes exchange

In May 2022, the Company entered into privately-negotiated exchange agreements with certain holders of the Company's outstanding 2026 Notes with respect to the exchange of $45.8 million in cash (excluding $0.3 million in cash for the payment of accrued interest) and 1,354,348 shares of common stock for $69.1 million in aggregate principal amount of the Company's outstanding 2026 Notes (the "2026 Notes Exchange"). Immediately following the closing of the 2026 Notes Exchange, approximately $69.1 million in aggregate principal amount of the 2026 Notes remained outstanding.

The 2026 Notes Exchange was accounted for as an extinguishment of debt. The Company recorded the difference between the proceeds paid and the carrying amount of the debt as an extinguishment loss, with a corresponding entry to common stock and Additional-paid-in capital for the issuance of the shares at the then-trading price of $41.31 per share. The table below presents the components of the Loss on debt extinguishment recorded in the Company's condensed consolidated statements of operations in the three months ended June 30, 2022 (amounts in thousands, except share and per share amounts):

Shares issued for repurchase	1,354,348		
Closing price of Cutera common stock on May 24, 2022	$ 41.31		
Value of shares issued		$ 55,948	
Cash used for repurchase		45,776	
Total shares and cash			$ 101,724
2026 Note principal exchanged			(69,125)
			32,599
2026 Notes: Unamortized debt issuance costs on May 24, 2022		$ 3,648	
Portion of 2026 Note principal exchanged		50 %	1,824

Loss on debt extinguishment	$ 34,423

Conversion and other features

2026 Notes:

Holders may convert their 2026 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 (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 2026 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 2026 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 2026 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 2026 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 2023. As of March 31, 2023, the 2026 Notes are not convertible. The 2026 Notes may become convertible in future periods. Upon any conversion requests of the 2026 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, 2024, the Company intends to settle such conversion requests in shares of common stock. Therefore, as of March 31, 2023, the 2026 Notes have been included as Long-term debt on the condensed consolidated balance sheet.

The Company may not redeem the 2026 Notes prior to March 20, 2024. On or after March 20, 2024, the Company may redeem for cash all or any portion of the 2026 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 2026 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 2026 Notes, at least $50.0 million aggregate principal amount of 2026 Notes must be outstanding and not subject to redemption as of the relevant redemption notice date.

If a specified corporate event occurs, 2026 Note holders have the option to require the Company to repurchase any portion or all of their 2026 Notes in $1,000 principal increments for cash. The price for such repurchase is calculated as 100% of the principal amounts of 2026 Notes, plus accrued and unpaid interest to the day immediately preceding the Fundamental Change repurchase date. Additionally, holders of the 2026 Notes who convert in connection with a fundamental change are, under certain circumstances, entitled to an increase in conversion rate.

The 2026 Notes are general senior unsecured obligations that rank senior to any of the Company’s indebtedness that is explicitly subordinated to the 2026 Notes. The 2026 Notes have equal rank in right of payment with all existing and future unsecured indebtedness that is not subordinated to the 2026 Notes (including the 2028 Notes and 2029 Notes). The 2026 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 2026 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 2026 Notes was approximately $68.4 million as of March 31, 2023, which the Company determined through consideration of market prices. The fair value measurement is classified as Level 2, as defined in Note 3.

2028 Notes:

Holders may convert their 2028 Notes at their option, in multiples of $1,000 principal amount, only under the following circumstances:

- During any fiscal quarter commencing after the fiscal quarter ending on September 30, 2022 (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 2028 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 2028 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 2028 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 March 1, 2028, 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 2028 Notes, in multiples of $1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

The circumstances described in the bullets in the paragraph above were not met during the first quarter of 2023. As of March 31, 2023, the 2028 Notes are not convertible. The 2028 Notes may become convertible in future periods. Upon any conversion requests of the 2028 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, 2024, the Company intends to settle such conversion requests in shares of common stock. Therefore, as of March 31, 2023, the 2028 Notes have been included as long-term debt on the condensed consolidated balance sheet.

The Company may not redeem the 2028 Notes prior to June 5, 2025. On or after June 5, 2025, the Company may redeem for cash all or any portion of the 2028 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 2028 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 2028 Notes, at least $100.0 million aggregate principal amount of 2028 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 2028 Notes in $1,000 principal increments for cash. The price for such repurchase is calculated as 100% of the principal amounts of 2028 Notes, plus accrued and unpaid interest to the day immediately preceding the Fundamental Change repurchase date. Additionally, holders of the 2028 Notes who convert in connection with a fundamental change are, under certain circumstances, entitled to an increase in conversion rate.

The 2028 Notes are general senior unsecured obligations that rank senior to any of the Company’s indebtedness that is explicitly subordinated to the 2028 Notes. The 2028 Notes have equal rank in right of payment with all existing and future unsecured indebtedness that is not subordinated to the 2028 Notes (including the 2026 Notes and 2029 Notes). The 2028 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 2028 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 2028 Notes was approximately $180.4 million as of March 31, 2023, which the Company determined through consideration of market prices. The fair value measurement is classified as Level 2, as defined in Note 3.

2029 Notes:

Holders may convert their 2029 Notes at their option prior to the close of business on the business day immediately preceding March 1, 2029 in multiples of $1,000 principal amount, only under the following circumstances:

- During any fiscal quarter commencing after the fiscal quarter ending March 31, 2023 (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 2029 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 2029 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 2029 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 March 1, 2029, 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 2029 Notes, in multiples of $1,000 principal amount, at the option of the holder regardless of the foregoing circumstances.

Upon any conversion requests of the 2029 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, 2024, the Company intends to settle such conversion requests in shares of common stock. Therefore, as of March 31, 2023, the 2029 Notes have been included as Long-term debt on the consolidated balance sheet.

The Company may not redeem the 2029 Notes prior to December 5, 2025. On or after December 5, 2025, the Company may redeem for cash all or any portion of the 2029 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 2029 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 2029 Notes, at least $100.0 million aggregate principal amount of 2029 Notes must be outstanding and not subject to redemption as of the relevant redemption notice date.

If a specified corporate event occurs, 2029 Note holders have the option to require the Company to repurchase any portion or all of their 2029 Notes in $1,000 principal increments for cash. The price for such repurchase is calculated as 100% of the principal amounts of 2029 Notes, plus accrued and unpaid interest to the day immediately preceding the Fundamental Change repurchase date. Additionally, holders of the 2029 Notes who convert in connection with a fundamental change are, under certain circumstances, entitled to an increase in conversion rate.

The 2029 Notes are general senior unsecured obligations that rank senior to any of the Company’s indebtedness that is explicitly subordinated to the 2029 Notes. The 2029 Notes have equal rank in right of payment with all existing and future unsecured indebtedness that is not subordinated to the 2029 Notes (including the 2026 Notes and 2028 Notes). The 2029 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 2029 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 2029 Notes was approximately $87.2 million as of March 31, 2023, which the Company determined through consideration of market prices. The fair value measurement is classified as Level 2, as defined in Note 3.

Capped Call Transactions

In connection with the issuance of each series 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 applicable series of Convertible Notes or to offset any cash payment the Company is required to make in excess of the principal amount upon conversion of the applicable series of Convertible 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 applicable capped call transactions, then the Company's stock would experience some dilution and/or such capped call transactions 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 applicable cap price.

In connection with the offering of the 2026 Notes, 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 $45.535, which represented 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.

In connection with the offering of the 2028 Notes, the Company purchased from the option counterparties capped call options that in the aggregate related to the total number of shares of the Company's common stock underlying the 2028 Notes sold to the initial purchasers in the offering of 2028 Notes, with a strike price equal to the conversion price of the 2028 Notes and with an initial cap price equal to $82.62, which represents a 100% premium over the last reported sale price of the Company's common stock of $41.31 per share on May 24, 2022, with certain adjustments to the settlement terms that reflect standard anti-dilution provisions. These capped call transactions expire over 40 consecutive scheduled trading days ended on May 30, 2028. The capped calls were purchased for $32.0 million, net of issuance costs.

In connection with the offering of the 2029 Notes, the Company purchased from the option counterparties capped call options that in the aggregate related to the total number of shares of the Company's common stock underlying the 2029 Notes sold to the initial purchasers in the offering of 2029 Notes, with a strike price equal to the conversion price of the 2029 Notes and with an initial cap price equal to $99.21, which represents a 100% premium over the last reported sale price of the Company's common stock of $49.66 per share on December 7, 2022, with certain adjustments to the settlement terms that reflect standard anti-dilution provisions. These capped call transactions expire over 40 consecutive scheduled trading days ended on May 30, 2029. The capped calls were purchased for $25.1 million, net of issuance costs.

The Company evaluated the capped call transactions under authoritative accounting guidance and determined that they 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. The effective interest rates on the 2026 Notes, 2028 Notes, and 2029 Notes are 2.98%, 2.82%, and 4.63%, respectively. Interest expense for the three months ended March 31, 2023, including the amortization of debt issuance cost, totaled approximately $3.5 million. 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.

The Loan and Security Agreement has been amended since inception to permit the issuance of the Convertible Notes and related capped call transactions and to remove the quarterly minimum revenue requirement. On March 26, 2023, the FDIC announced that it had entered into a purchase and assumption agreement with First-Citizens Bank & Trust Company under which all deposits of the former Silicon Valley Bank were assumed by First-Citizens Bank & Trust Company. In addition, under the purchase and assumption agreement, First-Citizens Bank & Trust Company assumed Silicon Valley Bank's obligations under the Company's Loan and Security Agreement.

The Company and First Citizens Bank & Trust Company agreed to amend the requirement for Cutera to maintain substantially all of its funds with First Citizens Bank & Trust Company and allowed up to 50% of the Company's funds to be invested with institutions other than First Citizens Bank & Trust Company.

As of March 31, 2023, the Company had not drawn on the loan facility and the Company is in compliance with all financial covenants.

Note 16. Segment Reporting (Restated)

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 maker ("CODM") is its Chief Executive Officer ("CEO"), who makes decisions on allocating resources and assessing performance.

Beginning in the fourth quarter of 2022, the Company segregates its operations into two reportable business segments: (i) Cutera Core and (ii) AviClear. This segregation aligns the Company's operating business segments with the way the CEO reviews the Company's operations as a result of the commercial release of the Company's AviClear acne treatment device in April 2022.

The Company measures the financial results of its reportable segments using an internal performance measure that excludes certain non-cash and non-recurring expenses.

	Three Months Ended March 31,	
	2023	2022
	(Dollars in thousands)	
	(As Restated)	
Net revenue		
Cutera Core	$ 50,598	$ 58,014
AviClear	3,928	—
Total net revenue	$ 54,526	$ 58,014
Income (loss) from operations		
Cutera Core	$ (11,259)	$ 4,350
AviClear	(6,299)	(8,155)
Segment loss from operations	(17,558)	(3,805)
Items not allocated to segments		
Stock-based compensation	(3,386)	(4,043)
ERP implementation	(518)	(3,976)
Depreciation and amortization	(3,587)	(1,079)
Legal fees, severance, and other	(1,552)	(254)
Consolidated loss from operations	(26,601)	(13,157)
Interest and other expense, net	(1,175)	(1,752)
Consolidated loss before income taxes	$ (27,776)	$ (14,909)

	Three Months Ended March 31,	
	2023	2022
Capital spending	*(As Restated)*	
Cutera Core	$ 73	$ 91
AviClear	10,280	230
Total segment capital spending	10,353	321
Corporate	—	—
Total capital spending	$ 10,353	$ 321

Total assets	**March 31, 2023**	**December 31, 2022**
	(As Restated)	
Cutera Core	$ 166,932	$ 154,978
AviClear	60,719	47,406
Total segment assets	227,651	202,384
Corporate	268,928	318,604
Total assets	$ 496,579	$ 520,988

The following table presents a summary of revenue by geography and product category for the three months ended March 31, 2023 and 2022 (in thousands):

	Three Months Ended March 31,	
	2023	2022
Revenue mix by geography:	***(As Restated)***	
North America	$ 27,202	$ 28,853
Japan	12,908	17,503
Rest of the World, other than United States, Asia and Europe	14,416	11,658
Total consolidated revenue	$ 54,526	$ 58,014
Revenue mix by product category:	***(As Restated)***	
Systems	$ 33,317	$ 36,514
AviClear	3,928	—
Consumables	3,744	3,903
Skincare	8,132	11,649
Total product revenue	49,121	52,066
Service	5,405	5,948
Total consolidated revenue	$ 54,526	$ 58,014

Note 17. Subsequent Events

In April 2023, the Company's Compensation Committee approved a retention amount of $10.0 million to be made available to sales personnel and a retention amount of $3.0 million for non-sales personnel. These retention amounts will be paid in cash to the relevant employees over an 18-month period in installments in July 2023, January 2024, April 2024, and October 2024.

The Company believed it necessary given the recent events at the Board of Director level to put incentives in place to prevent employee turnover.

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 Amendment and the Company's audited financial statements and notes thereto for the year ended December 31, 2022, included in its annual report on Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC") on April 7, 2023, as amended on May 1, 2023.

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.

Restatement of Previously Issued Financial Statements

This "Management's Discussion and Analysis of Financial Condition and Results of Operations" has been amended and restated to give effect to the Restatement, as more fully described in Note 1 – *Restatement of Previously Issued Financial Statements* to the Company's accompanying unaudited condensed consolidated financial statements contained elsewhere in this Amendment. For further detail regarding the Restatement, see "Explanatory Note" and Part I, Item 4, "Controls and Procedures" contained in this Amendment.

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, 2023.

Executive Summary

Company Description

The Company develops, manufactures, distributes, and markets energy-based product platforms for medical practitioners, enabling them to offer safe and effective treatments to their customers. In addition, the Company distributes third-party manufactured skincare products. The Company currently markets the following system platforms: AviClear, enlighten, excel, truSculpt, Secret PRO, Secret RF, and xeo. These platforms enable medical practitioners to perform procedures including treatment for acne, body contouring, skin resurfacing and revitalization, hair and tattoo removal, removal of benign pigmented lesions, and vascular conditions. Several of the Company's systems offer multiple hand pieces and applications, providing customers the flexibility to upgrade their systems.

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 also maintains regional distribution centers ("RDCs") in selection locations across the U.S. These RDCs serve as forward warehousing for systems and service parts in various geographies. The Company markets sells 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, 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 37 countries. The consolidated financial statements include the accounts of the Company and its subsidiaries. All inter-company transactions and balances have been eliminated.

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), leasing of AviClear devices for acne treatment ("AviClear" revenue), replacement hand pieces, truSculpt cycle refills, and truFlex 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) an 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 such as with the Company's Pearl and Pearl Fractional applications instead of within the console.

The Company currently markets the following key platforms: AviClear, enlighten, excel, truSculpt, Secret PRO, Secret RF, and xeo. These platforms enable medical practitioners to perform procedures including treatment for acne, body contouring, skin resurfacing and revitalization, hair and tattoo removal, removal of benign pigmented lesions, and vascular conditions.

Several of the Company's systems offer multiple hand pieces and applications, providing customers the flexibility to upgrade their systems whenever they choose and provides the Company with a source of additional Systems 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 includes prepaid service contracts, and labor, time and material on out-of-warranty products.

Significant Business Trends

The Company believes that the ability to grow revenue will be primarily impacted by the following:

- capturing market share in the acne space and capitalizing on the momentum in 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 physicians in the core dermatology and plastic surgeon specialties, as well as outside those specialties; 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 Secret RF products.

For a detailed discussion of the significant business trends impacting the Company's 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, 2022- Part I, Item 1A "Risk Factors," and (2) other announcements the Company makes from time to time.

Risks and Uncertainties

The world is currently experiencing widespread inflation. Household budgets are tight and cash is generally being conserved and spent on essential items like housing, gas, food, clothing and healthcare. Given the inflationary environment, fewer funds may be spent on aesthetic treatments, which may translate into less demand for the Company's products and less revenue as a result.

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, 2023. The Company will continue to monitor future conditions important to its assessment of potential impairment of its long-lived assets and goodwill.

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 Company relies on ZO as the sole supplier for skincare products. 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, 2022 filed with the SEC on April 7, 2023, as amended on May 1, 2023. 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 2.25% Convertible Senior Notes due 2026 (the “2026 Notes” and, together with the 2028 Notes and 2029 Notes, the “Convertible Notes”) and related transactions during the first quarter of 2021.

In March 2021, the Company issued $138.3 million aggregate principal amount of 2026 Notes in a private placement offering. In May 2022, the Company issued $240.0 million aggregate principal amount of 2028 Notes in a private placement offering. In December 2022, the Company issued $120.0 million aggregate principal amount of 2029 Notes in a private placement offering. The notes issued in March 2021 and May 2022 each bear interest at a rate of 2.25% per year and the notes issued in December 2022 bear interest at 4.00% per year. In accordance with ASU 2020-06, the Company recorded 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 are met for the note holders to have the option to redeem the notes early. To the extent there are any conversion requests, the Company intends to settle such conversion requests in shares of common stock. Therefore, the convertible notes have been included as Long-term debt on the condensed consolidated balance sheet.

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 15 of the unaudited condensed consolidated financial statements included in Item I, Part 1 of this Amendment.

Results of Operations (Restated)

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.

	Three Months Ended March 31,	
	2023	**2022**
	(As Restated)	
Net revenue	100 %	100 %
Cost of revenue	60 %	45 %
Gross margin	40 %	55 %
Operating expenses:		
Sales and marketing	54 %	43 %
Research and development	12 %	11 %
General and administrative	22 %	23 %
Total operating expenses	88 %	77 %
Loss from operations	(49)%	(23)%
Amortization of debt issuance costs	(1)%	— %
Interest on convertible notes	(5)%	(1)%
Other expense, net	0 %	(1)%
Loss before income taxes	(51)%	(26)%
Income tax expense	— %	— %
Net loss	(51)%	(26)%

Revenue (Restated)

The timing of the Company’s revenue is significantly affected by the mix of system products, training, consumables and extended service contracts. The revenue generated in any given period is also impacted by whether the revenue is recognized over time or at a point in time. For an additional description on revenue, see Note 2 in the notes to consolidated financial statements on the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022 and Note 9 to the unaudited condensed consolidated financial statements included in Item I, Part 1 of this Amendment.

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 11% and 7% of the Company's total revenue for the three months ended March 31, 2023 and 2022, 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 (Restated)

	Three Months Ended March 31,		
(Dollars in thousands)	**2023**	**% Change**	**2022**
Revenue mix by geography:	*(As Restated)*	*(As Restated)*	
North America	$ 27,202	*(6)%*	$ 28,853
Japan	12,908	*(26)%*	17,503
Rest of World	14,416	*24 %*	11,658
Consolidated total revenue	$ 54,526	*(6)%*	$ 58,014
North America as a percentage of total revenue	*50 %*		*50 %*
Japan as a percentage of total revenue	*24 %*		*30 %*
Rest of World as a percentage of total revenue	*26 %*		*20 %*
Revenue mix by product category:	*(As Restated)*	*(As Restated)*	
Systems - North America	$ 17,959	*(21)%*	$ 22,707
Systems - Rest of World (including Japan)	15,358	*11 %*	13,807
Total Systems	33,317	*(9)%*	36,514
AviClear	3,928	*100 %*	—
Consumables	3,744	*(4)%*	3,903
Skincare	8,132	*(30)%*	11,649
Total Products	49,121	*(6)%*	52,066
Service	5,405	*(9)%*	5,948
Total Net Revenue	$ 54,526	*(6)%*	$ 58,014

The Company's total net revenue decreased by $3.5 million, or 6%, in the three months ended March 31, 2023, compared to the same period in 2022. This decrease was primarily driven by weakness in Systems revenue in North America and a decline in Japanese Skincare revenue, partially offset by AviClear revenue. In March 2022, the Company received FDA clearance for the AviClear treatment device and began limited commercial release in April 2022.

Revenue by Geography (Restated)

The Company's North America revenue decreased by $1.7 million, or 6%, in the three months ended March 31, 2023, compared to the same period in 2022. The decrease was primarily driven by weakness in Systems revenue.

Revenue in Japan decreased by $4.6 million, or 26%, in the three months ended March 31, 2023, compared to the same period in 2022, due to a decrease in Skincare revenue.

The Company's Rest of World revenue increased by $2.8 million, or 24%, in the three months ended March 31, 2023, compared to the same period in 2022. The increase was mostly driven by strong System sales in Europe and global distributor markets.

Revenue by Product Type (Restated)

Systems Revenue

Systems revenue in North America decreased by $4.7 million, or 21%, in the three months ended March 31, 2023, compared to the same period in 2022, mainly due to a decrease in average selling prices ("ASPs") and unit volumes.

System revenue in the Rest of the World (including Japan) increased by $1.6 million or 11%, in the three months ended March 31, 2023, compared to the same periods in 2022, primarily due to increased sales in the Company's businesses in Europe, the Middle East, and Asia.

AviClear Revenue (Restated)

The AviClear revenue consists of $1.2 million of lease revenue related to the fixed annual license fee and variable lease revenue of $2.7 million related to treatments performed by the lessee.

Consumables Revenue

Consumables revenue decreased by $0.2 million, or 4%, in the three months ended March 31, 2023, compared to the same period in 2022.

Skincare Revenue

The Company's revenue from Skincare products in Japan decreased by $3.5 million, or 30%, in the three months ended March 31, 2023, compared to the same period in 2022. This decrease included a $1.3 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. Increased competition from alternative products and procedures also contributed to the decrease in Skincare revenue.

Service Revenue

The Company's Service revenue decreased by $0.5 million, or 9%, in the three months ended March 31, 2023, compared to the same period in 2022. This decrease was due primarily to decreased sales of service contracts, and support and maintenance services.

Gross Profit (Restated)

	Three Months Ended March 31,		
(Dollars in thousands)	**2023**	**2022**	**Change**
	(As Restated)		***(As Restated)***
Gross profit	$ 21,632	$ 31,788	$ (10,156)
As a percentage of total net revenue	39.7 %	54.8 %	(15.1)%

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, 2023, was 39.7%, compared to 54.8% in the same period in 2022. The 15.1 percentage point decrease in gross profit in the three-month comparison mainly reflects the following factors:

- Lower than planned production in the three months ended March 31, 2023, primarily because of challenges the Company faced in completing its audit-related inventory procedures, impacted the Company's inventory absorption by 6.3 percentage points. The resulting lack of finished goods inventory availability resulted in a lower fixed cost leverage of 1.2 percentage points;
- Geographic revenue mix, primarily lower North American volume sales and higher foreign distributor sales, adversely impacted the Company's gross margin rate by 1.1 percentage points in the three-month comparison;
- North American system ASPs were lower in the three months ended March 31, 2023, compared to the same period in 2022, and reflected a large national accounts deal in the three months ended March 31, 2023. The lower ASPs adversely impacted the gross margin rate by 1.4 percentage points in the three-month comparison;

- Weakening foreign currencies adversely impacted the Company's gross margin rate by 2.1 percentage points in the three-month comparison. This was primarily a result of the Company's Skincare revenue being denominated in Japanese Yen and costs being dominated in U.S. Dollars; and
- In April 2022, the Company began leasing the AviClear device. Depreciation expense on installed AviClear devices and amortization expense on capitalized lease installment costs adversely impacted the Company's gross margin rate by 2.8 percentage points in the three-month comparison.

Sales and Marketing

	Three Months Ended March 31,		
(Dollars in thousands)	2023	2022	Change
Sales and Marketing	$ 29,512	$ 24,944	$ 4,568
As a percentage of total net revenue	54.1 %	43.0 %	11.1 %

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, 2023, increased $4.6 million compared to the same period in 2022. This increase reflects headcount growth related to the launch of AviClear, as payroll-related costs, including commission expense and consulting services, increased $2.7 million in the three months ended March 31, 2023. Also contributing to the increase in sales and marketing expenses was an increase in promotional activities and travel of $1.2 million.

Research and Development ("R&D")

	Three Months Ended March 31,		
(Dollars in thousands)	2023	2022	Change
Research and development	$ 6,468	$ 6,499	$ (31)
As a percentage of total net revenue	11.9 %	11.2 %	0.7 %

R&D expenses consist primarily of personnel expenses, clinical research, regulatory and material costs. R&D expenses decreased by less than $0.1 million in the three months ended March 31, 2023, compared to the same period in 2022. This decrease reflected lower personnel expenses and external consultant costs, partially offset by an increase in materials of $0.6 million related to spend on new projects.

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

	Three Months Ended March 31,		
(Dollars in thousands)	2023	2022	Change
	(As restated)		(As restated)
General and administrative	$ 12,253	$ 13,502	$ (1,249)
As a percentage of total net revenue	22.5 %	23.3 %	(0.8)%

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 decreased by $1.2 million for the three months ended March 31, 2023 compared to the same period in 2022. This decrease was due to a $3.5 million decrease in implementation expense related to the Company's enterprise resource planning (ERP) system, partially offset by an increase in audit and related expense of $1.5 million.

Interest and Other Expense, Net

Interest and other expense, net, consists of the following:

(Dollars in thousands)	Three Months Ended March 31, 2023	2022	Change
Amortization of debt issuance costs	$ (552)	$ (219)	$ (333)
Interest on convertible notes	(2,939)	(778)	(2,161)
Interest income (expense), net	2,479	(144)	2,623
Other expense, net	(163)	(611)	448
Interest and other expense, net	$ (1,175)	$ (1,752)	$ 577

Interest and other expense, net, decreased $0.6 million for the three months ended March 31, 2023, compared to the same period in 2022. The increase in the Company's cash and marketable securities from March 31, 2022 to March 31, 2023, mainly as a result of the issuance of the 2028 Notes and 2029 Notes in May 2022 and December 2022, resulted in the $2.6 million increase in interest income and the $2.2 million increase in convertible note interest expense.

Provision for Income Taxes

(Dollars in thousands)	Three Months Ended March 31, 2023	2022	Change
Income tax expense	$ 272	$ 233	$ 39

The Company's income tax expense was $0.3 million for the three months ended March 31, 2023, compared to $0.2 million for the same period in 2022.

Segment Results of Operations (Restated)

	Three Months Ended March 31, 2023			Three Months Ended March 31, 2022		
(Dollars in thousands)	Cutera Core	AviClear	Total	Cutera Core	AviClear	Total
	(As Restated)	*(As Restated)*	*(As Restated)*			
Revenue	$ 50,598	$ 3,928	$ 54,526	$ 58,014	$ —	$ 58,014
Loss from operations	$ (17,424)	$ (9,177)	$ (26,601)	$ (4,872)	$ (8,285)	$ (13,157)
Interest and other income (expense), net			(1,175)			(1,752)
Loss before income taxes			$ (27,776)			$ (14,909)

Cutera Core (Restated)

The Cutera Core reportable segment consists of the Company's systems, consumables, skincare, and service businesses. The Cutera Core segment develops and manufactures energy-based systems for medical practitioners in addition to distributing third-party manufactured skincare products in Japan. The installed base of systems provides opportunities for the segment to earn revenues through service contracts, consumables, and replacement handpieces.

The Cutera Core segment's revenue decreased by $7.4 million in the three months ended March 31, 2023, compared to the three months ended March 31, 2022. This decrease reflected a decrease in system sales of $3.2 million due mainly to ASP and unit volume decreases in North America and a decrease in Skincare revenue of $3.5 million due to the weakening Japanese Yen and a combination of lower unit volumes and ASPs.

The Cutera Core segment recorded a loss from operations of $17.4 million in the three months ended March 31, 2023, compared to a loss from operations of $4.9 million in the three months ended March 31, 2022. This $12.5 million adverse change mainly reflects a decrease in gross margin contribution of $12.2 million because of the increase in the cost of service parts; the effect of the weakening Japanese Yen on Skincare revenue; a decrease in North American System ASPs; a decrease in overhead absorption due to lower than planned production; and an unfavorable shift in Systems customer and region sales mix.

AviClear (Restated)

The Company's AviClear reportable segment consists of the AviClear business. The Company's acne solution, AviClear, is a prescription-free, drug-free laser treatment for the treatment of mild to severe acne. The Company began earning revenue from its AviClear device following FDA approval in March 2022. The Company leases the AviClear device to customers in North America and receives a fixed annual license fee over the term of the arrangement and variable revenue related to number of treatments performed by the lessee.

In the three months ended March 31, 2023, the Company earned $1.2 million in lease license fee revenue and $2.7 million in treatment revenue.

The AviClear segment recorded a loss from operations of $9.2 million in the three months ended March 31, 2023, compared to a loss from operations of $8.3 million in the three months ended March 31, 2022. This $0.9 million adverse change reflects an increase in operating expenses of $3.0 million, partially offset by an increase of $2.2 million in gross margin contribution. The increase in operating expenses reflects additional sales and marketing headcount associated with the commercialization of the AviClear device.

Liquidity and Capital Resources (Restated)

The Company's principal source of liquidity in the three months ended March 31, 2023, was cash generated from net proceeds from the issuance of the Convertible Notes in March 2021, May 2022 and December 2022. 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, 2023 and December 31, 2022, the Company had $307.4 million and $345.4 million of working capital, respectively. Cash, cash equivalents, restricted cash and marketable investments decreased by $49.7 million to $268.4 million as of March 31, 2023, from $318.0 million as of December 31, 2022, driven by net loss adjusted for non-cash items of $20.9 million, an increase in working capital balances of $16.1 million, and capital expenditures of $10.3 million.

Cash, Cash Equivalents, Restricted Cash and Marketable Investments

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

(Dollars in thousands)	**March 31, 2023**	**December 31, 2022**	**Change**
Cash and cash equivalents	$ 166,828	$ 145,924	$ 20,904
Restricted cash	700	700	—
Marketable investments	100,823	171,390	(70,567)
Total	$ 268,351	$ 318,014	$ (49,663)

Cash Flows (Restated)

	Three Months Ended March 31,	
(Dollars in thousands)	**2023**	**2022**
	(As Restated)	
Net cash flow provided by (used in):		
Operating activities	$ (37,018)	$ (29,604)
Investing activities	60,334	(74,379)
Financing activities	(2,412)	(2,449)
Net increase (decrease) in cash and cash equivalents	$ 20,904	$ (106,432)

Cash Flows from Operating Activities (Restated)

Net cash used in operating activities in the three months ended March 31, 2023, was $37.0 million, which reflected net loss, adjusted for non-cash items, of $20.9 million, and changes in assets and liabilities of $16.1 million. The increase in current assets mainly reflects an increase in inventories and accounts receivable.

Cash Flows from Investing Activities (Restated)

Net cash provided by investing activities was $60.3 million in the three months ended March 31, 2023, which was attributable to the net sale of marketable investments of $70.7 million, partially offset by an $10.4 million increase in the AviClear device asset balance.

Cash Flows from Financing Activities

Net cash used in financing activities was $2.4 million in the three months ended March 31, 2023, 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 $166.8 million and marketable investments of $100.8 million as of March 31, 2023. For the three months ended March 31, 2023, the Company's principal source of liquidity was cash generated from proceeds received from the issuance of the Convertible Notes in March 2021, May 2022, and December 2022. 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 May 2022, the Company issued $240.0 million aggregate principal amount of 2028 Notes. A total of $230.0 million of aggregate principal amount of 2028 Notes was issued in a private placement offering and concurrently with this private placement, the Company entered into a purchase agreement with Voce Capital Management LLC, an entity affiliated with J. Daniel Plants, the Company's Executive Chairperson, pursuant to which the Company issued to Voce $10.0 million aggregate principal amount of 2028 Notes on the same terms and conditions. The aggregate proceeds from the offering of 2028 Notes were approximately $232.4 million, net of issuance costs, including initial purchaser fees.

In March 2021, the Company issued $138.3 million aggregate principal amount of 2026 Notes in a private placement offering. The 2026 Notes bear interest at a rate of 2.25% per year payable semiannually in arrears on March 15 and September 15 of each year. Upon conversion, the 2026 Notes will be convertible into either 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. The aggregate proceeds from the offering were approximately $133.6 million, net of issuance costs, including initial purchasers fees.

In December 2022, the Company issued $120.0 million aggregate principal amount of 2029 Notes in a private placement offering. The 2029 Notes bear interest at a rate of 4.00% per year payable semiannually in arrears on June 1 and December 1 of each year. Upon conversion, the 2029 Notes will be convertible into either 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 consolidated balance sheet. The aggregate proceeds from the offering were approximately $115.8 million, net of issuance costs, including initial purchasers fees.

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. See Note 14 – 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.

The Loan and Security Agreement has been amended since inception to permit the issuance of the Convertible Notes and related capped call transactions and to remove the quarterly minimum revenue requirement. On March 26, 2023, the FDIC announced that it had entered into a purchase and assumption agreement with First-Citizens Bank & Trust Company under which all deposits of the former Silicon Valley Bank were assumed by First-Citizens Bank & Trust Company. In addition, under the purchase and assumption agreement, First-Citizens Bank & Trust Company assumed Silicon Valley Bank's obligations under the Company's Loan and Security Agreement.

The Company and First Citizens Bank & Trust Company agreed to amend the requirement for Cutera to maintain substantially all of its funds with First Citizens Bank & Trust Company and allowed up to 50% of the Company's funds to be invested with institutions other than First Citizens Bank & Trust Company.

As of March 31, 2023, the Company had not drawn on the loan facility and the Company is in compliance with all financial covenants.

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 April 7, 2023, the filing date of the Company's Annual Report on 2022 Form 10-K, as amended May 1, 2023.

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, 2022, filed with the SEC on April 7, 2023, as amended on May 1, 2023, and other announcements the Company makes from time to time.

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

The Company has outstanding the 2.25% Convertible Senior Notes due 2026 (the "2026 Notes"), the 2.25% Convertible Senior Notes due 2028, and the 4.00% Convertible Senior Notes due 2029. During any fiscal quarter commencing after the fiscal quarter ending on June 30, 2021, in the case of the 2026 Notes, ending on September 30, 2022, in the case of the 2028 Notes, and ending on March 31, 2023, in the case of the 2029 Notes, 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 conversion price for the applicable series of Convertible Notes on each applicable trading day then holders may convert their notes in the subsequent quarter. This condition was not met for any of the Company's Convertible Notes in the three months ended March 31, 2023. Upon any future 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, 2023, 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 8.00% as of March 31, 2023, 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.

In 2022, the Company experienced an adverse impact on revenues and gross margin 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. In July 2022, the Company implemented a hedging program to mitigate this exposure to the Japanese Yen fluctuation against the U.S. Dollar.

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 material weaknesses in the year ended December 31, 2022, over the Company’s internal controls over financial reporting. These material weaknesses are related to information technology general controls (“ITGCs”) including, segregation of duties, user access, and reports produced by certain IT systems that support the Company's financial reporting process including those related to the implementation of an ERP system; inventory controls related to the completeness, existence, and cut-off of inventories held at third parties, inventories held by sales personnel, and inventories in transit, and controls related to the calculation of adjustments to inventory for items considered excessive and obsolete; and the completeness and accuracy of expense for routine and non-routine equity-based awards.

Additionally, in fiscal year 2023, and in conjunction with the Restatement, management identified an additional material weakness. Specifically, the Company failed to design, maintain and monitor a risk assessment program at a sufficiently precise level and therefore failed to identify new and evolving risks related to accounting policies, procedures and related controls performed over areas including, but not limited to inventory, revenues and lease income, costs for leased devices, and testing of certain key reports used in controls. Consequently, the Company failed to timely implement new controls to respond to changes in the business and leadership.

Although certain of these material weaknesses did not result in any material misstatement of the Company's consolidated financial statements for the periods presented, they could lead to a material misstatement of account balances or disclosures. Accordingly, management concluded that these deficiencies constitute material weaknesses.

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 Amendment. 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, 2023, at the reasonable assurance level, because of the material weaknesses in internal controls, which were disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2022, and the additional material weakness identified in fiscal year 2023. Notwithstanding these material weaknesses, the Company’s management, including the CEO and CFO, has concluded that the consolidated financial statements, included in the Form 10-Q/A, for the three months ended March 31, 2023, 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

Management continues to review and make changes to the overall design of its internal control environment, including implementing additional internal controls over ITGC’s, inventory, equity, and its risk assessment program over areas including but not limited to inventory, revenues and lease income, costs for leased devices, and certain key reports used in controls. The Company has added internal and external resources to its finance function to enhance the effectiveness of internal controls over financial reporting. The material weakness will not be considered remediated until the applicable remedial controls operate for a sufficient period. The Company has made progress in the remediation efforts related to the three material weaknesses but cannot estimate when these efforts will be completed.

The Company’s efforts include:

ITGC remediation actions:

- Developing a training program addressing ITGCs and policies, including educating control owners concerning the principles and requirements of each control, with a focus on those related to user access and change-management over IT systems impacting financial reporting;
- Developing enhanced risk assessment procedures and controls related to changes in IT systems; and
- Implementing an IT management review and testing plan to monitor ITGCs with focus on systems supporting the financial reporting processes.

Inventory control remediation actions:

- Evaluating the effectiveness of the current annual inventory count program and controls;
- Implementing a global inventory count policy and standard operating procedures to ensure consistent communication of the inventory count process and adherence to these policies at facilities managed by the Company and third-party logistics service providers;
- Providing training of standard operating procedures and internal controls to key stakeholders within the supply chain, logistics, and inventory process; and
- Enhancing existing management review controls related to inventory reconciliation, inventory in transit, inventories held by sales personnel, and key reports used in in the inventory count process.

Equity-based awards expense calculation remediation actions:
• Enhancing current review controls around the calculation of stock-based compensation expense.
Risk assessment remediation actions:
- Engaged third-party professionals to evaluate the design and operating effectiveness of the Company's risk assessment process in relation to the timely identification and assessment of changes in the business and leadership; and
- Provided training of standard operating procedures and internal controls to key stakeholders.

The actions the Company is taking are subject to ongoing executive management review and are also subject to audit committee oversight. If the Company is unable to successfully remediate these material weaknesses, 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 consolidated financial statements may be materially misstated.

Changes in Internal Control over Financial Reporting

Except for the material weakness identified in 2023 and the remediation measures in connection with the material weaknesses described above, there were no changes in the Company's internal control over financial reporting during the quarter ended March 31, 2023, 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, 2022, filed with the SEC on April 7, 2023, and Note 14 to the Company's condensed consolidated financial statements entitled "Contingencies", in this Amendment for the three months ended March 31, 2023.

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, 2022, filed with the SEC on April 7, 2023 (the “Annual Report”), as amended on May 1, 2023, other than as noted below:

The Company's business could be negatively affected as a result of the ongoing dispute between its former Executive Chairperson and former Chief Executive Officer and its Board of Directors.

On April 3, 2023 and April 10, 2023, J. Daniel Plants and David H. Mowry, in their then-capacities as the Executive Chairperson and Chief Executive Officer of the Company, respectively, each delivered a demand for a special meeting of the Company’s stockholders to vote on proposals submitted by Messrs. Plants and Mowry, specifically the immediate removal of five of the six independent directors of the Board, without cause. The Board subsequently terminated Messrs. Plants and Mowry from their positions as Executive Chairperson and Chief Executive Officer, respectively, for cause. The Board appointed members Sheila A. Hopkins as the interim Chief Executive Officer and Janet D. Widmann as the Chairperson of the Board. The Board has set a special meeting of stockholders for June 9, 2023 to vote on the proposals submitted by Messrs. Plants and Mowry.

On April 11, 2023, Mr. Plants and Mr. Mowry filed a complaint in the Delaware Court of Chancery against five of the Company’s independent directors, Gregory Barrett, Sheila Hopkins, Timothy O’Shea, Juliane Park and Janet Widmann, as defendants, and the Company, as nominal defendant seeking a declaration that the individual defendants breached their fiduciary duties and enjoining them from enforcing the nomination deadline under the Company’s Amended and Restated Bylaws in connection with the 2023 annual meeting of stockholders, or in the alternative, a declaration that the Company must hold a special meeting of the stockholders on June 2, 2023. Mr. Plants and Mr. Mowry filed a motion for expedited proceedings with their complaint. Mr. Plants and Mr. Mowry subsequently agreed that the determination made by the Special Committee of the Board to hold a special meeting of the stockholders on June 9, 2023 mooted their request in the Delaware litigation for a declaration that the Company hold a special meeting of the stockholders. On April 18, 2023, the Court of Chancery denied Mr. Plants and Mr. Mowry's motion for expedited proceedings.

Messrs. Plants and Mowry have subsequently publicly voiced opposition to certain aspects of the Company's corporate governance and strategy, and have undertaken a proxy contest to reconstitute the Company's Board. Activist campaigns that contest or conflict with the Company's strategic direction or seek changes in the composition of its Board or management could have an adverse effect on its operating results and financial condition. A proxy contest will require the Company to incur significant legal and advisory fees, proxy solicitation expenses and administrative and associated costs. In addition, proxy contests require significant time and attention by the Company's Board and management to address stockholder matters, diverting their attention from executing on its business strategy. Any perceived uncertainties as to the Company's future direction and control, its ability to execute on its strategy, or changes to the composition of its Board or senior management team arising from a proxy contest could lead to the perception of a change in the direction of its business or instability which may result in the loss of potential business opportunities, be exploited by its competitors, cause concern for those enrolling in its clinical trials, make it more difficult to pursue its strategic initiatives, or limit its ability to attract and retain qualified personnel and business partners, any of which could adversely affect its business and operating results.

Messrs. Plants and Mowry have indicated that they intend to fill any vacancies resulting from the removal of the current directors with unnamed individuals of their choosing. If individuals are ultimately appointed to the Company's Board with a specific agenda, such as reappointing Messrs. Plants and Mowry to executive positions, it may adversely affect the Company's ability to effectively implement its business strategy and create additional value for its stockholders.

Additionally, the Company has become subject to litigation as a result of this proxy contest and may become subject to additional litigation matters arising from this proxy contest, which would serve as a further distraction to its Board and management and would require the Company to incur significant additional costs. Actions such as those described above could cause significant fluctuations in the Company's stock price based upon temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of the Company's business.

The Company may become a defendant in one or more stockholder derivative or class-action litigations, and any such future lawsuit may adversely affect its business, financial condition, results of operations and cash flows.

The Company and certain of its officers and directors may become defendants in one or more future stockholder derivative actions or other class-action lawsuits. These lawsuits would divert the Company's management's attention and resources from its ordinary business operations, and the Company would likely incur significant expenses associated with their defense (including, without limitation, substantial attorneys' fees and other fees of professional advisors and potential obligations to indemnify current and former officers and directors who are or may become parties to such actions). If these lawsuits do arise, the Company may be required to pay material damages, consent to injunctions on future conduct and suffer other penalties, remedies or sanctions. In addition, any such future stockholder lawsuits could adversely impact the Company's reputation and harm its ability to generate revenue. Accordingly, the ultimate resolution of these matters could have a material adverse effect on the Company's business, financial condition, results of operation and cash flow and, consequently, could negatively impact the trading price of the Company's common stock.

The Company's distribution agreement with ZO requires the Company meet certain minimum purchase requirements during each calendar year. Since the Company did not meet these minimum requirements in 2022 and has not reached a mutually agreed upon resolution with ZO, ZO has the right to terminate the distribution agreement.

The Company has an exclusive agreement with ZO to distribute ZO's proprietary skincare products in Japan. There are certain economic requirements in the agreement that were not met for the 2022 fiscal year because of global economic factors, such as the unprecedented decline in the value of the Japanese Yen compared to the U.S. Dollar over the course of 2022. The distribution agreement provides that the Company and ZO shall meet during the first quarter of the subsequent fiscal year to develop an improvement plan and/or change the minimum purchase requirements for 2023.

To date, the Company has been unable to reach terms with ZO on an improvement plan and/or minimum purchase requirements for 2023 and therefore ZO has the option to terminate the distribution agreement in its sole discretion during the second quarter of 2023. If ZO terminates the Company's distribution rights, or requires the Company to amend the terms of its distribution agreement in a manner favorable to ZO, there would be an adverse effect the Company's future revenue, results of operations, cash flows and stock price.

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.

On May 27, 2022, the Company issued $240.0 million aggregate principal amount of convertible notes (the “2028 Notes”). The notes bear interest at a rate of 2.25% per year. A total of $230.0 million of aggregate principal amount of 2028 Notes was issued in a private placement offering to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A under the Securities Act and concurrently with this private placement, the Company entered into a purchase agreement with Voce Capital Management LLC (“Voce”) pursuant to Section 4(a)(2) of the Securities Act, an entity affiliated with J. Daniel Plants, the Company’s former Executive Chairperson, pursuant to which the Company issued to Voce $10.0 million aggregate principal amount of 2028 Notes on the same terms and conditions. The aggregate proceeds from the offering of 2028 Notes were approximately $232.4 million, net of issuance costs, including initial purchasers’ fees. The notes will mature on June 1, 2028, unless earlier converted, repurchased or redeemed. The initial conversion rate will be 18.9860 shares of the Company's common stock per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $52.67 per share of common stock). 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 $32.0 million, inclusive of issuance costs.

On December 12, 2022, the Company issued $120.0 million aggregate principal amount of convertible notes (the “2029 Notes”) in a private placement offering to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A under the Securities Act. The 2029 Notes bear interest at a rate of 4.00% per year. Upon conversion, the 2029 Notes will be convertible into either cash, shares of the Company’s common stock or a combination thereof, at the Company’s election. The 2029 Notes are presented as convertible notes, net of unamortized debt issuance costs, on the consolidated balance sheet. The aggregate proceeds from the offering were approximately $115.8 million, net of issuance costs, including initial purchasers’ fees. The notes will mature on June 1, 2029, unless earlier converted, repurchased or redeemed. The initial conversion rate will be 17.1378 shares of the Company's common stock per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $58.35 per share of common stock). In connection with issuance of the 2029 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 $25.1 million, inclusive of issuance costs.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit No.	Description
3.2	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).
3.4	Amended and Restated Bylaws of the Registrant (filed as Exhibit 3.2 to its Annual Report on Form 10-K filed on April 7, 2023 and incorporated herein by reference).
4.1	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).
33.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
33.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
34.1	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.
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 5th day of March, 2024.

CUTERA, INC.

/s/ Stuart Drummond

Stuart Drummond
Interim Chief Financial Officer

EXHIBIT 33.1

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

I, Taylor Harris, certify that:

1. I have reviewed this quarterly report on Form 10-Q/A 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: March 5, 2024

/s/ Taylor Harris

Taylor Harris
Chief Executive Officer

EXHIBIT 33.2

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

I, Stuart Drummond, certify that:

1. I have reviewed this quarterly report on Form 10-Q/A 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: March 5, 2024

/s/ Stuart Drummond
Stuart Drummond
Interim Chief Financial Officer

Exhibit 34.1

**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, Taylor Harris, 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/A of the Company for the quarterly period ended March 31, 2023 (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: March 5, 2024

/s/ Taylor Harris

Taylor Harris
Chief Executive Officer

I, Stuart Drummond, 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/A of the Company for the quarterly period ended March 31, 2023 (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: March 5, 2024

/s/ Stuart Drummond

Stuart Drummond
Interim Chief Financial 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.